

**THE STATUS AND ROLE OF PROVINCIAL GOVERNANCE IN THE SOUTH AFRICAN
CONSTITUTIONAL DISPENSATION 1996-2012**

By

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ABSTRACT

Provincial governance in South Africa has come under tremendous pressure and scrutiny from a variety of sectors, including Chapter 9 institutions, non-governmental organisations, the media, and opposition political parties. However, these challenges are not new and have been a concern for the South African government since the dawn of democracy. Former president, Thabo Mbeki, during his term of office, highlighted the challenges facing provinces – particularly with regard to financial management – and hinted at the need to abolish provinces. Endemic poor governance and incapacity within provinces – particularly those that inherited regions of the former homelands – undermined government’s efforts of reconstruction and development. Yet, more than 23 years since the dawn of democracy in the country, the provinces continue to struggle to fulfil their executive obligations. This incapacity at provincial government level has led the ruling ANC to review provinces.

The review of provinces requires constitutional amendment as it entails rearranging the political legislative framework and system of government that assigns the powers and functions to the provinces; a political provision that is entrenched in the Constitution of the country. This political framework of government, known as a quasi-federal system or a decentralised unitary state because of its close resemblance to a federal state, albeit highly centralised, was agreed to as a compromise by negotiating parties during the Codesa negotiations to accommodate the fears and safeguard the interests of minority parties, particularly the IFP and the NP, in the new government of national unity. The study took an exploratory descriptive qualitative research approach to explore the status and role of provincial governance in the South African constitutional dispensation between 1996 and 2012.

The study found weaknesses in the legislative framework of the current political system of government, which subsequently renders provinces prone to practices of poor governance and incapacity with respect to their ability to fulfil their constitutional executive obligations and electoral mandate. Thus, the study proposes an assignment of constitutionally guaranteed powers and functions to provinces through constitutional reforms. This would establish South Africa as a federation, whereby provinces have the authority and capacity to act independently as autonomous institutions of democratic governance within their respective

jurisdictions to fulfil their legislative and executive obligations in the best interest of their diverse constituencies.

Keywords: *structure of government; intergovernmental relations; federalism; centralisation, decentralisation; sub-national government; constitution; provincial government; fiscal autonomy; powers and functions; South Africa; governance*

DEDICATION

I dedicate this thesis to my late mother, Mary Kelebogile Diseko, who planted in me the seeds of love, respect, determination, direction, and discipline. I am forever grateful for her love and teachings. She will always be in my heart with unconditional love. My mother taught me to believe in myself and to put my trust and faith in God. I know she is smiling down on me from heaven because I have made her proud. May her soul rest in peace.

DECLARATION

- i. I, (Thabo) Mogale Daniel Diseko, declare that the thesis (or interrelated publishable manuscripts/published articles or mini-theses) that I herewith submit for the Philosophiae Doctor Degree for the programme in Governance and Political Transformation at the University of the Free State is my independent work and that I have not previously submitted it for a qualification at another institution of higher education.

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January 2018

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TABLE OF CONTENTS

ABSTRACT.....	ii
DEDICATION.....	iv
DECLARATION.....	v
ACKNOWLEDGEMENTS.....	vi
TABLE OF CONTENTS.....	vii
LIST OF FIGURES.....	xiv
LIST OF TABLES.....	xv
LIST OF ACRONYMS AND ABBREVIATIONS.....	xvii
CHAPTER 1: INTRODUCTION.....	1
1.1 MOTIVATION AND BACKGROUND.....	1
1.2 CONCEPTUALISATION AND CONTEXTUALISATION OF THE STUDY.....	11
1.2.1 Federalism.....	11
1.2.2 Decentralisation.....	15
1.2.3 Unitary states.....	19
1.2.4 Union government: historical amendments of the South African Constitution....	20
1.2.5 KwaZulu/Natal Indaba: Federalist proposal for South Africa.....	23
1.2.6 Historical perspective: Codesa and the new Constitutional dispensation.....	25
1.2.7 1996 Constitutional dispensation.....	26
1.2.8 Intergovernmental Relations (IGR).....	27
1.2.9 Fiscal federalism in South Africa.....	34
1.2.10 The future of provinces.....	36
1.2.11 Provincial government and governance.....	41
1.2.12 Why the ANC wants to do away with provinces.....	41
1.2.13 An effective governance framework for the new dispensation.....	45
1.2.14 Federalism in the international context.....	48
1.2.14.1 Germany.....	48
1.2.14.3 Nigeria.....	52
1.3 RESEARCH PROBLEM.....	55
1.3.1 Problem statement.....	60
1.4 RESEARCH QUESTION.....	60
1.4.1 Primary research question.....	62
1.4.2 Secondary research question.....	63
1.5 RESEARCH OBJECTIVES.....	65
1.5.1 Key political tenets underpinning the current constitutional dispensation.....	65
1.5.2 Alternative frameworks of systems of government.....	66

1.5.3	Analysis of the current constitutional dispensation of provinces	66
1.5.4	Review of provinces	67
1.6	RESEARCH DESIGN AND METHODOLOGY	67
1.6.1	Data collection	72
1.6.2	Data analysis	73
1.7	CHAPTERS OUTLINE.....	75
	Chapter 1: Orientation.....	75
	Chapter 2: Theories and models of systems of governance.....	75
	Chapter 3: Theories of governance	75
	Chapter 4: Federalism in the international context	76
	Chapter 5: South African political dispensation	76
	Chapter 6: Critical analysis of the South African governance model.....	76
	Chapter 7: Governance in the provincial administration	77
	Chapter 8: Analysis and findings	77
	Chapter 9: Summary, conclusions and recommendations	78
1.8	VALUE OF THE STUDY	78
	CHAPTER 2: CONCEPTUAL FRAMEWORK: THEORIES AND MODELS OF FEDERALISM	80
2.1	INTRODUCTION.....	80
2.2	FEDERATIONS: PRINCIPLES AND DESIGN.....	81
2.3	PERSPECTIVES ON FEDERALISM.....	86
2.3.1	Federalism and democracy	87
2.3.2	Management of conflict	90
2.3.3	Policy-making	91
2.3.4	Institutional design.....	94
2.4	ASYMMETRY IN FEDERALISM	95
2.5	FEDERALISM AND MACROECONOMIC OUTCOMES	104
2.6	MODELS OF FEDERALISM	106
2.6.1	Economic federalism	108
2.6.2	Cooperative federalism	109
2.6.3	Democratic (majority-rule) federalism	113
2.7	ROLES OF STATE AND NATIONAL GOVERNMENTS IN AREAS OF JOINT RESPONSIBILITY.....	116
2.7.1	Coordinate federalism.....	116
2.7.2	Competitive federalism.....	119
2.8	DECENTRALISATION	121
2.8.1	Fiscal decentralisation.....	123

2.8.2	Policy decentralisation	125
2.8.3	Political decentralisation	126
2.9	DISTRIBUTION OF POWERS	127
2.9.1	Balancing unity and diversity	127
2.9.2	The relationship between the distribution of legislative and executive powers 129	
2.10	VARIATIONS IN THE FORM OF DISTRIBUTION OF LEGISLATIVE AUTHORITY	130
2.10.1	Exclusive legislative powers	130
2.10.2	Concurrent (shared) legislative powers	131
2.10.3	Residual powers	132
2.11	FEDERALISM AND SUBNATIONAL SEPARATION OF POWERS	133
2.12	CONCLUSION	134
CHAPTER 3: THEORIES OF GOVERNANCE		137
3.1	INTRODUCTION	137
3.2	GOVERNANCE DEFINED	140
3.2.1	Beyond New Public Governance	146
3.2.2	Governance and government	152
3.3	WAVES OF GOVERNANCE	155
3.3.1	THE FIRST WAVE OF GOVERNANCE: NETWORK GOVERNANCE	156
3.3.2	THE SECOND WAVE: META-GOVERNANCE	159
3.3.3	THE THIRD WAVE: INTERPRETING THE CHANGING STATE	161
3.4	GOVERNANCE AS ANALYTIC FRAMEWORK	165
3.5	GOVERNANCE AS STRUCTURE, PROCESS, MECHANISM, AND STRATEGY	169
3.6	GOOD GOVERNANCE	171
3.6.1	Intellectual and policy background	173
3.6.2	Empirical research: good governance and human wellbeing	173
3.7	DIFFERENT CONCEPTIONS OF GOOD GOVERNANCE	175
3.7.1	Good governance and corruption	177
3.7.2	Good governance, global governance and the rule of law	181
3.7.3	Good governance and democracy	185
3.7.4	Good governance and government efficiency	194
3.8	CONCLUSION	200
CHAPTER 4: FEDERALISM IN THE INTERNATIONAL CONTEXT		203
4.1	INTRODUCTION	203
4.2	FEDERALISM IN THE UNITED STATES OF AMERICA	204
4.2.1	Decentralisation and the trajectory of American federalism	204

4.2.2	American federalism: centralisation versus decentralisation	207
4.3	FEDERALISM IN EUROPE.....	210
4.3.1	Fiscal federalism in Germany.....	213
4.3.2	Fiscal federal structures in Germany	214
4.3.3	Germany's Double <i>Politikverflechtung</i> : implications of federal reform on <i>Bund-Länder</i> relations in Europe.....	219
4.3.4	Analysis of the consequences of Germany's 2006 constitutional reform	221
4.3.5	Recent developments of Swiss federalism	223
4.3.6	Diversity in Switzerland	223
4.3.7	Fiscal federalism in Switzerland.....	226
4.3.8	The theoretical background of fiscal federalism	227
4.3.9	Competitive versus coordinated federalism	231
4.3.10	Competitive fiscal federalism in Switzerland.....	233
4.4	FEDERALISM IN DEVELOPING COUNTRIES	236
4.4.1	FEDERALISM IN LATIN AMERICA	237
4.4.1.1	Identity politics, citizenship, and democratisation in Ethiopia.....	237
4.4.1.2	Federalism in Brazil.....	237
4.4.1.3	Re-equilibration and intergovernmental authority in Brazil.....	242
4.4.1.4	Regulation of subnational borrowing.....	250
4.4.2	FEDERALISM IN AFRICA.....	252
4.4.2.1	Federalism and economic growth in Nigeria.....	252
4.4.2.2	Federalism and economic growth in Nigeria pre-1999.....	255
4.4.2.3	Federalism in Ethiopia	256
4.4.2.5	Ethiopian nationalism	258
4.4.3	DECENTRALISATION IN ASIA.....	262
4.4.3.1	China's soft centralisation.....	263
4.4.3.2	Implications of China's soft centralisation	264
4.4.3.3	Fiscal decentralisation and economic growth in China	266
4.4.3.4	Fiscal decentralisation in the 1980s	269
4.4.3.5	Challenges to India's centralised parliamentary federalism	269
4.4.3.6	Decentralisation in India	273
4.5	CONCLUSION.....	278
CHAPTER 5: THE SOUTH AFRICAN POLITICAL AND CONSTITUTIONAL DISPENSATION.....		281
5.1	INTRODUCTION.....	281
5.2	BACKGROUND.....	282
5.3	POLITICAL AND CONSTITUTIONAL DISPENSATION BEFORE 1994.....	287

5.3.1	1910 Constitutional dispensation	287
5.3.2	1948 Constitutional dispensation	290
5.3.3	1961 Constitutional dispensation	293
5.3.4	1983 Constitutional dispensation	300
5.4	THE POLITICAL AND CONSTITUTIONAL DISPENSATION IN SOUTH AFRICA: 1996-2012	309
5.4.1	Codesa: bargaining and compromise	311
5.4.2	The Truth and Reconciliation Commission (TRC).....	322
5.4.3	Structure and systems of the South African government.....	324
5.4.4	Provincial governance.....	336
5.4.5	Intergovernmental Relations (IGR)	342
5.5	CONCLUSION	347
CHAPTER 6: CRITICAL ANALYSIS OF THE SOUTH AFRICAN GOVERNANCE MODEL		
MODEL		
6.1	INTRODUCTION.....	352
6.2	GOVERNANCE IMPLICATIONS OF POLITICAL AND ECONOMIC DEVELOPMENTS IN SOUTH AFRICA	355
6.3	GOOD GOVERNANCE MECHANISMS	367
6.3.1	African Peer Review Mechanism (APRM)	368
6.3.2	Mo Ibrahim Index of African Governance (IIAG)	373
6.3.3	Summary of the role of good governance mechanisms	376
6.4	GOVERNANCE IN SOUTH AFRICA: A NATIONAL OVERVIEW	377
6.4.1	The South African Constitution	380
6.4.2	Parliamentary committees.....	381
6.4.3	State institutions supporting constitutional democracy	387
6.4.4	Governance indicators	390
6.5	GOVERNANCE AND POLITICS IN A DEMOCRATIC SOUTH AFRICA.....	398
6.5.1	Democracy and party politics	398
6.5.2	Political transformation.....	405
6.5.3	The New Public Management.....	408
6.5.4	Politicisation	410
6.5.5	Corruption	413
6.6	CONCLUSION	419
APPENDIX 6A: BATHO PELE PRINCIPLES IN RELATION TO GOOD GOVERNANCE.....		
APPENDIX 6B: THE ROLE AND FUNCTIONS OF PARLIAMENTARY COMMITTEES (SOURCE: WWW.PMG.ORG.ZA ACCESSED ON 22 JUNE 2014) ..		
424		

APPENDIX 6C: PRINCIPLES AND VALUES OF THE OFFICE OF THE PUBLIC PROTECTOR	428
CHAPTER 7: GOVERNANCE IN PROVINCIAL ADMINISTRATIONS	429
7.1 INTRODUCTION.....	429
7.2 PROVINCIAL GOVERNANCE IN SOUTH AFRICA – A PERFORMANCE OVERVIEW	436
7.2.1 Professional ethics	445
7.2.2 Efficiency, economy and effectiveness.....	450
7.2.3 Development orientation.....	454
7.2.4 Impartiality and fairness	458
7.2.5 Public participation in policy-making.....	459
7.2.6 Accountability.....	463
7.2.7 Transparency.....	472
7.2.8 Good human resources management and career development practices.....	474
7.2.9 Representivity	477
7.2.10 Summary of provincial governance in South Africa	480
7.3 CONCLUSION	487
APPENDIX 7A: CONSTITUTIONAL VALUES AND PRINCIPLES AND CONTRIBUTION TO GOOD GOVERNANCE	490
APPENDIX 7B: FOCAL AREAS SUBJECT TO MANDATORY M&E AND ITS RELATIONSHIP TO GOOD GOVERNANCE	494
APPENDIX 7C: THE NOLAN COMMITTEE’S SEVEN PRINCIPLES OF PUBLIC LIFE	496
APPENDIX 7D: NORMATIVE CRITERIA FOR EFFECTIVE AND EFFICIENT PUBLIC SERVICE DELIVERY.....	497
CHAPTER 8: ANALYSIS AND FINDINGS	498
8.1 INTRODUCTION.....	498
8.2 OVERVIEW OF PROVINCIAL GOVERNANCE.....	502
8.3 OVERVIEW OF FINDINGS.....	510
8.4 INTERPRETATION OF FINDINGS	519
8.4.1 Promoting constitutional values and principles	527
8.4.2 Strengthening the accountability structures and Chapter nine institutions.....	529
8.4.3 Strengthening Intergovernmental Relations	531
8.4.4 Promoting public participation	537
8.4.5 Integrating and coordinating accountability and governance mechanisms	540
8.4.6 Options for an improved governance framework	546
8.5 CONCLUSION	555
APPENDIX 8A: Principles of Good Governance in the Public Sector.....	571

APPENDIX 8B: LIST OF ANTI-CORRUPTION ACTS.....	573
APPENDIX 8C: LIST OF LEGISLATION	574
APPENDIX 8D: LIST OF POLICIES.....	575
CHAPTER 9: SUMMARY, CONTRIBUTION, RECOMMENDATIONS AND CONCLUSION.....	576
9.1 SUMMARY OF KEY GOVERNANCE ISSUES	576
9.1.1 A case for good governance.....	580
9.1.2 Systems and structures of good governance	588
9.1.3 Theoretical perspectives of good governance.....	590
9.1.4 Different constitutional dispensations in South Africa.....	592
9.1.5 A historical perspective of governance in South Africa	593
9.1.6 Good governance in South Africa.....	595
9.1.7 Governance in provincial administration.....	599
9.1.8 Analysis of the findings of the study	600
9.2 RECOMMENDATIONS	603
9.2.1 Recommendations for improved governance	605
9.2.2 Key determinants of good governance in the provincial sphere of government 609	
9.3 CONCLUSION	616
APPENDIX 9A: Principles of Good Governance in the Public Sector.....	621
APPENDIX 9B: LIST OF ANTI-CORRUPTION ACTS.....	623
BIBLIOGRAPHY	624

LIST OF FIGURES

Figure 1.1: Decentralisation as devolution: A typology	16
Figure 1.2: Analytical Framework for Provincial Governance	74
Figure 3.1: Conceptual framework: Governance of income from and expenditure conservation	141
Figure 5.4: Relationships among the structure, systems and processes of government	335
Figure 5.5: Provincial shares in personal income, 2006	337
Figure 6.1: Role players in governance	357
Figure 7.1: Good governance model in the South African public service.....	438
Figure 7.8: Average performance against principle 4 (impartiality and fairness) per Office for the 2010/11 assessment cycle	459
Figure 7.9: Average performance against principle 5 (public participation in policy-making) per Office for the 2010/11 assessment cycle	462
Figure 7.10: Accountability Framework of the South African Government.....	465
Figure 7.11: Vertical accountability structures in the water sector	469
Figure 7.12: Average performance against principle 6 (accountability) per Office for the 2010/11 assessment cycle	471
Figure 7.13: Average performance against principle 7 per Office for the 2010/11 assessment cycle	473
Figure 7.14: Average performance against principle 8 per Office for the Premier 2010/11 assessment cycle	475
Figure 7.15: Average performance against indicator 9 (representivity) per Office for the 2010/11 assessment cycle	478

LIST OF TABLES

Table 1.1: Options for the future of provinces.....	62
Table 4.2: Comparison in tax assignment between the Musgrave model and the Swiss fiscal system	235
Table 4.3: Typological measures: Fiscal autonomy of Subnational governments (SNG)....	244
Table 4.4: Macroeconomic outcomes, Latin America.....	248
Table 4.5: Implementation of market-friendly reforms, Latin America.....	249
Table 6.1: Good governance reforms for developing countries	355
Table 7.1: Overall performance per Office (OTP) for the 2010/2011 assessment	440
Table 8.1: Provincial government performance overview - 2010/11 assessment of Offices of the Premier	513

Governance can be defined in four different ways; as a structure, process, mechanism and strategy. “As a structure, governance signifies the architecture of formal and informal institutions; as a process it signifies the dynamics and steering functions involved in a lengthy never-ending process of policy-making; as a mechanism it signifies institutional procedures of decision making, of compliance and of control (or instruments); finally as a strategy it signifies the actor’s efforts to govern and manipulate the design of institutions and mechanisms in order to shape choice and preferences” – Levi-Faur (2012:8)

LIST OF ACRONYMS AND ABBREVIATIONS

ACRONYM	MEANING
ACCC	Anti-corruption Coordinating Committee
AG	Auditor-General
AGOA	African Growth Opportunity Act
AGSA	Auditor-General of South Africa
ANC	African National Congress
APP	Annual Performance Plan
APR	Annual Performance Report
APRM	African Peer Review Mechanism
ATIA	Access to Information Act
AU	African Union
BAS	Budget Automation System
BBBEE	Broad-Based Black Economic Empowerment
CASAC	Council for the Advancement of the South African Constitution
CBO	Community Based Organisation
CDP	Community Development Programme
CDU	Christian Democratic Party
CIPFA	Chartered Institute of Public Finance and Accountancy
CMN	Conselho Monetario Nacional
Codesa	Convention of a Democratic South Africa
COGTA	Department of Cooperative Governance and Traditional Affairs
COSATU	Confederation of South African Trade Unions
CPI	Corruption Perception Index
CPIA	Country Policy and Institutions Assessment

CSU	Christian Social Union
CUD	Council for Unity and Democracy
CVP	Constitutional Values and Principles
DA	Democratic Alliance
DME	Department of Minerals and Energy
DOC	Department of Communications
DPSA	Department of Public Service and Administration
EC	Eastern Cape
EE	Employment Equity
EFF	Economic Freedom Fighters
EHA	Event History Analysis
EPRDF	Ethiopian People's Revolutionary Democratic Front
EU	European Union
FA	Finanzausgleich
FCT	Federal Capacity Territory
FDP	Free Democratic Party
FIFA	<i>Fédération Internationale de Football Association</i>
FPP	Fraud Prevention Plan
FRG	Federal Republic of Germany
FTP	Federal, Provincial and Territorial Governments (Canada)
GAL	Global Administrative Law
GCIS	Government Communication and Information System
GDP	Gross Domestic Product
GDR	German Democratic Republic
GP	Gauteng
HEW	Health, Education and Welfare
HOD	Head of Department

HR	Human Resources
HRC	Human Rights Commission
HRM	Human Resource Management
HSIC	Heads of State and Government Implementation Committee
HSRC	Human Sciences Research Council
ICC	International Criminal Law
ICRG	International Country Risk Guide
ICT	Information and Communications Technology
IDP	Integrated Development Plan
IEC	Independent Electoral Commission
IFP	Inkatha Freedom Party
IGR	Intergovernmental Relations
IGRFA	Intergovernmental Relations Framework Act
IIAG	Ibrahim Index of African Governance
IL	International Law
IMF	International Monetary Fund
IPAP	Industrial Policy Action Plan
IR	International Relations
KZN	KwaZulu-Natal
LOGIS	Local Government Information System
LP	Limpopo
M&E	Monitoring and Evaluation
MAI	Manual of Access to Information
MCSA	Multichannel Sequences Analysis
MEC	Member of the Executive Council
MGD	Millennium Development Goal
MLC	Mayor's Listening Campaign

MP	Member of Parliament
MSA	Municipal Systems Act
MTSF	Mid-Term Strategic Framework
NA	National Assembly
NC	Northern Cape
NCOP	National Council of Provinces
NDP	National Development Plan
NDR	National Democratic Revolution
NEPAD	New Economic Partnership for Africa's Development
NGC	National General Council
NGO	Non-governmental Organisation
NGP	National Growth Path
NP	National Party
NPA	National Prosecuting Authority
NPM	New Public Management
NT	National Treasury
NW	North West
OECD	Organisation of Economic Co-operation and Development
OMA	Optimal Matching Analysis
ONLF	Ogaden National Liberation Front
OTP	Office of the Premier
PAA	Public Audit Act
PAIA	Promotion of Access to Information Act
PAJA	Promotion of Administrative Justice Act
PAP	Pan African Parliament
PB	Participatory Budgeting
PDP	Provincial Development Plan

PERSAL	Personnel Salary System
PFMA	Public Finance Management Act
PGDS	Provincial Growth and Development Strategy
PI	Performance Indicator
PMDS	Performance Management Development System
PoA	Programme of Action
PP	Public Protector
PPP	Public Participation Process
PRI	Panchayati Raj Institutions
PSC	Public Service Commission
PSCA	Public Service Commission Act
PSCBC	Public Service Coordinating Bargaining Council
PSOE	<i>Partido Socialista Obrero Espanol</i>
PSU	Public Sector Undertakings
PT	Brazil's Workers Party
R&D	Research and Development
RDP	Reconstruction and Development Programme
RSA	Republic of South Africa
SABC	South African Broadcasting Corporation
SACP	South African Communist Party
SADC	Southern African Development Community
SAI	Supreme Audit Institution
SALGA	South African Local Government Association
SAP	Structural Adjustment Programmes
SAPA	South African Press Association
SCOPA	Standing Committee on Public Accounts
SDPP	Strategic Defence Procurement Packages

SHRC	South African Human Rights Commission
SNG	Sub-national government
SOE	State-owned Enterprises
SPD	Social Democratic Party
TI	Transparency International
UDM	United Democratic Movement
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Program
US	United States
USA	United States of America
USAID	United States Agency for International Development
USD	United States Dollar
ViC	Villages in the City
WB	World Bank
WC	Western Cape
WGI	World Governance Index
WGIS	World Governance Indicators Survey
WPTPS	White Paper on the Transformation of the Public Service
WSA	Water Services Act (No. 108 of 1997)
WSP	Water Safety Plan
WWII	World War 2

CHAPTER 1: INTRODUCTION

There are two sets of principles. They are the principles of power and privilege and the principles of truth and justice. If you pursue truth and justice it will always mean a diminution of power and privilege. If you pursue power and privilege, it will always be at the expense of truth and justice – Chris Hedges

1.1 MOTIVATION AND BACKGROUND

The ruling African National Congress (ANC) introduced bills and policy proposals that triggered discussions and a political discourse across all sectors of the society in South Africa, including media, academia, labour, and business. The most vocal and strongest concerns were raised by the main opposition party – the Democratic Alliance (DA) – which interpreted these policy reform proposals as the ruling party's drive to centralise power in the national government (SA Today, 2010; DA, 2010). The DA asserts in its discussion document, *Centralisation of power under the ANC*, that the ANC, under President Jacob Zuma, seeks to centralise power in the national government away from the provinces and municipalities (DA, 2010). The DA argues further that the ANC passes legislation and policy proposals, which seek to centralise critical functions of the state, which include state security, revenue distribution, and policy planning under control of the national government (DA, 2010). This development is akin to the political developments regarding transformation of intergovernmental relations between the federal government and the states in the United States (US) between 1947 and 1998 whereby the actions of the Congress and the president served to increase federal dominion over policy making (see paragraph 4.2.1 in Chapter 4) (Woods & Bowman, 2011:862).

The DA argues that this perceived drive to centralise power in the national government will lead to the formation of a highly centralised unitary state, thereby undermining the provisions of the Constitution, which safeguard against abuse of power by the national government (see paragraph 1.2.3 below) (DA, 2010). The DA's discussion documents and media statements regarding the ANC and its alleged drive to centralise power serve only to fuel this debate and make these concerns more realistic and debatable in political and public discourse. The

debate about the future of provinces, especially their roles, functions, and powers intensified at that time, particularly because of the then approaching 53rd ANC national conference that took place in December 2012 in Mangaung¹. At this conference, the ANC was expected to review its progress in implementing the policies that were agreed upon five years earlier at the 52nd ANC national conference in Polokwane.

The 53rd ANC national conference was preceded by a policy conference in June 2012. One of the resolutions adopted at the 52nd National Conference of the ANC in 2007 was the review of provinces and local government (ANC, 2007; ANC, 2012). The ANC reviews its progress in implementing the resolutions of Polokwane in its Legislature and Governance discussion document (ANC, 2012). In this document, the ANC acknowledges that it has made limited progress in terms of implementing the resolutions of Polokwane. It also highlights, among others, the need to accelerate the implementation of outstanding resolutions, chief among them the review of provinces. Developments around poor performance by some provinces, including Limpopo, the Free State, and the Eastern Cape, which had some of their departments placed under administration of the national government by invoking section 100 (1)(b) of the Constitution, added to the debate about the role, function, and powers of the provinces.

Van Niekerk (2012:620) refers to this poor state of financial management and governance in these provinces as a crisis that manifested itself in fiscal wastefulness and failure in service delivery. Section 100 of the Constitution (Act 108 of 1996) empowers the national government to intervene in a provincial administration when such administration fails to deliver on its executive obligations. Likewise, section 139 of the Constitution empowers the provincial executive to intervene when a municipality fails to fulfil an executive obligation in terms of the Constitution or legislation (RSA, 1996:51).

Poor performance in service delivery intensifies the questions about the provinces' capacity to deliver crucial services to large numbers of citizens in such crucial areas as health,

¹ At the time of writing this thesis, the review of provinces had still not been undertaken as a policy position by the ruling ANC despite the organisation having held its 5th Policy Conference from 30 June to 5 July 2017. However, the ANC made strong assertions in this document regarding its previous policy positions and the need to reconfigure the state, including functionality of the intergovernmental system, review of provinces, powers and functions of different spheres, integrated cooperative governance and the impact on effective service delivery – see the ANC Legislature and Governance Policy Discussion Document (2017) (www.anc.org.za viewed 25 July 2017).

education, housing, and welfare services. This failure to provide adequate public services by provinces raises a question of capacity, which itself reflects the failure of this sphere of government to affirm its constitutional powers and functions to fulfil their legislative and executive obligations. Lues (2014:789) argues that maladministration, corruption, and imbalance in the distribution of power are some of the key challenges that are a direct result of government's lack of proper structures with regard to the delivery of services, as well as a lack of capacity to deliver government services.

Widespread service delivery protest actions throughout the country between 2009 and 2016 also contributed to the intensity and vigour of the debate. The protest action against poor service delivery or lack of service delivery in the communities, where local government is situated, increased the significance of the debate around provinces and the configuration of the political system of government; that is, a federal versus a unitary state. During these protests, citizens take to the street to demand basic necessities such as housing, land, water, and sanitation services. The number of service delivery protests averaged 32 a day across the country since 2009 (Khumalo, 2014:16).

Provinces, in particular, are targeted due to the expectation emanating from their supervisory and facilitative role over the local government – as stipulated in the Constitution (see page 51, section 139, chapter 6 of the Constitution). The current multi-layered system of government, known as the three spheres of government (local, provincial and national), is enshrined in the Constitution (section 40) (Constitution, 1996). It was agreed upon as a compromise to accommodate the concerns of minority parties, particularly the National Party (NP) and the Inkatha Freedom Party (IFP), which were part of the constitutional negotiations of 1992 (Codesa) (Van Niekerk, 2012:621; Oechsli, 2015:19).

The constitutional negotiations during the transition from apartheid to a constitutional democracy were divided between political parties in favour of a federal state, which would grant greater scope and nature of autonomy to provinces, and those in favour of a unitary state. These divergent views and preferences expressed the expectations, insecurities and anxieties of the different political parties on the fundamental political changes the new constitution might bring. Political parties in support of the maximum devolution of power and the greatest degree of autonomy of provincial governments desired to retain at least some of the formal or informal features or structures of the pre-1990 South Africa. These parties

included the NP, the Freedom Front (FF), the Democratic Party (DP) and the IFP. On the other hand, the ANC and the Pan Africanist Congress of Azania (PAC) were concerned about the transformation of the institutions and patterns of privilege and power in South Africa, and thus supported a unitary state (Schwella, 2016:73).

This system of government is referred to as a quasi-federal system or a decentralised unitary state. Regardless of the classification, the South African Constitution makes a clear distinction on the roles and functions of the different spheres of government and how they relate to each other (RSA, 1996). The Policy Discussion Document of the ANC (2012) briefly reviews current policies and progress in their implementation. It builds on the decisions taken at the ANC 52nd National Conference of 2007, the 3rd National General Council (NGC) of 2010, and the December 2010 Provincial and Local Government Summit. In addition, the document evaluates the current system of cooperative governance (chapter 3 of the Constitution) and the role of provinces.

The 3rd NGC report proposes means to fast track the implementation of the resolutions of the 52nd National Conference. The ANC admits that it has experienced major challenges in the implementation of some resolutions and policies, including the review of provinces and local government. The resolution to review provinces dates back to the 51st ANC National Conference of 2002. The urgency regarding the implementation of this resolution only began to gather momentum at the NGC of 2010, which mandated a summit on Provinces and Local Government, hosted by the Legislature and Governance sub-committee of the ANC in December 2010. This ANC summit provided political principles and guidelines for developing a blueprint policy on provinces and local government, and recommended the appointment of a panel of experts by government to review this policy.

The ANC believes that its ability to succeed in strengthening the democratic state and achieving a developmental state depends on the review of provinces. The developmental mandate of the South African government is poverty eradication and socio-economic development (ANC, 2012). The review of provinces will determine the allocation of powers and functions to the provinces and improve planning across government. Furthermore, the review of provinces is expected to strengthen the two-tier system of local government and the effectiveness and functionality of some provinces (ANC, 2015:44).

By the time the ANC policy conference of 2017 took place, from 30 June to 5 July, the review of provinces had still not happened despite endorsement of a framework document by the ANC summit of December 2010 to guide the review process. The ANC Task Team must first engage the government and parliament to ensure implementation of the resolution, thus, paving the way for establishment of the Presidential Commission on the review of provinces. The review process will be carried out by this Presidential Commission (ANC, 2015:44).

The discussion paper of the ANC's 2015 NGC identified the following main thrusts of the organisation in its effort to configure a developmental state: functionality of the intergovernmental system; provinces: the review of provinces; powers and functions of different spheres and the impact on effective service delivery; inter-departmental coordination: its effectiveness and determination of the appropriate number of departments; and mandates, which are overlapping and fragmented. The ANC conceded that these matters remained unresolved in both its 2015 NGC report (ANC, 2015:121) and the 2017 policy discussion document (ANC, 2017:6). At the conclusion of the policy conference of June-July 2017, the ANC had still not dealt decisively with the issue of the review of provinces, thus leaving the matter unresolved. The 2015 NGC resolved that the establishment of the Presidential Commission to review provinces be fast tracked and that it should commence in earnest. The work of the Commission is going to be challenging given that the change in provincial boundaries and assignment of powers and functions requires a change to the Constitution and that this Constitutional amendment requires a two-thirds majority vote to pass in parliament (ANC, 2015:44).

The alteration of provincial boundaries, powers, functions or institutions can only be made in accordance with section 74 of the Constitution, which provides for Bills amending the Constitution. Section 74 provides for amendment of the Constitution by a Bill passed in accordance with sub-section 74 (3) (a) of the Constitution by the National Assembly, with a supporting vote of at least two-thirds of its members; and 74 (3) (b) (ii) also by the National Council of Provinces, with a supporting vote of at least six provinces, if the amendment alters provincial boundaries, powers, functions, or institutions (RSA, 1996:30). Furthermore, section 155 (3) (b) of the Constitution on the establishment of municipalities requires the National Assembly to establish criteria and procedures for the determination of municipal boundaries by an independent authority, that is, the Municipal Demarcation Board (RSA, 1996:58).

The political landscape in the country has changed quite drastically since the first adoption of the resolution to review provinces; thus, further rendering the implementation of the resolution difficult. The political landscape has changed in a number of ways, including the formation of a newcomer, the Economic Freedom Fighters (EFF) and the growing factionalism within the ruling ANC – which is further exacerbated by the reshuffling of cabinet by President Zuma on 30 March 2017 (www.news24.co.za viewed 1 April 2017). This has led to a foreign currency credit rating downgrade of the country to so-called ‘junk’ status by international rating agencies (Standard & Poors, and Fitch), increasing calls and pressure for President Zuma to step down both within and outside the ANC, and a growing unhappiness with the government from all sectors of the society, including business, student organisations, social movements, and opposition parties (www.dailymaverick.co.za viewed 9 April 2017).

The ANC as a ruling party has the moral, ethical, and constitutional responsibility to project an image of a unified and stronger political organisation that has the capacity and political will to lead the country and to uphold the values and principles of a constitutional democracy. Thus, the current political wrangling and factional battles for political power within the organisation do not inspire public and investor confidence in the country and the government. Instead, this political turmoil is reflective of organisational instability within the ANC and threatens both the political stability of the country and good governance, which are the bedrock of a progressive and prosperous country where the rule of law, accountability, and democracy flourish. The ensuing discussion on factionalism within the ANC and the resultant rampant corruption illustrate the risk that these developments could pose for governance in the country, including governance at the subnational sphere of government.

Factionalism within the ANC is further fuelled by different camps formed to support different candidates for election as the next president of the ANC in the December 2017 elective conference. The battle for the top leadership position in the organisation is largely between the current deputy president of the ANC and the country, and the former secretary-general of the National Union of Mineworkers (NUM), Cyril Ramaphosa, and the former cabinet minister and African Union (AU) chairperson, Dr Nkosazana Dlamini-Zuma (also the ex-wife of President Zuma) (Mtshiselwa, Masenya & Mtshiselwa, 2016:4).

Calls for President Zuma to step down were echoed by the late veteran ANC leader and fellow Rivonia treason trial defendant Ahmed Kathrada, who wrote a pained open letter to Zuma asking him to resign. This letter was recently read by former President Kgalema Motlanthe at the funeral of Kathrada, leading to a wave of similar calls by senior ANC members and its Alliance partners, as well as senior leaders in business and social movements across the country (www.mg.co.za viewed 1 April 2017; www.pari.org.za viewed 26 August 2017). Senior ANC members calling for President Zuma² to resign (Wambu, 2016:74) include former Minister Pravin Gordhan and his deputy Mcebisi Jonas, Members of Parliament Dr Makhosi Khoza³ and Mondli Gungubele, former executive mayor of the City of Ekurhuleni, and Alliance partners such as First and Second Deputy Secretary-Generals of the South African Communist Party, Solly Maphaila and Jeremy Cronin⁴, and the leaders of the Confederation of South African Trade Unions (COSATU), such as Secretary-General Bheki Ntshalintshali and President Sdumo Dlamini. President Zuma has a close relationship with the Gupta family, who are of Indian origin, and who have been found by the former Public Protector's report to have benefitted immensely from prepayments and lucrative contracts from Eskom, a state-owned power utility, during the tenure of its former CEO Brian Molefe (Dludlu, 2016:74).

President Zuma was found by the Constitutional Court, led by Chief Justice Mogoeng Mogoeng, to have violated the Constitution, and, in respect of the separation of duties, the legislature was required to sanction the president. The legislature itself was found to have violated the Constitution by aiding Zuma's non-compliance with the Public Protector's finding that he should pay for the non-security features at his Nkandla homestead. The ANC Caucus in parliament did not hold Zuma to account, but instead carried out a parallel investigation to that of the Public Protector. Zuma and the ANC used majoritarianism in parliament to flout the law. The ANC Caucus used this majoritarianism to defeat the motion by the opposition DA to impeach the president. The DA, in its 2016 policy document titled *Defending our Democracy: The DA's Plan to Firewall Key Institutions*, argues that since his

² President Zuma survived the motion of no confidence in the historic motion held via a secret ballot on 8 August 2017, as decided by the Speaker of Parliament, Baleka Mbete. This was the eighth motion of no confidence against President Zuma, all of which he survived (www.news24.com viewed on 9 August 2017).

³ Dr Khoza was summoned to appear before the disciplinary committee of the ANC in the KwaZulu-Natal province for her public utterances. She later resigned from the ANC as a member, which effectively terminated her appointment as a Member of Parliament in the National Assembly.

⁴ Solly Maphaila was elected as the First Deputy General Secretary of the SACP during the party's 14th national congress in Boksburg where the former incumbent Jeremy Cronin indicated that he would not stand for re-election (www.ewn.co.za viewed on 23 July 2017).

appointment in 2009, Zuma has presided over a systematic project of so-called ‘state capture’ (see paragraph 3.7.1 for a detailed discussion on governance and corruption). The ANC used cadre deployment and its majoritarianism to sideline and erode a number of key institutions, such as the National Prosecuting Authority, the Public Protector, and the South African Revenue Service (DA, 2016:1).

Another motion of no confidence against Zuma took place on 8 August 2017. This motion of no confidence against Zuma was the most historic one in that opposition parties requested the Speaker of Parliament, Baleka Mbete, to approve that the motion be conducted in a secret ballot. The matter was taken to court by the opposition parties, led by the United Democratic Movement (UDM), after the Speaker pronounced that she did not have the powers to approve a secret ballot in a motion of no confidence against the president. In this court case, 11 opposition parties in the National Assembly joined the UDM in its court application as respondents, including the Council for the Advancement of the South African Constitution (CASAC) which applied to be admitted as *amicus curiae*. In this application to the court, CASAC alludes to the functions and responsibilities of the National Assembly of law making and oversight. CASAC argues that a motion of no confidence is at the heart of the oversight role of the National Assembly and thus places an obligation on Members of the National Assembly to not toe the party line as required by the Constitution of the ANC; hence, the need to have a secret ballot to protect the Members against any disciplinary processes when complying with their oversight obligations (CASAC, 2017:2).

The Constitutional Court ruled that the speaker does have the powers to approve such a process. The Speaker of Parliament approved the conducting of a motion of no confidence in a secret ballot. A number of ANC Members of Parliament (MPs) voted against Zuma even though the motion was defeated with 198 votes against, 177 for, and nine abstentions. However, this illustrates divisions within the ANC with some ANC MPs, such as Dr. Makhosi Khoza and Pravin Gordhan, having publicly indicated that they voted against Zuma and voted “on their conscience”. The Chief Whip of the ANC Caucus in Parliament, Jackson Mthembu, and the Minister of Police, Fikile Mbalula, publicly lambasted Dr Khosa for her stance and indicated that disciplinary action would be taken against her and anyone who goes against the decision of the ANC to vote in favour of Zuma. However, cracks within the party showed when some MPs abstained from the vote in the last motion of no confidence against Zuma. His corruption cases and break of his oath of office are just some of an array of

corruption cases involving senior government officials and politicians, which undermine the Constitution and rule of law (New African, 2016:25; www.dailymaverick.co.za viewed on 26 September 2017).

The difficulties facing the ANC are further exacerbated by its dismal performance in the 2016 local government elections where the party, for the first time since 1994, claimed less than 60% of the popular vote. The party's traditional stronghold cities, including Johannesburg, Port Elizabeth (now called Nelson Mandela Bay Metropolitan Municipality), and Pretoria (now called City of Tshwane), slipped from its grasp for the first time into the hands of the conservative DA and radical EFF. This massive loss has indeed been a wake-up call for the ruling ANC and a signal that it is beginning to lose its vice-like grip on the electorate (African Business, 2016:14). The dismal performance of the ANC in these elections was predicted by Xolelwa Mangcu, a University of Cape Town professor, who cited the recent corruption and fraud cases involving Zuma and the ANC's failure to hold him to account (Mangcu, 2016:27). While the ANC maintains its hegemony on the electorate, much like its counterpart liberation movements in other Southern African countries, such as the CCM in Tanzania (since 1961), MPLA in Angola (since 1975), FRELIMO in Mozambique (since 1975), ZANU-PF in Zimbabwe (since 1980), and SWAPO in Namibia (since 1990), the 2014 general elections and the 2016 local government elections point to a decline in the ANC's hegemony.

Service delivery community protests in the most impoverished black townships, which are traditionally ANC strongholds, are on the rise, highlighting frustrations with the government of the ANC within these communities. A number of factors contributed to the decline in the ANC hegemony. They include the corruption scandal surrounding the upgrades to Zuma's Nkandla homestead using public funds at a cost of an estimated R246-million, increasing calls for Zuma to resign, including calls by the ANC-aligned COSATU, the Marikana Massacre in August 2012, and the expulsion of COSATU's largest affiliate, the National Union of Metalworkers of South Africa (NUMSA) in December 2013, which officially resolved to withdraw its support for the ANC (Paret, 2016:420; Southall, 2014:81; Mangcu, 2016:27; Beresford, 2015:226; Parker, 2014:30).

Beresford (2015:226) attributes the increase in factionalism within the ruling ANC and corruption in the state to gatekeeper politics. The symptoms and consequences of gatekeeper

politics include the growth of patronage networks, crony capitalism, and bitter factional struggles within the party. Gatekeeper politics differs from uniquely “African” forms of political aberration and breakdown and instead resemble patronage politics found throughout the world because of its intrinsic connection to the development of capitalism (Beresford, 2015:226). In Africa, patronage politics are used by political elites to create and sustain the power base in states. In South Africa, ethnic patronage is used to dispense favouritism in bureaucratic appointments and state contracts awarded to business. Political elites use patronage in the form of nepotism, partiality, and preferential treatment to expand and strengthen their patronage coalitions in order to forge stable coalitions between the political elites and politicians who are located on the periphery (Mtshiselwa, Masenya & Mtshiselwa, 2016:4).

In gatekeeper politics within the ANC, political leaders in positions of authority both in the party and the public service act as gatekeepers by regulating access to the resources and opportunities that they control. The volatile politics of inclusion and exclusion that emerge from such practices trigger bitter factional struggles within the ANC as rival elites compete for power, thus undermining both the organisational integrity of the ANC and its capacity to deliver on its electoral mandate; hence, the decline in electoral support for the ANC in successive national and local elections (Beresford, 2015:226). There was a huge expectation given the above challenges facing the ruling ANC that the party would be severely bruised in the 2014 general elections, yet as Parker (2014:30) posits, the ANC emerged with a mere nosebleed, reaffirming its hegemonic grip on the electorate in South Africa since 1994 (Paret, 2016:420; Southall, 2014:81; Mangcu, 2016:27; Beresford, 2015:226; Parker, 2014:30).

The ANC recently released its policy discussion document titled *The year of Oliver Reginald Tambo: Let us deepen unity!* This discussion document was part of the party’s preparation for the policy conference that was held from 30 June to 5 July 2017, as well as the December 2017 National Elective Conference. Zuma is expected to be replaced by a new leader of the ANC during the National Elective Conference as he would have reached the end of his maximum two terms as the president of the ANC. The central theme of the Legislature and Governance paper of the discussion document is the articulation of the people’s power through state institutions. Thus, the ANC uses this paper as a means to strengthen its democratic legitimacy based on its mandate of a developmental state and the values of a constitutional democracy and human rights (ANC, 2017:1).

The ANC's policy on the attainment of the objectives of a developmental state are aligned with the development policies of government, including the National Development Plan (NDP), the New Growth Path (NGP), and the Industrial Policy Action Plan (IPAP). The Legislature and Governance paper focuses on the transformation and capacity of the state in respect of political institutions and the state machinery. The paper's main focus areas include governance and legislatures at national, provincial, and municipal level, macro configuration of the state; and provinces, public service administration, planning coordination, service delivery and capacity building, including cadre development (ANC, 2017:1).

1.2 CONCEPTUALISATION AND CONTEXTUALISATION OF THE STUDY

This chapter discusses a number of concepts and historical events, which provide both the conceptual and historical background of the study. These aspects form the basis of the study and assist in unpacking and understanding the context of the study. This background is drawn from both domestic and international developments in the political systems of these governments to provide a broader and wider comparative analysis and perspective of the structures and institutions of governance and political organisation.

1.2.1 Federalism

The lack of clarity or agreement among scholars and politicians about the classification of the system of government in South Africa as either federal or unitary necessitates an exploration of the various definitions of these concepts. This lack of clarity is compounded by the fact that even though the Constitution clearly sets out the constitution of the system of government along the definition and principles of federalism, it does not mention the words federal or federalism (Simeon & Murray, 2001). However, the multilevel (federal) nature of the government with its semi-autonomous constituent units, that is, provinces and local governments, renders South Africa a federal state by definition, as provided in ensuing paragraphs (see chapter 2 below for a detailed discussion of federalism) (Dahl, 1986:14; Gamper, 2016:1299; Cameron & Falleti, 2005:256; Inman & Rubinfeld, 2016:1).

A key characteristic used to classify a country as federal or not is the constitutional division of jurisdictions between the national and intermediate levels of government (Cameron & Falleti, 2005: 256-257). Dahl (1986:14) defines federalism as a system of dual sovereignty

in which some matters are exclusively within the competence of certain local units; cantons, states, provinces, and are constitutionally beyond the scope of the authority of the national government, and where certain other matters are constitutionally outside the scope of the authority of the smaller units.

This implies that the autonomy of both national and sub-national governments is guaranteed and protected by the constitution in certain matters (competencies) as provided in the constitution. Federalism is derived from the Latin word *foedus* meaning covenant. Thus, Dahl's definition above is in line with that of Gamper's (2016:1299), who defines federalism as a principle found in government systems consisting of at least two constituent governments that are partly independent but together form the system as a whole. Thus, federalism combines the principles of unity and diversity (*concordantia discors*). Further, federalism allocates independent power to constituent units within its jurisdiction and the means to participate at the federal level (Gamper, 2016:1299).

Dahl's definition above seems to suggest that South Africa is a federal state because the Constitution makes provision for both exclusive and concurrent competencies among the three spheres of government: that is, national, provincial, and local. Schedule 4 of the Constitution makes provision for functional areas of concurrent national and provincial legislative competence (RSA, 1996:98), whereas Schedule 5 provides for functional areas of exclusive provincial legislative competence (RSA, 1996:99).

However, section 44(2) of the Constitution further makes provision for the national legislature (parliament) to "intervene, by passing legislation in accordance with section 76 (1), with regard to a matter falling within a functional area listed in Schedule 5, when it is necessary" (RSA, 1996:19). Section 76 (1) deals with Ordinary Bills affecting provinces and defines the relationship between the National Assembly and the National Council of Provinces (NCOP) in this regard (RSA, 1996:31). Similar constitutional provision for national intervention in provincial administration is made in section 100 of the Constitution where it states that "When a province cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, the national executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation" (RSA, 1996:40).

The constitutional provision for a federal character of the state in South Africa in terms of Schedule 5 is overridden by the provisions of sections 44 and 100; effectively rendering South Africa a unitary state where the national or central government has universal constitutional powers over all jurisdictions; that is, national and sub-national governments (SNGs) under certain circumstances. Thus, in South Africa where the central government is stronger than the SNGs, the centre-state binary that “the stronger the states are, the weaker the centre will be” loses its edge (Varshney, 2013:43). Based on these provisions, it can be argued that the state in South Africa is primarily a federal state, but it can also assume the character of a unitary state under certain circumstances. Elazar (1994) defines federalism as:

... a polity with a strong overarching general government whose constitution is recognised as the supreme law of the land and which is able to relate directly to the individuals who are dual citizens in both the federation and their constituent states. The position and autonomy of the latter are constitutionally protected.

In all these definitions, the issues of shared government and independent jurisdictions, that is, self-rule, are emphasised, making them the defining features in the definition of federalism. In similar vein, Kincaid (2002) defines federalism as:

... both a structure and a process of governance that establishes unity on the basis of consent while preserving diversity by constitutionally uniting separate political communities into a limited, but encompassing, polity. Powers are divided and shared between constituent governments and a general government. The constituent units also have broad local responsibilities and sufficiently autonomous self-government to carry out their responsibilities on behalf of their own people in concert with the whole people of the federal polity.

Equally important to vertical separation of powers is horizontal separation of powers. This means that a clear distinction of the three branches of government, namely, executive, legislative and judiciary, need to be defined both at central and SNG levels (see paragraphs 2.11 in chapter 2 and 5.4.3 in chapter 5) (Cameron & Falleti, 2005; Dickovick, 2005). This separation of powers creates checks and balances, that is, safeguards, which prevent any branch of government from acquiring sweeping powers in all functions of the state. Thus, any given branch of government is limited to exercise powers only within the confines of its function and cannot interfere in matters pertaining to other branches. A closer analysis of the South African system of government depicts close adherence to the definitions of federalism

above. The political system of government in South Africa can therefore be referred to as federal as it exhibits the characteristics of vertical and horizontal division of power. The South African system of government is referred to by some authors as quasi-federal or a decentralised unitary state due to its highly centralised nature (Simeon & Murray, 2001:65-66; Dickovick, 2005).

Powers (2012:545) also refers to the South African system of government as quasi-federal with reference to the ability of an opposition political party occupying the intermediary institutions, that is, an alliance between the New National Party and the Democratic Party (1999-2004) in the Western Cape provincial government to enact an alternative HIV/Aids policy to that of the national government's due to international support from the Global Fund. Other forms of federalism are observed in other countries, such as joint federalism in Belgium and dual federalism in established federations such as Canada and Australia (Dodeigne, Gramme, Reuchamps & Sinardet, 2014:430).

Further sub-divisions of federalism can be defined based on the degree of division of power at SNG level. True federalism exhibits separation of power at SNG level in the three branches of government. Executive and legislative federalism countries lack sub-national judiciaries (courts), whereas executive federalism countries lack both sub-national legislatures and courts (Cameron & Falleti, 2005:258-259). Wheare (1964) classifies countries as federal or not on the basis of their constitutions, their governmental practices, and the degree of centralisation of authority of the national executive. In general, definitions of federalism focus on the division of sovereignty and power between the centre and the SNGs, and take into consideration the constitution and government practices. However, most definitions emphasise the division of sovereignty and power between the centre and the SNGs, that is, a vertical separation of power (Cameron & Falleti, 2005).

The most inclusive definition of federalism by Cameron and Falleti (2005) defines federalism as "a constitutional arrangement that creates executive, legislative, and judicial branches of government at the subnational level". India, Russia, and Malaysia exhibit executive and legislative federalism and are treated as quasi-federal. This is largely because of the asymmetrical powers of the centre. In each of the three countries, the sub-national units have limited institutional autonomy; that is, their existence depends on the restraint of the central government, as enforced by the judiciary (Cameron & Falleti, 2005:261). In America,

federalism reconfigured itself into newer, more centralised forms due to its inherent tensions; thus, replacing the classical dual sovereignty federalism with modern cooperative federalism. The tensions leading to expanding federal power in America arise from state-level policy shortcomings increasing the number of policy areas for which the federal state is responsible. “In practice, increased federal authority over new policy areas results from subnational governments abdicating control of local policies after their own failures and shifting responsibility to national institutions” (Callen, 2012:298).

1.2.2 Decentralisation

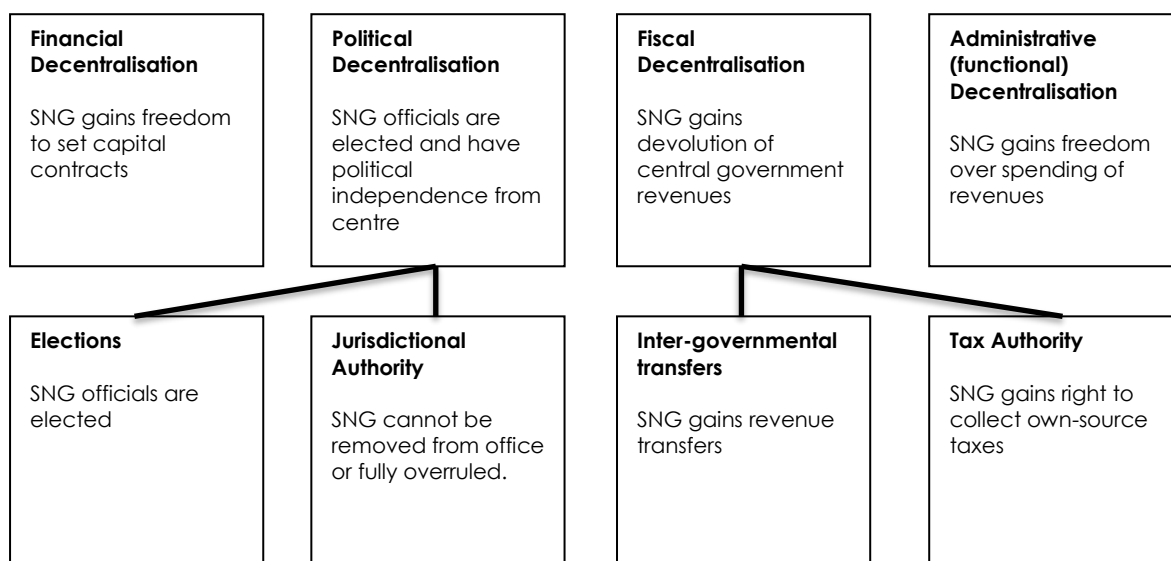
Decentralisation is the devolution of power from the central government to the sub-national government (Dickovick, 2005). Dickovick defines sub-national government (SNG) as levels of government below the central government, that is, provincial/regional and local governments that are run by elected officials with some political independence from the centre. In developing countries like Vietnam, decentralisation is advocated for its potential to promote strong dynamism, creativity, autonomy, and self-responsibility among sub-national governments in managing and implementing socio-economic development programmes. Instead, decentralisation fails to achieve the expected outcomes and is blamed for undermining uniformity of national policies and encouraging unhealthy competition among sub-national governments. Furthermore, decentralisation is criticised for reducing central government control over subnational governments and increasing localism (Anh, 2016:189).

In other developing countries, like Bolivia, decentralisation reforms created a system of municipalities resulting in favourable representative and material gains for indigenous people. The benefits of municipalisation have thus prevented many indigenous communities from choosing the option of indigenous autonomy that is provided by the decentralisation reforms. This lack of interest by indigenous communities in exercising indigenous autonomy is also attributed to the territorial delimitations of the country’s municipalities that are often inconsistent with indigenous people’s ancestral territories. Legal frameworks of decentralisation limit indigenous self-governance because the new institutions of self-governance are legally obligated to include discrete legislative, executive, and administrative functions that reflect liberal designs of municipal structure, instead of indigenous norms. Thus, new decentralisation reforms inhibit indigenous self-determination since indigenous

territorial jurisdictions are expected to coincide with the contemporary boundaries of colonial origins, rather than with pre-colonial territories (Tockman, 2016:154).

A more detailed definition of decentralisation distinguishes between devolution and deconcentration or delegation. Devolution is the meaningful transfer of power and resources from higher levels of government to lower levels, that is, constitutional provision for policy-making and resource allocation power by SNGs. Deconcentration or delegation represents a mere redistribution of authority within the central bureaucracy from centrally located bureaucrats to locally based representatives of the centre. A definition of deconcentration can further be expanded to include privatisation, which is a transfer of control of government institutions from government administration to market-based administration. Dickovick (2005) argues that only devolution denotes a real decentralisation of power from central government to SNG. Dickovick (2005) presents a typology of possible areas of government decentralisation, as depicted in the model below.

Figure 1.1: Decentralisation as devolution: A typology



Source: Dickovick, 2005

In defining devolution, Dickovick (2005) emphasises the importance of the independence of SNGs in political and fiscal decentralisation. SNG officials should not only be elected, but should also be independent from the central government in order to achieve true decentralisation. Guaranteed inter-governmental revenue transfer is one of the mechanisms

through which fiscal decentralisation may be achieved. The independence of SNGs from the central government regarding resource flows may be achieved through the devolution of tax authority to SNGs.

In South Africa, Provincial Equitable Share (PES) is used to achieve equalisation across provinces, which are almost entirely reliant on transfers from the central government. PES is used to transfer resources across provinces with the aim of equalising the abilities of different provinces to provide similar levels of public services with similar levels of taxation. Thus, fiscal equalisation in the main seeks to offset any imbalances, or differences, between SNGs that result from fiscal decentralisation. However, in South Africa, PES largely fails to equalise across provinces because it seeks to achieve too many and often conflicting goals, such as promoting budget autonomy at the subnational level, providing adequate revenue to SNGs, providing appropriate incentives, enhancing equity and fairness, and achieving national objectives (Alm & Martinez-Vazquez, 2015:1; Liu, 2013:345).

Administrative decentralisation, that is, the transfer of administrative competencies from the central public administration to the subnational public administration must be accompanied by an increase in local budget revenues. This increase in local budget revenues represents financial decentralisation, and is achieved by increasing the amount of taxes generated by local governments or SNGs without increasing the tax burden. This means that the central public administration must surrender some of its tax collection competencies to the SNG to allow it to generate its own revenue. However, as SNGs have limited tax collection competencies, their budget revenue should be supplemented by additional fiscal allocation from the national budget. However, the latter form of revenue increase for SNGs does not represent real decentralisation since the form, amount, and use of the allocation is dictated by the central government and thus limits the autonomy of the SNG (Gorea, Nagy & Toncean-Luieran, 2017:13).

The resistance to decentralisation in many developing countries is well represented in Thailand, which is a highly centralised state despite having close to 8 000 local bodies across provinces, municipalities, and sub-districts. Centralisation in Thailand is maintained by the Ministry of Interior (MoI) that controls provincial and district level governments. The country remains highly centralised despite the introduction of substantial political and fiscal decentralisation reforms in the 1990s. These reforms included the 1999 Decentralisation Plan

and Procedures Act that sought to establish a National Decentralisation Committee and the formulation of a Decentralisation Master Plan. The failure of decentralisation reforms in Thailand is attributed to a disorganised and weak society and political parties; thus, creating a space for the domination of SNGs by actors who mistrust decentralisation processes. As a result, the MoI maintains a highly centralised administrative structure that is intertwined with the strengthened institutions of political decentralisation. Political elites dominate both national and local politics in Thailand⁵, thus maintaining the highly centralised state that was created under an absolute monarchy (Unger & Mahakanjana, 2016:172).

Dickovick (2005) argues that South Africa follows a limited form of decentralisation that is characterised by political decentralisation in the form of elected SNGs and increased inter-governmental transfers to SNGs. The South African form of decentralisation is limited in that the central government controls taxation, budgeting, expenditure decisions, borrowing, and the appointment of some SNG officials. The current triple challenges of poverty, inequality, and unemployment in South Africa continue to worsen despite policy reforms across all spheres of government largely driven by the national government. An example is the education system that is characterised by rampant inequality despite government emphasis on distributing resource inputs through policy and legislation based on equity and redress (Sayed & Motala, 2012:672). In addition, South Africa is bedevilled by deep-rooted racial, ethnic, political, and economic divisions, which pose challenges for the country's governance systems, including federalism (Schwella, 2016:74).

An example of the South African government's commitment to reforms and efforts to improve good governance is its membership to the Open Government Partnership (OGP), an initiative launched in 2011 to encourage governments to become more open, accountable, and responsive to citizens. The South African government committed itself to good governance by adopting an OGP Action Plan. This commitment sought to strengthen public integrity by improving public services, creating safer communities, effectively managing public resources, and increasing accountability (Mills, 2016:70). This commitment to good governance was effected through comprehensive governance reforms during the latter half of the 1990s in all sectors of the society, including the political, social, and economic sectors.

⁵ The examples of decentralisation reforms above (Vietnam, Bolivia and Thailand) illustrate the difficulty of realising decentralisation and accountability in developing countries, despite the highly touted benefits of efficiency and self-determination.

These reforms were largely based on British reform experiences and various international development policies and public-management models (Frödin, 2011:S180).

It is therefore ironic that Sahasranaman (2012:407) recognises policy changes in South Africa as being innovative in many aspects of the policy framework for local government and service delivery, and fitting to use as a case study for policy improvements in India to address the challenges of poverty and inequality. Sahasranaman (2012:407) argues that 17 years since the passage of the 74th Constitutional Amendment Act (CAA) in 1993, which gave urban local governments constitutional status and aimed to strengthen municipal governance by giving municipalities greater responsibilities in the provision of basic infrastructure, social services and financial autonomy, the expectation of improved governance and service delivery in India has not been realised. This situation may be attributed to India's long-standing history of fiscal imbalances whereby the states are assigned functional responsibilities that are disproportionately larger than the allocated sources of revenue. In India, state and local governments rely extensively on federal support and intergovernmental transfers for major expenditures (Kumar, 2016:262).

1.2.3 Unitary states

There are three types of democratic government, namely, confederal, federal and unitary, all of which are decentralised in one way or another. This implies that a single tier democratic government does not exist. Such a government would be autocratic. Autocratic government does not represent democratic principles of multiparty governance. In confederal states, all powers are owned by member states and can be repossessed at will by these member states. Federal systems, on the other hand, retain some powers at the centre and confer some to the provinces, states, lander, republics, or cantons that make up the federation. The constitution of federal states protects unilateral repossession of powers by the centre from SNGs. In unitary states, all powers are owned by the central government and can be recentralised at will by the central government (Breton & Fraschini, 2003). A sharper distinction between federal and unitary systems is based on their constitutions and according to the political institutions and practices that are in place in each case (Dickovick, 2005). In a unitary system, the national government demarcates powers between the national government and SNGs; whereas, in a federal system this demarcation is made by a written constitution, which is a source of authority for both the national government and SNGs (Dandekar, 1987).

As an example, Italy⁶ is currently in the process of transformation from a unitary to a decentralised federal-type constitutional democracy (Del Duca & Del Duca, 2006). The transformation and survival of Italy's nascent federalism in the face of a strong political impasse requires a combination of regionalisation and supranationalism. Central to this process of transformation is the assurance of the rule of law in conformity with the state's constitutional fundamental principles. Del Duca and Del Duca (2006) argue that Italy's 1948 constitutional fundamental principles constrained and shaped the evolution and transformation of the government.

Del Duca and Del Duca (2006) argue that the regions of Italy have not sought real autonomy and continue to be shaped and governed by the state as political and government units. This is despite their more than 2000-year history as distinct cultural and political entities. Some of these regions were controlled for long periods by foreign powers, some of whom were Italian powers, such as Venice's Republic. In addition, these regions had no powers to impose tax and depended on state revenue sharing until the 2001 constitutional amendment. In the 1990s, direct state subsidies and economic development initiatives outside the framework of the regions were used to address the economy of the regions of South Italy that were lagging behind the North. Italy devolved more legislative and fiscal authority to the regions to address division of powers between regions and the state, through a constitutional amendment in 2001 (Del Duca & Del Duca, 2005).

1.2.4 Union government: historical amendments of the South African Constitution

Dollery (1998) unpacks the roles and responsibilities of the different spheres of government in South Africa during four different epochs, as manifested by the adoption of the Constitution in 1910, 1961, 1985, and 1996 respectively. Dollery (1998) argues that the duties and responsibilities of the three tiers of government in South Africa have historically not been clearly spelled out. Dollery (1998) attributes this lack of detail to the circumstances under which the four constitutions were formulated. The Constitution of 1910 that led to the formation of the Union of South Africa was negotiated in the aftermath of the Second Anglo-

⁶ Italy is used here as an example of a country that was highly centralised and embarked on a transformation process to decentralise, and thus render some degree of autonomy to SNGs by devolving more competencies to these constituent units.

Boer War. Representatives of the former Boer Republics sought greater autonomy for the regional governments, while delegates of the two British colonies advocated for a stronger central government (Dollery, 1998; Schierup, 2016:1053).

The constitutional changes of 1961 that established the Republic of South Africa occurred after an acrimonious debate and a very close referendum. Constitutional changes during this period were minimal and led to the removal of the Crown and its replacement with a State President as the head of state. The 1985 Tri-cameral Constitution represented white, Coloured, and Indian South Africans, and was ratified by parliament in September 1983 and endorsed by the white electorate in a national referendum in November 1983. This Constitution also did not spell out in detail the duties and responsibilities of the three tiers of government. The 1986 Provincial Government Act 69 abolished provincial legislatures on 1 July 1986 and replaced them with new executive authorities appointed by the State President and headed by an administrator. In 1987 and 1988, new powers and responsibilities were given to provincial governments, especially in areas of health services. However, provincial budgets still had to be ratified by parliament. On 11 October 1996, a new Constitution, known as the Constitution of the Republic of South Africa Act, was adopted.

Negotiations that led to the adoption of this Constitution took place during a period of repression and civil rebellion, and following years of isolation of the former apartheid state. The pressure on the apartheid government in the 1980s and early 1990s to institute reforms was marked by recession, international sanctions, and widening cracks in the white hegemony (Schierup, 2016:1053). International sanctions against the apartheid regime were fuelled by strong anti-apartheid movements in the 1980s by Western countries, including the Belgian government, which comprised of inter-governmental organisations, student unions, NGOs, and social movements (Christiaens & Goddeeris, 2015:648).

During these negotiations, the Tripartite Alliance, consisting of the dominant ANC, the South African Communist Party (SACP), and COSATU advocated for a more centralised form of government, while other parties (such as the NP and the IFP) sought greater regional autonomy. Even the most recent constitutional amendments (1993 Constitution of the Republic of South Africa Act No. 200 as amended by Act No. 2 of 1994, Act No. 3 of 1994, and the Constitution of the Republic of South Africa Act, as adopted by the Constitutional

Assembly on 8 May 1996 and amended on 11 October 1996) do not adequately address the issue of the roles and duties of the various levels of government (Dollery, 1998).

Regional autonomy could lead to secession, especially when ethnic groups in that region become disgruntled. Thus, such decentralising and secession forces as displayed by minority parties during the Codesa negotiations had the potential to ultimately weaken the state by creating centre-state binaries; the stronger the states are, the weaker the centre will be (Varshney, 2013:43). Secession and devolution are not simply about the distribution of rents and economic resources, but also to a great extent about symbolic gestures such as public declarations of independence and sovereignty, or re-naming local political institutions to resemble those of ‘mature’ nations. Thus, most secessionist movements are often motivated by issues of symbols and status, rather than the desire to change the actual allocation of rents and resources (Libman, 2015:802).

Federal countries with strong autonomy among their constituent units are likely to experience secession pressures. However, Belgium, despite six reforms of the state between 1970 and 2013, progressively increasing the autonomy of Belgian regions and communities, is unlikely to experience secession of its regions, including Flanders, one of the three regions, the other two being Brussels and Wallonia (Gérard, 2014:257).

The immediate purpose of secession is usually to change political structures and institutions. However, such a break-up is also likely to have profound economic consequences. These include a new set of fiscal and monetary arrangements (possibly including new currency arrangements) at the macro level and changes in market structures and their regulation at the micro level. These issues were raised during the period leading up to the Scottish referendum on independence. Similar secession movements occurred in Catalonia, Flanders, and Quebec. Unfortunately, secession demands and pressures for the reconfiguration of states due to ethnic, linguistic, religious, or cultural differences can result in violent confrontations, as seen in Sudan, Iraq, and Ukraine (Bell, 2014:189).

In Canada, the Liberal government of the francophone majority province of Quebec demanded more powers within Canada, with or without constitutional change, from the end of WWII. The so-called “Quiet Revolution”, from 1960 to 1966, was a period of rapid social and political change in the province of Quebec. Successive attempts to change the Canadian

Constitution to give more powers to the province of Quebec were made in 1960, 1976, and 1996, with demands for the formation of two nations in Canada or a complete secession of Quebec. These attempts to change the constitution failed each time (Somers & Vaillancourt, 2014:239).

1.2.5 KwaZulu/Natal Indaba: Federalist proposal for South Africa

Developments in Natal in 1986 led to some of the consensus reached during the Codesa negotiations preceding the democratic elections of 1994 (Mamdani, 2014:61; Ndlovu-Gatsheni, 2015:322; Bower, 2014:109; Kroth, Larcinese & Wehner, 2016:775). These developments did not immediately produce the envisioned results of a non-racial autonomous province consisting of the KwaZulu tribal homeland and the Natal province. Delegates at the meeting included black representatives from the ‘homeland’ of KwaZulu and delegates from 35 other racial, business, farming, community, and political groups of all the South African racial groups (blacks, Coloureds, whites and Indians) (Lynch, 1986). The conference sought regional solutions to two national problems – apartheid and loss of autonomy by the provinces to the central government.

The KwaZulu/Natal Indaba of 3 April 1986 was aimed at merging the KwaZulu homeland with the Natal province to bring majority rule to the region. Chief Mangosuthu Gatsha Buthelezi, an *inkosi* in the Zulu monarchy and then Chief Minister of the KwaZulu Legislative Assembly, enjoyed support among the *amakhosi* (traditional chiefs) and their *izinduna* (headmen) who had benefited through ‘homeland’ patronage and he was thus able to wield bargaining power to influence the negotiations (Beall, 2006:461).

The delegates reached consensus and on 1 December 1986 they presented to the ruling NP a proposal which envisioned a system consisting of a bicameral legislature, a consociational cabinet, proportional representation, minority veto over certain legislation, a segmented representative chamber, and enforcement of a comprehensive Bill of Rights. The proposal further called for substantial devolution of power to the province and the right of the provincial legislature to repeal acts of Parliament that invade areas of provincial competence. The central government in Pretoria summarily rejected this proposal as it was in the process of centralising power by trying to replace elected provincial governments with provincial administrations led by an appointed administrator. The negotiators also held a long-term

vision of reorganising South Africa into a federation of autonomous provinces. Lynch (1986) argues that Natal was then sufficiently integrated politically and socially for a multiracial government, compared to the other three provinces (Transvaal, the Cape, and the Orange Free State) of the Republic of South Africa.

The KwaZulu/Natal Indaba was based on the principle that the KwaZulu/Natal region is a single federal region, which should operate independently from the central government. However, the conference also emphasised that it was an integral part of the country and therefore had no aspirations of sovereign independence, particularly with regard to the economic and strategic interdependencies of the country as a whole and the region. The conference also acknowledged the importance of the principles of full participation, effective representation, and the democratic principles of freedom, equality, justice, the rule of law, and access to the law. Most of the deliberations of the KwaZulu/Natal indaba were informed by the Buthelezi Commission report. The Buthelezi Commission comprised of constitutional scholars, prominent politicians, and businessmen who met periodically from 1980 to 1982. The report found that the KwaZulu/Natal region was one geographic unit and advocated for a multiracial provincial government. The recommendations of the report had a federalist orientation and emphasised the need for a large degree of regional autonomy. Furthermore, the report recognised the protection of minority rights and suggested a consociational cabinet, proportional representation in the legislative assembly, and a minority veto as a mechanism to achieve the protection of minority rights (Lynch, 1986).

Another important recommendation of the report was the need to cease using race as a basis of group identification in South Africa and to encourage the creation of multiracial political parties. This recommendation was aimed at ensuring that no racial group would automatically receive a dominant majority (Lynch, 1986). The Buthelezi Commission report prompted the political leaders of the KwaZulu and Natal administration to take concrete steps towards joining their two administrations. These developments led to the formation in November 1984 of the KwaZulu/Natal Working Group and the KwaZulu/Natal Strategic Policy Group, which were aimed at addressing common matters such as health, education, and roads. Following these developments, informal arrangements such as the formation of joint working groups led to the establishment of a Statutory Joint Executive Authority in March 1986. The Pretoria administration accepted this arrangement, whose membership was equally divided between the KwaZulu Cabinet and the Natal Executive Committee (Lynch, 1986).

1.2.6 Historical perspective: Codesa and the new Constitutional dispensation

International sanctions against the apartheid government and internal instability led to significant political developments, which began in 1990. These included the unbanning of liberation movements and political parties, such as the ANC and the South African Communist Party, and the release of Nelson Mandela and other political prisoners. Some of the ANC leaders returned from exile during this period and between 2 and 4 May the Groote Schuur Minute was signed to seal a commitment by the ANC and the NP government to pursue peace and a negotiated settlement to their differences (Van Wyk & Oranje, 2013:352).

Then, on 14 September 1991, the National Peace Accord was signed by representatives of 27 political organisations, and national and homeland governments to pave the way for the Convention for a Democratic South Africa (Codesa) negotiations, convened in December 1991. Representatives of various political, civil, religious and community organisations agreed to support the Declaration of Intent, which indicated that a process of drawing up a constitution would be set in motion (Van Wyk & Oranje, 2013:352; Cameron & Tapscott, 2000:81).

The Codesa negotiations were held as multi-party negotiations in 1991 and 1992 to negotiate the future shape of South Africa (Renner, 2013:274). The negotiating parties could not agree on a number of issues, such as the organisation of the future state (unitary vs. federal political system), decision-making mechanisms, minority protection (which essentially meant a veto provision for the white minority), possible power-sharing arrangements, and the question of how to deal with past human rights violations (see paragraph 5.4, chapter 5) (Renner, 2013:274; Cameron & Tapscott, 2000:81).

The following section illustrates the benefits of decentralisation as a form of transfer of power to SNGs, in line with the principles of federalism, to highlight the potential advantages that the proponents of a federal state during the Codesa negotiations were hoping to achieve. Dickovick (2005) presents a comparative analysis of Africa's two leading democracies, namely, South Africa and Senegal. Both of them undertook decentralisation in the 1990s. Dickovick (2005) argues that decentralisation in these two leading democracies on the African continent has been limited. Limited decentralisation is attributable to reluctance by

central states to devolve fiscal decision-making authority to sub-national levels. Positive developments of decentralisation in South Africa and Senegal are that sub-national officials are elected and receive revenue transfers. Factors limiting decentralisation reforms and SNG autonomy include a low tax-raising capacity, tight central control over spending, limited access to capital markets, and insecure legal rights in their own jurisdictions (Dickovick, 2005).

Democratisation and the decentralisation process in South Africa and Senegal have not been accompanied by an equitable transfer of revenues from the central state to the SNGs. The SNGs in these countries do not have true fiscal autonomy. Dickovick (2005) argues that South Africa is a quasi-federal state, whereas Senegal is a unitary state. The autonomy of SNGs is severely limited in terms of tax bases, spending mandates and monitoring, capital market access, and juridical interventions, which Dickovick (2005) refers to as revenue autonomy, spending autonomy, borrowing autonomy, and juridical autonomy respectively. Dominant political parties are in favour of a centralised form of government, while smaller parties advocate for decentralisation in the hope of a stake in government through political representation at SNG level.

1.2.7 1996 Constitutional dispensation

This section analyses the 1996 constitutional dispensation in South Africa by evaluating the political organisation of the different spheres of government. This analysis seeks to determine the effectiveness and efficiency of the 1996 constitutional dispensation by examining the intergovernmental relations and fiscal arrangements, and concludes by discussing possible future configurations and the role of provinces. The key factor being assessed regarding the provincial government is the assignment of powers and functions to this sphere of government. The assessment of these competences seeks to establish the outcome effects of governance provisions within the provincial sphere of government, as derived from the Constitution, which dictates the architecture and political organisation of provinces. This constitutional authority provides for the powers and functions of provinces with respect to the values and principles of good governance to be upheld (section 194, chapter 10 of the Constitution) and competences applicable in each jurisdiction (Schedules 4 and 5 of the Constitution) (RSA, 1996).

1.2.8 Intergovernmental Relations (IGR)

Chapter 3 of the Constitution of South Africa, namely, Cooperative Government, outlines the constitution of government into national, provincial and local spheres, which are distinctive, interdependent and interrelated (see paragraph 5.4.3, chapter 5) (RSA, 1996). Thus, the constitution of the government into central governments and SNGs, that is, constituent units, is in line with decentralisation, which grants some degree of administrative, political, fiscal and legislative autonomy to SNGs. Such autonomy and assignment of functions across various spheres of government is a defining characteristic of decentralisation, which can be achieved by three different approaches, namely, delegation, devolution and de-concentration (Nyane, 2016:62). Further, chapter 3 of the Constitution outlines the principles of Cooperative Government and Intergovernmental Relations (IGR). IGR is a facilitative mechanism aimed at improving the coordination and alignment of government activities (see page 109, paragraph 2.6.2 in chapter 2 and page 341, paragraph 5.4.5 in chapter 5) (Ile, 2010; Inman & Rubinfeld, 1997; Bagghi, 2000:3026; Staten, 1993:131-136; Edwards, 2008:65; RSA, 1996:18; Monro, 2001:46; Cameron & Simeon, 2002:49).

Intergovernmental relations in federal and devolved systems serve several roles, including resolving conflicts of competence, dealing with overlaps and externalities or spill-overs, harmonising policies, and responding to new policy challenges (Keating, 2012:214). The relationship among the three spheres of government in South Africa, namely, the national, provincial and local government sphere, is provided for in an Act of Parliament – the Intergovernmental Relations Framework Act No. 13 of 2005. The Act provides the framework for the three spheres of government to promote and facilitate intergovernmental relations; mechanisms and procedures to facilitate the settlement of intergovernmental disputes; as well as mechanisms for dealing with related matters (RSA, 2005:1).

However, Keating (2012:214) argues that federations tend to move from co-operative to competitive federalism, and that there is no case for greater policy harmonisation as the respective constituent units compete for resources and benefits; thus, they adopt competing policies and strategies, instead of aligning. This trend is demonstrated by the Canadian federal government that used “open federalism” – a concept that sought to counter centralising federalism – as a cover for a vast programme of federal withdrawal from social policies and the centralisation of economic and security policies. Thus, federal actions did not

harmonise policies nor prevent centralisation, but instead centralised policy formulation and implementation away from provinces. This action strained relations between the federal government and both provinces and minority nations. This situation was remedied when the Liberal government was formed in November 2015, took power, and re-established healthy intergovernmental relations between the central government and the provinces (Castro-Rea, 2016:257).

Increased divergence between the dominant central or federal government's legislative majority and majorities in the devolved territories points to increased autonomy and less harmonisation. This observation was made with reference to intergovernmental relations in the United Kingdom (UK). This section of the study discusses IGR in terms of the functions and powers of the three spheres of government, particularly in relation to their roles as agents of service delivery. In order to increase and improve service delivery in the country, IGR should be managed in a more effective and efficient manner. Integrated and improved administrative processes, as well as coordinated and aligned governmental systems, should be pursued to maximise IGR as a facilitative process in government (Ile, 2010). Ile (2010) states that the quality of leadership should be foregrounded in order to improve service delivery. Further, the responsibility of leadership should be emphasised to gain synergy and an interface between the political and administrative processes.

IGR is defined as relations between central, regional, and local governments that facilitate the attainment of common goals through cooperation (Opeskin, 1998; Van Der Waldt & Du Toit; 1997; Thornhill, 2002; Adamolekun, 1986). Statutory and non-statutory bodies contribute to promoting IGR relations in the form of committees, boards, or a range of other bodies (Ile, 2010). IGR consists of facilitative systems and relationships that enable the units of government to collaborate effectively and carry out mandates so that common governmental goals are achieved. These systems and relationships include executive mechanisms, coordinating mechanisms, cooperative agreements, and judiciary and legislative mechanisms that all facilitate delivery by the government machinery. IGR seeks to achieve "common goals through mutual relationships between and across vertical and horizontal governmental arrangements, alignment and cohesion across all spheres of government" (Ile, 2010).

The aim of IGR "is to enable governmental activities, through synergy, efficiency and effectiveness in delivering services, to sustain democracy and strengthen delivery capacity

across all spheres of government for the common good” (Ile, 2012: 53). In line with this aim and role of IGR, Simeon and Murray (2001) highlight that its success depends on its ability and capacity to promote the values of democratisation, effective governance, and conflict management. Furthermore, active participation of the citizens and government in promoting accountability, transparency, effectiveness and good quality provision of public services to the citizens is critical in sustaining and strengthening democracy (Lues, 2014:789).

Citizen participation is essential for good governance, improving the relationship between the government and the public, better service quality, and better decision-making. A number of mechanisms are used to involve citizens in governance, including access to information, enabling citizens to take part in decision-making, and access to resources (Chowdhury & Aktaruzzaman, 2016:120). There was a greater expectation among the people that the post-apartheid era would bring democratic constitutional democracy that promoted the values of public participation in decision-making, particularly for those previously marginalised under the apartheid regime (Lemanski, 2012:16).

Cooperative governance in South Africa is based on the German model, which emphasises concurrency, provincial delivery of national policies, and provincial representation at the centre (Simeon & Murray, 2001). The government introduced new institutions, actors and processes to support and facilitate implementation of this model. However, this model is difficult to implement because the ruling ANC favours a centralised policy, and because provinces and local governments have weak political, administrative, and fiscal capacities (Simeon & Murray, 2001). Cooperative governance is also linked to citizen participation by involving various civil society organisations and structures in the planning and decision-making processes of government, particularly at local government level, for example, in disaster management and public service delivery matters (Hoossein *et al.*, 2016:E1).

Simeon and Murray (2001) classify South Africa as a federal country based on the provisions of autonomous legislative and fiscal powers conferred on the SNGs (provincial and municipal governments) by the Constitution. The establishment of provinces is provided for in the Constitution, which confers upon them their status and autonomy, including legislative authority (section 104) and executive authority (section 125). Chapter 7 of the Constitution makes provision for the establishment of local government (Constitution, 1996:56). The legislative powers of all spheres of government, including SNGs, are derived from section 43,

which vests legislative power in the parliament at the national sphere, in the provincial legislature at the provincial sphere, and in the municipal councils at the municipal sphere of government. Provisions of legislative power for the three spheres of government are set out in sections 44, 104 and 156 of the Constitution, respectively (Constitution, 1996; Simeon & Murray, 2001).

The Constitution also provides for judicial and fiscal authority for SNGs, as set out in chapters 8 and 13 respectively (Constitution, 1996). In addition to the three spheres of government, government structures and institutions, also referred to as organs of state, established or provided for by an act of parliament as set out in section 41(2), are required to promote and facilitate IGR. An act of parliament (IGRFA) also provides for appropriate mechanisms and procedures to facilitate settlement of intergovernmental disputes. The Constitutional Court will arbitrate disputes among the spheres of government after all mechanisms and procedures provided for that purpose have been exhausted (Constitution, 1996; Simeon & Murray, 2001:65). Although multi-sphere government is embedded in the constitutional design, the effective and efficient implementation of IGR remains elusive as provinces and municipalities struggle to establish and consolidate entirely new political institutions and processes (Simeon & Murray, 2001:66).

These challenges in achieving the aims of IGR have led to some political leaders, such as former president Thabo Mbeki, calling for the abolition of provinces (Simeon & Murray, 2001:65). The idea of abolishing provinces and the need to explore alternative systems of government arrangement are discussed in the paragraphs that follow (see paragraphs 1.2.10 - 1.2.12). Simeon and Murray (2001) propose an approach of assessing the capacity of provincial governments in evaluating the effectiveness and efficiency of IGR in South Africa. The five dimensions of capacity being assessed include the legislative, political, fiscal, administrative, and intergovernmental capacity. This approach is a fair and appropriate measure of IGR effectiveness as the success of SNGs critically depends on their ability to carry out their assigned roles and responsibilities (Simeon & Murray, 2001).

In turn, the ability of the SNGs to carry out their roles and responsibilities depends on their degree of political, legislative, administrative, fiscal and intergovernmental capacity, and authority and autonomy. Simeon and Murray's (2001) assessment of the degree of capacity conferred on SNGs focuses on the provincial spheres of government and national-provincial

relations. Political capacity refers to the ability of an SNG to establish itself as an autonomous government elected by the population in its jurisdiction. Legislative capacity refers to the ability of provinces and their legislatures to formulate and enact their own legislation. It includes their ability to influence national legislation that affects them, within an appropriate institution, that is, the National Council of Provinces (NCOP).

Administrative (functional) capacity refers to the ability of the province to administer their civil service (bureaucracy) effectively and efficiently. This includes the transparent, ethical, and accountable administration of civil services. It is important to note that in South Africa, as in Germany, most legislative powers are centralised and that provinces mainly administer national legislation, that is, national policy implementation. It is therefore crucial that provinces have the capacity to influence the design of national legislation that affects them. Fiscal capacity refers to the ability of provinces to access resources required to carry out their responsibilities. It also refers to them having sufficient financial flexibility to set their own priorities (see page 15, paragraph 1.2.2). Intergovernmental capacity refers to the ability of provinces to effectively use the machinery designed to encourage cooperative relationships with other SNGs (Benz, 2009; Simeon & Murray, 2001). This machinery includes institutions and structures, organs of state, mechanisms, and procedures which promote intergovernmental cooperation and provide a coherent framework for governance (Simeon & Murray, 2001:66-67).

Provinces, as opposed to municipalities, are mainly responsible for implementing and delivering most social programmes, including education, health, housing and welfare (Constitution, 1996; Simeon & Murray, 2001). Municipalities are faced with enormous political and administrative challenges, which constrain their role in cooperative governance. In addition, a broader criterion used generally to assess and evaluate federal systems can be used to assess and evaluate the effectiveness and efficiency of IGR in South Africa (Simeon & Murray, 2001). This criterion establishes the extent to which IGR promotes or hinders democratic governance, socio-economic transformation, and the management of ethno-cultural conflict. Democratic governance includes participation, transparency, accountability, and effective links between government and civil society. Socio-economic transformation is assessed in terms of choosing and setting priorities, and delivering services such as pensions, housing, education, health, and economic growth (Simeon & Murray, 2001).

In South Africa, the effectiveness and success of a federal government and IGR should be assessed in terms of the values and objectives they are expected to serve, including their interaction with their economic, social and political contexts, and with their inherited historical legacies. The South African federal government and IGR should deepen democracy and contribute to socio-economic transformation, effective service delivery, and the management of diversity in a divided society. In reviewing the multi-sphere government (IGR) in South Africa, Simeon and Murray (2001) are of the opinion that the provinces are more administrative arms of the central government and undertake very few initiatives of their own⁷.

If this situation is to persist, the separately elected provincial governments and their legislatures serve no purpose. Legislative, political, fiscal, administrative, and intergovernmental capacities of provinces need to be increased significantly if provinces are to be more than simple delivery mechanisms, and instead to be alternative centres of citizen representation, responsible government, legislative initiative, and oversight of the bureaucracy. Since the establishment of the new multi-sphere government in South Africa, the central government has been dominant over the provincial and local governments. On the other hand, provinces have been focusing more on service delivery than on autonomous policymaking. The constitutional design of the South African government centralises legislative and fiscal power in the national government, including the power to oversee provincial government performance (see paragraph 1.2.10) (Simeon & Murray, 2001).

Simeon and Murray (2001) argue that other factors contribute to the dominance of the central government over the SNGs, which include perceptions by the elite and citizens of South Africa as a unitary system and not a federal system. In addition, provinces are seen as subordinate, redundant and expensive institutions, which serve as barriers to good governance. Another factor which contributes to the dominance of the central government is the dominance of the ruling ANC at national and SNG levels. Provincial MECs and MPLs associate themselves more with the national ruling party than with the local constituencies they represent. As a result, these provincial representatives lack the political capacity to act autonomously. Radical changes at the local government level include the consolidation of the

⁷ This view is in line with option 2 presented in paragraph 1.2.13 (2) as one of the options for future configuration of the system of government in South Africa if provinces were to be reviewed. This option proposes reducing the legislative authority and functional discretion of the provinces, which would become more focused on implementing policy for national government.

previous 843 municipalities into 283 councils and the extension of local government to rural areas⁸ (www.salgaorg.za viewed on 10 August 2017).

Other radical changes at the local government level include the reconstitution of major urbanised and industrialised areas, such as Johannesburg and Cape Town, into eight Metropolitan Municipalities or Unicitys with strong executive mayors. Metropolitan municipalities are charged with the responsibility of addressing the challenges of the legacy of urban apartheid as outlined in the White Paper on Local Government by promoting equitable and inclusive metropolitan governance and development. Metropolitan municipalities have legislative competence over all the areas listed in Schedules 4B and 5B of the Constitution. Outside the metropolitan areas, a two-tier local government system furthers the mandate of local government and consists of 228 local municipalities grouped into 44 district municipalities, sharing the functional competencies listed in Schedules 4B and 5B. These developments at local government level are seen to represent an "hourglass" system in which the national and local spheres become the dynamic elements, and the role of provincial governments is reduced, if not eliminated⁹ (www.salga.org.za viewed on 10 August 2017).

These developments serve to strengthen the argument that the role of provinces is not justified as more effective and efficient service delivery and IGR could be achieved by a stronger government working closely with the national government, bypassing the provinces. However, the local government is faced with many challenges, including being under-resourced and a lack of capacity, especially relating to technical and management skills (Simeon & Murray, 2001). Prior to the introduction of the IGR Framework Act (IGRFA) 13 of 2005, the cooperative government framework included the President's Coordinating Council (PCC); consisting of the national President and the provincial Premiers; the MINMECs, consisting of national ministers and their provincial counterparts; a Budget Council, comprising the national Minister of Finance and his/her provincial counterparts; and the introduction of cabinet 'clusters', which group national ministries according to shared

⁸ A number of municipalities have since been merged to establish metros and consolidate some municipalities, resulting in further reduction of the number of municipalities. There are currently 278 municipalities in South Africa, according to Statistics South Africa (RSA, 2014:iv).

⁹ An hourglass description is used to depict the structural configuration of government with larger and stronger national and local governments and almost is non-existent, i.e. merely administrative, provincial governments with no fiscal nor legislative authority allocated to them. The end result of such an arrangement is a structure of government that resembles an hourglass in its appearance.

functional mandates, such as social services ministries and economic ministries (Naidoo, 2009).

The Department of Cooperative Governance and Traditional Affairs (formerly the Department of Provincial and Local Government) is responsible for policy and legislative development on intergovernmental relations and mobilising financial and technical assistance to support service delivery and programme implementation by SNGs. The IGRFA formalised the existing forums and sanctioned the creation of new structures and instruments, which included the PCC, National Intergovernmental Forums in place of MINMECs, Premier's Intergovernmental Forums, Provincial Intergovernmental Forums, Inter-provincial Forums established by the Premiers of two or more provinces, District Intergovernmental Forums, replicating the PCC and Premier's Intergovernmental Forums at municipal level, and Inter-Municipal Forums (Naidoo, 2009).

The IGRFA also introduced the Implementation Protocols in section 35, which outlines the roles and responsibilities of the respective spheres of government and role-players in the implementation of services and programmes spanning the involvement of more than one sphere of government. Naidoo (2009) argues that section 35 of the IGRFA, which defines the Implementation Protocol, does not adequately address the issue of policy discretion. This inadequacy is evident in the IGRFA, where it stipulates that the Implementation Protocol must be considered when a national priority has been identified in relation to the implementation of the policy, the exercise of the statutory power, and the performance of the statutory function or the provision of the service. The Constitution recognises the distinct status of SNGs, and assigns legislative and executive powers to each of these spheres. On the other hand, the Constitution allocates considerably greater legislative, financial, and functional influence to the national sphere of government. This inconsistency in the Constitution clouds the explicitly distinct status of SNGs and raises questions whether this arrangement has in practice created an optimal set of conditions for delivering services and programmes (Naidoo, 2009).

1.2.9 Fiscal federalism in South Africa

The South African Constitution is regarded as a compromise, which was arrived at during the transitional negotiations of the early 1990s. It is a compromise in that the white minority NP,

together with the Zulu nationalist IFP and the smaller Liberal Democratic Party (LDP) argued for a strong form of federalism. On the other hand, the dominant ANC-led liberation alliance preferred a centralised unitary system of government for fear that autonomous provinces would decrease its ability to govern, entrench existing disparities, and form the basis for divisive tribal politics. The compromise was then to have a constitution providing for one sovereign country with a decentralised government (Wehner, 2000:209; Feeley & Rubin, 2008:1; Napier, 1997:viii). Thus, the poor majority ANC was required to provide a credible promise to not exploit the full economic resources of the then ruling White minority elite. Thus, the resultant Constitution of 1996 adopted a form of federal governance that provided such protections by specifying annual policy prescripts that enabled the majority and the minority elite each to control one policy instrument of importance to the other, that is, political versus economic power (see page 25, paragraph 1.2.6 and page 27, paragraph 1.2.7) (Inman & Rubinfeld, 2016:1).

Financial decentralisation only began to become effective in the 1997/1998 financial year when the nine provinces for the first time independently drafted and implemented their own budgets. Provinces produced substantial over-expenditure in the 1997/1998 financial years which led to the then president, Thabo Mbeki, and other senior government officials calling for reassessment of the assignment of functions and resources to the different spheres. The assignment of fiscal functions and resources to the various tiers of government in a federal system are based on the theory of intergovernmental fiscal relations, also known as fiscal federalism (Wehner, 2000). Calitz and Essop (2012) argue that the South African government has over the decades been characterised by a gradual and steady reduction in the fiscal autonomy of SNGs. South Africa has become fiscally centralised, thus strengthening the *de facto* erosion of the federal state (Calitz & Essop, 2012).

The nature and extent of fiscal decentralisation or centralisation greatly influences the efficiency and equity in allocation of resources. In turn the nature and extent of fiscal decentralisation is shaped by how political and economic factors interact. Calitz and Essop (2012) argue that fiscal decentralisation is not an accurate indicator of all types of political decentralisation, nor is it its equivalent. They illustrate this argument by citing two countries which are examples of opposite arrangements of distribution of political and fiscal authority. Scotland is an example of a government system that exhibits significant political

decentralisation and fiscal centralisation. China, on the other hand, exhibits significant political centralisation and fiscal decentralisation of authority (Calitz & Essop, 2012).

1.2.10 The future of provinces

The Constitution provides for areas of exclusive provincial legislative competence and concurrent national and provincial legislative competencies, as expressed in schedules 5 and 4 respectively. The Constitutional Court is required to enforce this arrangement. According to section 146 of the Constitution (RSA, 1996:55), national legislation prevails where there is conflict between itself and provincial legislation (De Villiers, 2008:46). The principle of cooperative government in the Constitution (1996) (Chapter 3) governs the relationship between the national and provincial spheres of government. A range of statutory and other intergovernmental structures and processes facilitate and support the implementation of this relationship in line with the provisions of the Constitution (De Villiers, 2008:46).

South Africa has a single revenue system. Provinces have limited revenue sources of their own and receive an equitable share of the national revenue. The Constitution provides for a federal government. However, the autonomy of provincial governments is limited due to the extent of their powers, political realities, interpretations given by the Constitutional Court, and the financial dependency on the national government. De Villiers (2008) argues that the national government demonstrates centralist tendencies by emphasising the concurrency of functions and the financial dependency of provinces, as provided in the Constitution. The emphasis on these provisions creates space for the national government to monopolise legislative functions. Common practice in South Africa is that the national parliament adopts legislation on common competencies and assigns the provincial government to implement them (De Villiers, 2008:47).

Intergovernmental structures, processes and legal frameworks, such as the Intergovernmental Relations Framework Act (IGRFA) No. 13 of 2005 make provision for provinces to participate in the initiation and planning of the legislative processes. This approach inhibits provinces from objecting or making later inputs in the legislative process when channelled through the NCOP. This approach also renders the NCOP redundant as a structure that is supposed to represent provincial views in the law-making process. De Villiers (2008) argues that generally the national parliament has taken over the legislative functions of concurrent

competencies and relegated the provinces into a subordinate position. The ANC questioned the relevance of the provinces and their developmental roles at its 3rd Policy Conference in 2007 (Naidoo, 2009).

The ANC again highlighted the need to review the powers and functions of provinces at its 4th National Policy Conference held from 26 to 29 June 2012. The future of provinces was discussed under the theme *Legislature and Governance - Towards More Integrated Cooperative Governance as Part of a Developmental State*. The transformation of the state as it relates to the future of provinces is explained in terms of the need to deepen the National Democratic Revolution (NDR) and to accelerate service delivery and development, the success of which depends on a stronger developmental state and a more integrated cooperative governance system. The document argues that a stronger developmental state and cooperative governance have a mutually reinforcing relationship (ANC, 2012:29).

At the 5th National Policy Conference, held from 26 to 29 June 2017, the issue of the future of provinces and stronger cooperative governance was discussed again, more so given the poor performance of the ANC in the 2016 local government elections in which the ruling party lost some of the key metropolitan municipalities to the opposition. These metropolitan municipalities include the country's capital, the City of Tshwane; the country's economic hub, the City of Johannesburg; and one of the key metros and the former ANC stronghold, the Nelson Mandela Bay Metro (www.city-press.news24.com retrieved 21 February 2017).

Stronger, integrated and effective cooperative governance is necessary to advance service delivery and development. The recommendations made during the 2012 ANC Policy Conference to strengthen cooperative governance included reviewing the powers and functions of the three spheres of government; increasing the involvement of national and provincial governments in local government in ways that strengthen municipalities and do not erode their powers and functions; greater integration of planning across the spheres and public entities, with alignment between the NDP, PGDS (Provincial Growth and Development Strategies), and IDPs (Integrated Development Plans) (Frödin, 2011:S180; Lemanski, 2012:16); and the reform, reduction and strengthening of provinces (ANC, 2012:30).

Naidoo (2009) points out that the debate around the review of provinces and architecture of government has increased tremendously, attracting enormous media, political and research attention to the subject. The primary aim of the discussion around the future of provinces at the 2nd Policy Conference of the ANC in 2002 was to create a White Paper on the review process of local and provincial government in South Africa. In the early 1990s, Codesa negotiations around the new constitutional framework created the provinces as a countervailing power that would alleviate the fears of the minority parties about the ANC-led government being too domineering. The ANC has been in favour of a centralised system of government since the Codesa negotiations (see paragraphs 1.2.5 - 1.2.7 above and page 308, paragraph 5.4 in chapter 5).

Even though the ANC agreed to the formation of SNGs, it preferred retention by the central government of concurrent and overriding powers over all functional areas and granting limited powers of taxation to the provinces and local governments. In practice, provinces have less authority than they have been granted by the Constitution. Considerable overriding legislative and executive authority is held by the President. The subordinate position of provinces is illustrated by the provision in section 146 of the Constitution. This section states that when there is conflict in areas of uniform competencies, the national legislation prevails over the provincial legislation under certain conditions (Constitution, 1996). The conditions that contribute to the dominance of national legislation are outlined in section 146 (2) b, and include the requirement for uniformity across the three spheres of government.

The national government is required by the Constitution to provide that uniformity by establishing: norms and standards; frameworks; or national policies. The legislative powers of provinces are limited in that the national government could overturn any legislation that falls within areas of concurrent competencies, through section 146 (Naidoo, 2009). Naidoo (2009) argues that discretion by provincial governments is limited by sections 44 and 146 of the Constitution, which give the national parliament powers to set policy standards. Section 44 of the Constitution gives the national parliament powers to pass legislation in areas of concurrent competencies, as provided for in Schedule 4. Further, section 44 empowers the national parliament to intervene by passing legislation in functional areas of exclusive provincial competence when deemed necessary, under certain conditions. These conditions include maintaining national security, economic unity, essential national standards, minimum standards required for service delivery, and to prevent unreasonable action being taken by a

province, which is prejudicial to the interests of another province or to the country as a whole (Constitution, 1996:19-20).

The national executive is furthermore empowered by the Constitution (Section 100) to intervene in a provincial administration when it cannot or does not fulfil an executive obligation in terms of the Constitution or legislation. The national executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation, including the following (Constitution, 1996):

- (a) issuing a directive to the provincial executive, describing the extent of the failure to fulfil its obligations, and stating any steps required to meet its obligations; and
- (b) assuming responsibility for the relevant obligation in that province to the extent necessary to, among others, maintain national standards and minimum standards for service delivery.

Naidoo (2009) emphasises the confusion and inconsistency created by sections 44, 100 and 146 of the Constitution regarding the powers and functions of SNGs. Naidoo (2009) cites a contradictory explanation of the intergovernmental policy authority in South Africa by the Treasury's Provincial Budgets and Expenditure Review (2007). The definition refers to the South African legal framework on IGR as not highly prescriptive or rigid and allowing adequate discretion and flexibility. On the other hand, this definition asserts that the national government is responsible for formulating and framing policy, while the provincial governments are required to implement these policies in accordance with these frameworks. The degree of functional discretion of provincial governments and their responsibility to implement national policy has sparked and fuelled debates about the role and future of provinces. The significance of the debate is reflected in the attention it has created within political and media discourses (Naidoo, 2009).

Rapoo and Moloi (2008) examine the thinking and rationale behind debates about the functions and roles of provinces. Different political parties represented in the National Assembly of the Parliament present very different and strong views regarding the political system of provincial government. The debate centres strongly around two issues, namely, whether the provinces are relevant or not, and whether their number should be maintained or reduced. The majority of major political parties share a strong view about the need to keep

the provinces as agencies of democratic political governance and administration. The administrative and technocratic role of provinces is largely with regard to the provision of public social services (Rapoo & Moloi, 2008). Increasing the number of provinces will lead to the reduction in the size of provinces, which then reduces their ability to take advantage of economies of scale and the efficient resolution of problems resulting from externalities. Furthermore, a greater number of smaller provinces breed unhealthy competition among them for resources and economic growth, which may be detrimental to the overall stability and economic growth of the country (Anh, 2016:197).

On the other hand, competition between sub-national units is preferred to enhance public service delivery and innovation as local leaders seek to attract labour, capital and votes (Liu, 2013:345; Malesky & Hutchinson, 2016:126). Competition for capital improves discipline in SNG expenditure behaviour. These SNGs are motivated to invest more in public input, such as infrastructure, which enhances the productivity of capital, while spending less on non-productive public consumption for fear of capital outflows; hence, the resultant improved expenditure discipline. Another benefit of competition is that regions converge towards the same policies with the resultant uniform disciplining effect on all regions (Liu, 2013:345).

In addition, decentralisation may increase corruption and government inefficiency (Anh, 2016:197; Shair-Rosenfield, 2016:157; Baskaran, Feld & Schnellenbach, 2016:144). On the other hand, federalism and decentralisation may increase the efficiency of provision of public services and increase economic growth by raising the ability of the political system to innovate and carry out reforms (Baskaran *et al.*, 2016:1444; Ostwald, Tajima & Samphantharak, 2016:139). The benefits of decentralisation are reiterated by Malesky and Hutchinson (2016:125), Feeley and Rubin (2008:1), and Schleicher (2017:763) who argue that decentralisation brings administrative, fiscal and political decisions closer to the individuals most affected by those choices and thus generates productivity gains, enables better-tailored policies, and reduces corruption. Furthermore, decentralisation promotes public participation and therefore improves democracy. Likewise, Feeley and Rubin (2008:1) emphasise the virtues of federalism by citing such benefits as deterring tyranny, and cultivating and strengthening democracy in geographically large and ethnically diverse societies.

1.2.11 Provincial government and governance

Hawker (2000) identifies challenges that faced the ANC government under the then president, Thabo Mbeki, at provincial government level and argues that Mbeki ran the government effectively and sought to improve the performance of provinces. Mbeki removed seven premiers just a few weeks before his campaign to improve provincial performance began. The ANC's near-ability to change the Constitution because of its strong vote could lead to a constitutional amendment that would completely change the architecture and configuration of provincial government. The ANC requires a constitutional threshold of a two-thirds majority in the National Assembly to make constitutional changes. Hawker (2000) suggests that the Department of Provincial and Local Government, which was renamed the Department of Cooperative Governance and Traditional Affairs, is a result of the ANC government's concern regarding provincial leadership and performance.

Hawker (2000) argues that the ANC adopted practices of centralising power out of fear of potential recalcitrance in the bureaucracy, military and judiciary. Hawker (2000) also states that the ANC adopted and promoted corruption to discourage the continuation of democratic practices. The 11 October 1996 Constitution does not give autonomous powers to provinces. Instead, national legislation prevails over provinces, according to section 146 (2) of the Constitution (Constitution, 1996:55). Provinces are recognised in the national parliament through their direct representation in the NCOP. The debate about the system of government was settled at the Codesa transition negotiations that the South African government is not a federation and is instead a decentralised unitary state. The political and economic neoliberal order persuaded the government to commit to democracy and the decentralisation of power and authority to provinces and local government institutions created under the new constitutional dispensation right from the outset (Koelble & Lipuma, 2011:5; Hawker, 2000).

1.2.12 Why the ANC wants to do away with provinces

The NP won the 1948 general elections in South Africa. The apartheid regime gradually introduced a number of discriminatory laws during the 1950s, including legal and formal separation of the races (Eriksson, 2014:315; Benson, 2015:370; Kroth *et al.*, 2016:775). The election victory of the NP in 1948 was led by DF Malan, an Afrikaner nationalist leader who later instituted the policy of apartheid (Koorts, 2014:170). The aim of the post-1948 apartheid

government was to separate the lives of the races with the black population as a source of labour for unskilled and semi-skilled jobs (see paragraph 5.3.4) (Eriksson, 2014:315; Iheduru, 2004:4; Emery, 2008:409).

This view is attested to by Fay (2015:18), who states that the Transkei region (now incorporated into the Eastern Cape) was treated primarily as a labour reserve, ruled by village headmen under district magistrates, after its annexation by the Cape Colony in the 19th century, and later by chiefs after the Bantu Authorities Act of 1951 (Eriksson, 2014:315). Prior to this Act, the Black Administration Act of 1927, which underpinned the establishment of a separate legal order for the areas and that later became the homelands, was passed. This Act created and authorised the status and the jurisdiction of chiefs (White, 2015:1009).

The homelands (Bantustans) were regarded by the apartheid government as labour reserves for white farms, mines, and towns. Furthermore, the apartheid government developed male 'bachelor' hostels to maintain a shortage of accommodation for black people, particularly women, and to control black people's access to cities and thus maintain the migrant labour system (Benson, 2015:370; Bank, 2015:1071). This was part of the apartheid government's strategy of state-orchestrated destruction of family life among black ethnic groups (Budlender & Lund, 2011:925). This migrant labour system disrupted family and community life by forbidding male mineworkers to live with their families in the urban areas (Groenmeyer, 2011:262). In order to achieve the goal of 'separate development' and racial segregation, the apartheid government introduced major discriminatory laws and policy changes, which included the restriction of movement of the black population, formal job reservation for whites, a reform of the education system, and the creation of black homelands in the early 1950s (see paragraph 5.3.3.2) (Eriksson, 2014:315).

The apartheid government used the concept of federalism to justify the existence of Bantustans, also known as homelands. The homelands were formed in 1959 when the apartheid parliament passed Act No. 46, the Promotion of Bantu Self-Government Act. This Act inaugurated a period of so-called grand apartheid based on the concept of separate development in which segregation and exclusion became a law and not just an *ad hoc* process. As a result of this law, Africans were divided into a number of different groups in land reserves where they had equal right to self-determination and to express their own culture in their own territory. This process eventually led to four homelands being declared

independent (Transkei, Ciskei, Venda, and Bophuthatswana) and six territories getting limited self-determination (Gazankulu, KaNgwane, KwaNdebele, Lebowa, KwaZulu, and QwaQwa) (Jensen & Zenker, 2015:941). Even though the Promotion of Bantu Self-Government Act No. 46 was only passed in 1959, the Maphumulo and Nyavu chiefs, regents, and izinduna were the first to agree to the establishment of Bantu authorities in early 1995 at Table Mountain (Pietermaritzburg, Natal), well before many other KwaZulu/Natal chiefdoms (Kelly, 2015:273).

The issue of whether a new democratic South Africa should be a federation or unitary state was deeply contested during the Codesa transition negotiations of the new Constitution. The contestation around the system of government in South Africa continues in the new democratic dispensation, particularly as the provinces and municipalities struggle to establish and consolidate entirely new political institutions and processes. It appears that the desire to review provinces by the ruling ANC is firmly rooted in the legacy of the apartheid homelands that continue to be problematic for provincial governance. The homelands were generally expected to be re-incorporated into a new South Africa. Homelands were artifices of the apartheid state – “puppet” regimes ruling through the tyranny of “tradition” rather than through modern bureaucratic techniques (Ally, 2015:969; Robinson, 2015:962).

Homelands were criticised by the liberation movements throughout their existence – even though some would become aligned to the ANC at the end of apartheid. For example, the Transkei, led by General Bantu Holomisa, became a particular base of support for the ANC. On the other hand, other homelands opposed the liberation movements and attempts to integrate them into the new South Africa. Such homelands included KwaZulu, through the IFP and its leader, Prince Mangosuthu Buthelezi, and Bophuthatswana, led by Lucas Mangope (Robinson, 2015:953). These leaders and their organisations formed part of the resistance and opposition, becoming key players in oppositional alliances, including the Concerned South Africans Group (COSAG) first, and the Freedom Alliance later, both formed from the recalcitrant minority parties. The Freedom Alliance comprised Bophuthatswana, Ciskei and the Conservative Party (CP), the IFP, the KwaZulu government, and the Afrikaner Volksfront (AVF) – an umbrella organisation for a number of right-wing Afrikaner groups. “KwaZulu/IFP argued for a distinctly federal dispensation, in addition to recognition of the Zulu king. Bophuthatswana, similarly, argued for a confederal state” (Robinson, 2015:953).

The Codesa transition talks that led to the 1994 elections and the 1996 Constitution generally posited the homelands as problematic appendages of the apartheid state and raised uneasy questions regarding regional governance in the new South Africa (Robinson, 2015:962). The 1994 elections dismantled the homelands that were created initially by the Black Administration Act of 1927, which established a separate legal order for chiefs, and then later officially created by the Bantu Authorities Act of 1951. The homelands were dismantled in the transition from apartheid to a unitary national state (White, 2015:1009; Eriksson, 2014:315). The challenge emanated from the protests and unrest that accompanied the end of these homelands, the NP's project of separate development, and the incorporation of their often-inefficient bureaucracies into a new South Africa. The unpleasant legacy of homelands and one of the major features of post-apartheid South Africa is the degree to which the spatial and institutional legacies of Bantustans persist to this day (Robinson, 2015:962).

The Eastern Cape stands out as the most problematic provincial administration, both bureaucratically and financially, from the nine that emerged in 1994. The former Bantustan regions in the Eastern Cape were severely impacted by declining infrastructure budgets. The Eastern Cape has consistently been one of the worst-performing provincial administrations in post-apartheid South Africa, and along with Limpopo, it has become known for inefficiency and mismanagement (Robinson, 2015:962). It has experienced continual infrastructural and political stagnation since 1994, despite being the birthplace of many of the ANC elite and a crucial support base for Mbeki during his presidency. Since 1994, the Eastern Cape has been plagued by poorly performing municipalities and councils, and persistent allegations of bureaucratic and political corruption. None of the municipalities in the Eastern Cape received a clean audit during the 2012/2013 financial year.

These developments may serve as strong motivation for the ANC to review the structure and configuration of the provinces and thus effect constitutional amendments for the reconfiguration of provinces. The multi-sphere architecture of government is enshrined in the Constitution, but in practice a more centralised system of government is used (RSA, 1996). Mbeki signalled that significant changes in the federal regime may be necessary (Simeon & Murray, 2001).

1.2.13 An effective governance framework for the new dispensation

The increasingly heated public debate on the future of provincial government in South Africa is more about its organisational structure and relevance, and less about the techno-administrative issues. Techno-administrative issues relate to the specific functions of the provinces, their staffing challenges and concerns about their expenditure performance. The parameters of this debate have hinted at a handful of options on the future shape of provincial government, which include the following (HSRC, 2008):

- Doing away with the provincial sphere and apportioning its powers and functions amongst national and local government, also known as the hourglass model.
- Reducing the legislative authority and functional discretion of the provinces, which would become more focused on implementing policy for national government.
- Retaining the provinces in their present form and relying on new or amended policy, legislation, or administrative measures to improve their performance.
- Reducing the number of provinces (a rationalisation process) where this could ease staffing and capacity challenges currently being experienced by the country.
- Strengthening the functional discretion and even authority of the provinces.

The public concern is primarily with the municipal governments and less about the provincial and national spheres of government. The high level of concern with municipalities is due to their direct relationship with the communities in delivering national priorities. National priorities relate to service delivery challenges of local issues, including housing, water, electricity, health and infrastructure. The intensity of the debate around service delivery and the shape of provincial government is reflected in the increased attention on these issues in the media, politics and academic discourse (HSRC, 2008). The ANC in KwaZulu-Natal (KZN) advocated for the scrapping of provinces at the party's policy conference held from 30 June to 5 July 2017. This provincial structure of the ANC argued that local government is closer to the people and thus better positioned to deliver public services more efficiently. They further argued that this would ensure the alignment of policy between national and subnational (local) government and, thus, increase efficiencies. This would result in the transfer of some of the functions currently residing with provinces to either the national or local government. The KZN ANC was backed by COSATU on this position (www.iol.co.za viewed 5 August 2017).

A study of political centralisation and fiscal decentralisation in large emerging economies, such as China and countries of the G20, could aid in identifying and recommending the best option for South Africa's shape of provincial government from those given above. An inverse correlation between the degree of centralisation and economic growth exists. There is also some interaction between decentralisation and corruption in explaining growth. With reference to fiscal decentralisation, Granik and Saraceno (2012) argue that the central government can provide public services directly, but inefficiently. Conversely, the central government could delegate some or all service delivery to more efficient local bureaucrats to increase efficiency in service delivery (Granik & Saraceno, 2012).

Increased decentralisation, especially fiscal, leads to inefficiency in service delivery due to corruption at local government level and the cost of monitoring expenditure by the central government. The possibility of corruption at local government level leads to insufficient decentralisation and an overall decline in service delivery. In the aftermath of the 2007 financial crisis, many countries, especially G20 countries such as China, designed stimulus packages to sustain aggregate demand. This led to the mobilisation of many financial resources. This in turn revived the fear of rent seeking and corruption by local government officials. Linked to this is the concern about coordination between the central government and implementation by provincial and local governments. In large emerging economies, size makes it necessary to implement policies through local government to provide services efficiently (Granik & Saraceno, 2012; Xu, 2006:2).

In China, fear by the central government about its capacity to limit corruption during programme implementation at the local government level led to a reduced stimulus package, that is, reduced fiscal decentralisation during the financial crisis of 2007. On the other hand, more corrupt countries tend to be centralised. Central governments are confronted with the choice of providing public services directly, but somewhat inefficiently, for fear of corruption by local government officials, or delegating service delivery to the local government, which is more efficient, but potentially corrupt. The result of such a situation created by fear of corruption is the overall provision of public services that is lower than the benchmark optimal level (Granik & Saraceno, 2012; Li, 2017:212).

The degree of political centralisation in a country determines the effectiveness of fiscal decentralisation. Chinese fiscal decentralisation in the 1970s and 1980s was a resounding

success, while that of Russia in the early 1990s was a failure. The possible reasons for the different outcomes of fiscal decentralisation in the two countries include the fact that in the single-party system of China, local bureaucrats were appointed by the central authorities and generally lacked a strong local powerbase. In Russia, the economic and political reforms of the 1990s produced territorial cleavages and regional governors elected by local electorates, who often had political affiliations drastically different from that of the central government (Granik & Saraceno, 2012; Zhang, Zhu & Hou, 2016:198; Dexu & Wenlong, 2017:18).

The South African Constitution (Act 108 of 1996) structures the government as a unitary state with three spheres of government coupled with the creation of a fiscally decentralised system of intergovernmental fiscal relations. The government exhibits centralist tendencies of a *de facto* unitary state, which is contrary to the *de jure* constitutional federal arrangement. Calitz and Essop (2012) provide reasons which serve as evidence for the centralist tendency of the government. They include the shifting of welfare payment administration from provincial to national government; the non-activation of income tax-sharing and fuel levies as provincial revenue sources; the review of provincial and local government; the replacement of the local government regional service levy with a nationally collected and allocated share in the fuel levy; the prospective new composition of regional electricity distributors, which is likely to remove the electricity surcharge as a source of local government revenue; and the effective possible removal of the health function from provincial governments, as implied by the recommendation in the Green Paper on National Health Insurance, namely that the public health system be centralised under the control of a “national fund” with regional offices (Calitz & Essop, 2012).

Other examples of centralisation attempts were turned down by the Constitutional Court and include “the Western Cape Province’s objection to national legislation that sought to regulate liquor licensing, an exclusive provincial competency, and the Premier of Kwazulu-Natal’s resistance to the intention to regulate gambling nationally” (Calitz & Essop, 2012:29). The national government has the authority to develop policies, while provinces are charged with the responsibility of implementing these policies. This arrangement brings into question the functional discretion of provinces. The national government is responsible for setting norms and standards, the provincial government for ensuring implementation of national policy, and local government for ensuring development within their jurisdictions. Some senior

government officials have raised concerns about the assignment of powers and functions to the provinces, as well as the need to review the number of provinces.

These government officials cited the shortage of adequately skilled officials at the provincial spheres and responsibility of the national government to manage provinces as subordinate structures. Other reasons cited for the need to review provinces include the tension created by areas of concurrent competency between the national and provincial spheres of government. These tensions led to provinces accusing the national government of unfunded mandates and misalignment between policy and budget. Tension also arises as a result of conflict between the legislative and executive authority granted to provinces in the Constitution. An example of this tension is the appropriation of conditional grants by the national government to address its policy priorities that may differ from those of the SNG. This practice effectively reduces the autonomy and discretion of provinces and their sense of ownership of the programme and accountability (Naidoo, 2009).

1.2.14 Federalism in the international context

This study seeks to draw insights from countries in Africa (Nigeria) and Europe (Germany), which practice a federal system of government. Analysis of these countries will provide a hint and possible direction regarding the most effective and efficient governance framework for the architecture of the government system and the assignment of powers and functions in South Africa. The discussion focusses on Germany and Nigeria. Thus, analysis of the structure, composition or arrangement, processes and systems employed in these countries to address challenges of policy alignment *vis-à-vis* efficiency, allocation of resources, powers and functions, autonomy and jurisdiction would shed light on determining an appropriate arrangement of government structure and the allocation of powers and functions to constituent units in South Africa.

1.2.14.1 Germany

Germany is unlike many federal states with territorially based ethnic, linguistic or religious cleavages where the allocation of competencies among the levels of government may be determined by strong convictions and conflicts. Thus, the allocation of competencies among constituent units was largely guided by the economic theory of federalism and the

subsidiarity principle with the aim to strengthen institutionally entrenched SNGs. However, due to its unitary political culture, Germany in the post-war decades undertook a continuous expansion of federal legislative competencies, combined with a continuous increase of practices of cooperative federalism and joint decision-making. These practices required high levels of consensus between the federation and the *Länder*, thus compromising and constraining their capacity for autonomous political action (Scharpf, 2008:509).

Consensus is lacking regarding the categorisation of the German system of government as either unitary or federal, as is the case in South Africa, which to a great extent was inspired by the German federal design of government. The German Constitution assigns legislative power to the federal government, whereas the *Länder* (states) are responsible for implementing the law. This is another striking similarity with the South African Constitution, which provides for the national government legislation to prevail over provincial legislation in areas of policy conflict in concurrent competencies or functions and assigning policy implementation role to provinces (RSA, 1996). However, the German Constitution allocates the *Länder* exclusive legislative and administrative powers over some of the key competencies, such as the school system (Article 30 and Article 70ff. German Constitution) (Kuhlee, 2015:479).

The contradictions and challenges of German federalism lie in the character of its social, economic and political environment. German federalism operates within a society with centralised organisations of interest, in a highly developed welfare state, in an increasingly Europeanised economy, and in a political culture that emphasises national unity and uniform living conditions in all regions (Benz, 1999). This environment does not support the advancement of characteristics of a truly federal system, namely, territorial diversity and competition between decentralised governments. Despite the contradictions, the federal government of Germany exhibits the basic features of federalism, including division of power, decentralisation, and the participation of *Land* governments in national policymaking. The characteristic of competition among SNGs is emphasised by Libman (2015:801), who posits that decentralisation is often modelled as an outcome of bargaining over rents, economic resources, power and policies by SNGs (Libman, 2015:801).

The system of interlocking politics (*Politikverflechtung*) in Germany, which is characterised by the sharing of legislative, administrative, and financial functions between governments,

and the widespread orientation toward unity and equality is similar to cooperative governance or cooperative federalism in South Africa. Criticism of this system includes its increasing policymaking costs, reduction of governmental problem-solving capacity, and leading to stalemates. However, the December 2006 Constitutional amendment addressed this challenge and sought to reform and streamline the entrenched federal system (Burkhart, Manow & Ziblatt, 2008:522). In essence, the 2006 federalism reforms sought to increase the capacity for autonomous political action by the federal and *Länder* governments by replacing joint decision-making with the allocation of exclusive competence to each (Scharpf, 2008:509). The aim of the federal reform agenda was to ‘unlock’ interlocking federalism in Germany with the intent to free political actors from a system of constraints, which left them caught in a ‘joint decision trap’ (Moore & Eppler, 2008:488).

The Christian Democratic Party (CDU)/Christian Social Union (CSU)-Free Democratic Party (FDP) Grand Coalition (2005-2009) under the leadership of chancellor Angela Merkel¹⁰ broke through the “reform paralysis” and policy backlog after 16 years under Chancellor King Kohl (Mushaben, 2016:11). Thus, the introduction and recalibration of reforms has become a hallmark of the German policy arena with ongoing updating of institutions and policies in such areas as education (Welsh, 2014:400). Höreth (2008:408) argues that other articles unaffected by the 2006 reform of article 84 Paragraph 1 of the Basic Law (Constitution) in Germany essentially replaces this reform, as more than half of federal laws (articles) still require consent of the Bundesrat in order to be passed in the Bundestag. These remaining elements in the Basic Law, which make it necessary to obtain consent from the Bundesrat, are often called ‘catch-all elements’, and regulate highly contested subjects of the legislation. By contrast, legislation that no longer requires Bundesrat consent is politically uncontested. This view implies that Germany is still constrained by policy paralysis in its effort to effect policy reforms, despite the 2006 Constitutional reforms (Höreth, 2008:408).

The 1949 German constitution (cooperative federalism) required a majority of the *Land* governments’ votes in the *Bundesrat* (Federal Council) for the *Bundestag* (Federal Parliament) to pass more than 50 percent of the federal laws. As a result of this Constitutional

¹⁰ Angela Merkel has been ranked “the world’s most powerful woman” a number of times and she is also the only German chancellor since 1949 to have successfully led her party to a “normal” victory after a full term heading a grand coalition from 2005 to 2009. She served three consecutive terms as federal chancellor and leader of the Christian Democratic Party (CDU) (2005-2009, 2009-2013 and 2013-2017) having served as two-time cabinet member prior to becoming the chief of the CDU. Her first Grand Coalition was between the CDU and the SPD.

requirement, conflicts of interest between *Land* and federal governments are said to impede institutional reforms and policy changes. Similarly, arguments within and between the two houses of parliament (*Bundestag* and *Bundesrat*) hinder cooperation and reforms in policy fields in which the federal and *Land* governments jointly decide on the allocation of funds to regions. In the 1990s, cooperative federalism was blamed increasingly for blocking the passage of necessary reforms. There were also more calls for competitive federalism with a clear separation of powers between the levels of government and for fiscal autonomy of the *Land* governments, which were made by political parties and associations (Benz, 1999:54-56).

Benz (1999) argues that cooperative federalism in Germany is much more flexible and open to institutional adaptation and policy change. He dismisses the calls for more fiscal autonomy of the *Länder* and more competitive federalism, but concedes that tensions between the constitution of the federal polity, the structures of the party system, and basic principles of policymaking pose a serious challenge for the federal system in Germany. These challenges are caused by inconsistencies in the architecture of the German political system, resulting from the historical development of federalism. On the other hand, these challenges drive constant adjustment and the evolution of the federal system, thereby contributing to the dynamism of the system (Benz, 1999:56). Intergovernmental cooperation in the West German Federal Republic, prior to the unification of East and West Germany, was effective because of relative equality among the regions.

This intergovernmental cooperation occurred despite competition among political parties. The unification of West and East Germany after 1990 made the federal system asymmetric due to regional disparities and inequalities between the two regions. Distributive conflicts owing to regional inequalities complicated cooperative federalism. This resulted in an economic downturn in Germany at the dawn of the 21st century. The Federal Republic institutions that served West Germany, to encourage stability and consensus following the Nazi years, crumbled and could not absorb the combined stresses of unification, globalisation, and demographic change (Baldi, 2016:94; Scharpf, 2008:509). Horizontal fiscal imbalances, that is, regional tax inequalities in Germany, were much lower before than after the reunification of West and East Germany. Federal and state governments often do not use the same assumptions in their public finance systems, resulting in differences among

regions, both vertical and horizontal. In response to these inequalities, the federal government developed mechanisms to equalise them (Kowalik, 2015:1).

Bargaining strategies of *Land* governments, led by different political parties, have become more pragmatic due to the pluralistic nature of party system structures. The *Bundesrat* was designed as a second house of parliament, but with lesser powers than the *Bundestag*. However, the *Bundesrat* could become relatively powerful *vis-à-vis* the *Bundestag* where influential *Land* prime ministers could encroach upon the politics of the federal government. Provisions regarding financial matters in the Constitution continued to be reformed between the 1950s and 1960s, until they reached their final shape (Benz, 1999).

1.2.14.3 Nigeria

The state of Nigeria was formed in 1914 after the amalgamation of the Colony of Lagos and the Northern and Southern Protectorates of Nigeria. It was in essence an ‘amalgamation’ of the country’s two distinct former British colonial regions. However, as Nigeria celebrated its centennial in 2014, the media was peppered with reports of sectarian sentiments. The Richards Constitution of 1946 recognised three regions, the Northern, Western, and Eastern regions, and the Colony of Lagos. Subsequent constitutional reforms followed between 1951 and 1999 due to dissatisfaction among Nigerian nationalists with the level of Nigerian participation in government.

In 1957, a diarchy was formed with Alhaji Abubakar Tafawa Balewa appointed as the prime minister. Federal elections were held in 1959 and Nigeria obtained its independence in 1960 (Elaigwu, 2002; Bolarinwa, 2014:39). The operation of the federation experienced problems of fear and suspension among the regions due to the structural imbalances of the federation. These imbalances of political and economic power in the federal government among the Northern and Southern regions led to a military coup in January 1966. However, due to the Southern region’s advantage of higher levels of education, both economic and political power became concentrated in the South. Elaigwu (2002) argues that the South’s advantage in the bureaucracy was augmented and strengthened by the coup.

The federal Constitution of Nigeria was formally adopted in 1954. The form and type of federalism in Nigeria is explained in terms of its ethnicity, ethnic relations, and civil war.

Olowu (1991) identifies a number of different viewpoints about the origins of federalism in Nigeria. The first view suggests that the British colonialists imposed federalism on Nigeria at the end of their rule in order to sustain their neo-colonial links with the politically independent Nigeria. The second viewpoint was raised by Chief Obafemi Awolowo, which attributes federalism to the preference (between federalism and unitarism) exercised by Nigerian local, provincial, and regional representatives at general conference assemblies between 1949 and 1950, which sought public consensus regarding the form of government in the country (Olowu, 1991).

From the mid-1960s until the 1980s different regional groups and leaders moved back and forth canvassing and pressing for a variety of forms of association, including confederation, breaking away from the union, stronger centralised federalism and stronger centralisation. This argument is demonstrated by the failure to successfully institute consociational power sharing in Nigeria, which is Africa's largest and oldest federal system. This sharing failure is attributed to the legacy of late colonial, indirect rule institutions on citizenship and the politics of belonging that hamper the successful design of consociational power sharing arrangements (Kendhammer, 2014:396).

Major obstacles to confederalism in Nigeria, as seen in the example of previous experiences of federalism in Europe and the United States, include the danger of confederalism degenerating into a system of competitive armament, problems of economic management, decision-making paralysis at the centre, and the fact that a confederal arrangement would go against the grain of world history. Various sectors of the populations are calling for reconstitution of the federal system, devolution of powers, equitable distribution of natural-resource revenues and other resources, and the use of states to advance ethno-religious identities. Elaigwu (2002) argues that the federal system in Nigeria is likely to survive. He however points out that the political leadership needs to promote intergovernmental relations or cooperative governance among the spheres of government in order to solve the problems of the government peacefully and expeditiously (Elaigwu, 2002).

The strengthening of the centre in Nigeria is attributed to several factors, including military rule, civil war, creation of states, and the increase of petro-naira, demands for federal harmonisation, and international trade and globalisation. Elaigwu (2002) highlights challenges facing the federal government of Nigeria and possible solutions to the challenges.

These challenges include strong unitarist tendencies in government, strong pressure to review legislation and devolution of powers to SNGs, resource distribution, the explosion of subnational identities and the quality of leadership required for reconciliation (Elaigwu, 2002).

The country's stability and peace is further undermined by corruption, which is the biggest impediment to development. Corruption accounts for the high levels of unemployment, poverty and disease in Nigeria, as it does in many parts of Africa (Yagboyaju, 2016:69). Nigeria is the world's most populous nation and is endowed with abundant natural resources, including crude oil and several other minerals. Yet, corruption is endemic in Nigeria and has devastating and debilitating effects on the country's development and stability (Nwozor, 2014:146).

Political debates among social and political commentators over the efficacy of federalism in a multi-ethnic federation like Nigeria are widespread. These debates are accompanied by widespread calls in some parts of the country for the dissolution of the federal union. Babalola (2015:74) argues that the geo-demographic complexity of the Nigerian state and society makes federalism the most appropriate political framework for the country. The ongoing discourse about reinventing federalism in Nigeria is carried further by Bolarinwa (2014:39) who argues that building Nigeria into a strong and united federation requires sufficient empowerment of the constituent units (states). This entails enabling the principles of federalism, which require conferring a significant degree of autonomy to the states to manage their affairs (Bolarinwa, 2014:39).

Bolarinwa (2014:39) attributes the ongoing challenges of a series of violent, dramatic and traumatic inter-ethno regional confrontations to unitary federalism, which does not confer true autonomy on the states. Bolarinwa (2014:39) advocates for removal of all traces of the unitary system of government from Nigeria's form of federalism and conferring of a significant degree of freedom and autonomy to the states, which is consistent with federalism. These are the fundamental principles of federalism enshrined in the 1960 Independence and the 1963 Republican Constitutions respectively, with the view to promote regionalism and derivation percentage (fiscal federalism) among the regions. Nigeria tilted to a unitary system with a very strong centre under military rule, but with the return of democratic governance and developmental goals there is a strong need to institutionalise and practice true federalism

by devolving more powers and functions to the states. This is in the spirit of the underlying philosophy that views federalism as a system of government where the constituent units of a political system participate in sharing powers and functions in a cooperative manner (Bolarinwa, 2014:39).

1.3 RESEARCH PROBLEM

The present research study seeks to establish the challenges posed by the architecture of South Africa's political system of government, that is, a federal state, which has raised debates and lack of consensus among political parties regarding the most effective configuration for the assignment of powers and functions to the three spheres of government. The review of the political system of government, as suggested by the ruling ANC government, should provide the most suitable arrangement that is effective and efficient in achieving the developmental goals of the government. In addition, such an arrangement would be best positioned and capacitated to address development challenges and to take advantage of prevailing opportunities. The political developments in the country since the adoption of the new Constitution in 1996 have provided indicators and more compelling reasons for opposing parties in advocating for either a highly centralised (unitary) or decentralised (federal) arrangement of government in South Africa (see paragraphs 1.2.8 - 1.2.12 above).

The ruling ANC articulated in its NGC discussion document (2010) its vision of a developmental state, which is based on the resolutions of the organisation's 52nd National Elective Conference. The ANC identifies the four attributes of this developmental state as follows:

- Strategic orientation: an approach premised on people-centred and people-driven change, and sustained development based on high growth rates, restructuring of the economy and socio-economic inclusion.
- Capacity to lead in the definition of a common national agenda and in mobilising all of society to take part in its implementation.
- The state's organisational capacity: ensuring that its structures and systems facilitate realisation of a set agenda.

- Technical capacity: the ability to translate broad objectives into programmes and projects and to ensure their implementation (ANC, 2010).

The ANC argues in its 2010 NGC discussion document that the role of provincial governments in achieving the set developmental goals remains uncertain. A large chunk of the country's division of revenue goes to the provinces through transfers and equitable share, where the national, provincial and local governments receive on average 48.9%, 43.3% and 7.7% respectively. However, the ANC argues that the provinces display a stark lack of accountability for the share of revenue they receive (ANC, 2010). In addition, the ANC questions the role of the provinces in areas of concurrent competency with the national government, regional social and economic development, contestation with municipalities over housing, transport, roads and other functions, and incapacity by provinces to undertake supervisory roles over municipalities.

Other concerns raised by the ANC (2010) regarding the provinces include their limited legislative output, and uneven performance and capacity in expenditure and redistribution. Provinces that inherited the former homelands generally face the biggest challenges pertaining to capacity, the lowest per capita expenditure, poor service delivery and the highest backlogs. The state of development paralysis within provinces that incorporated the former homelands is echoed by Jensen and Zenker (2015:937), who argue that the policy initiatives of the new ANC that seek to erase the homeland past ironically often reproduce them. The ANC proposed development of a National Legislative Framework for Provincial Government, which is aimed at clarifying the roles and functions of provinces to address the abovementioned challenges.

The provincial legislative costs are negligible compared to provincial expenditure and therefore the ANC is in favour of reducing the number of provinces to achieve the desired outcomes, instead of completely abolishing them. The ANC argues further that concurrency in the functions of the provinces and the national government should be defined in terms of national priorities and provincial service delivery. This assertion points to the notion of the role of the national government being policy development and that of the provincial governments, policy implementation. The NGC further suggested the development of a legislative framework and criteria for the reconfiguration of provinces by the review summit on provincial government (ANC, 2010).

In view of the recent and current service delivery protest action throughout the country, a review of the success of the local sphere of government in meeting its constitutional obligations to the citizens is necessary. Tshishonga and Dipholo (2013:1) attribute the increase in civil unrest and community protests in South Africa since 2005 to poor service delivery, poor leadership by municipal officials, poor human and limited financial resources, and imperfections in the transition from apartheid to the new democratic and transformative system of governance. This review will also determine whether the powers and functions assigned to this sphere of government enable it to effectively and efficiently meet its developmental mandate.

Chapter 7 of the Constitution (Act 108 of 1996) provides for the establishment of municipalities. The powers and functions of municipalities are provided in section 156 (chapter 7) and Schedules 4B and 5B of the Constitution. The powers designated to local government by the Constitution and additional powers transferred by means of assignment, delegation and agency do not provide it with the necessary policy making and financial authority to deliver in critical impact areas (UWC, 2007). Schedules 4B and 5B should serve as municipal instruments that provide local government with means and solutions to provide services to citizens. The substantial oversight powers of the national and provincial government over local government limit the effectiveness of devolved powers and functions to local government, which results in a lack of capacity, the fragmentation of services and poor standards of service delivery.

Local governments require appropriate authority to perform their functions; thus, adequate assignment of powers and functions to the local sphere of government is necessary to build the necessary capacity. The functions that have the most immediate developmental impact on citizens should be performed by local government in line with the subsidiarity principle expressed in the Constitution. Key indicators which could be used to determine which functions are best performed by local government include the following: the degree to which economies of scale can be obtained at a higher level; the degree of spill-over effects of a function; necessary capacity; the degree of inter-sectoral coordination; the degree of grassroots community participation required; and the degree of policy control over the built environment (UWC, 2007).

These key indicators could be used in high impact functions, such as housing, transport, land use planning and local economic development. The UWC Local Community Centre (2010) suggests moving the housing function to Schedule 4B so as to afford municipalities' authority over this function within parameters set by the national and provincial government. Further, the metropolitan municipalities should be afforded significant policy control authority over public transport regarding the municipal transport competency. Local economic development should not form part of municipal functions, as expressed in Schedules 4B and 5B, due to lack of appropriate funding. Instead, incentives for performing operational parts of this function should be afforded to local governments through the generation of revenues (UWC, 2007).

Coetzee (2006) defines governance as providing stakeholders with assurance by applying the capacity (time, effort, resources) in such a manner that objectives are achieved effectively and efficiently in an agreed ethical environment. Chhotray and Stoker (2009:12) provide a more detailed definition which states, "Governance is about the rules of collective decision-making in settings where there is a plurality of actors or organisations and where no formal control system can dictate the terms of the relationship between these actors and organisations". Poor governance is a major obstacle to improved service delivery in South Africa, especially at local government level. Poor governance includes corruption, poor performance by leadership and government officials in managing public resources, and lack of political will to act against underperforming officials (Holtzhausen & Naidoo, 2011).

Poor management of public resources translates into poor service delivery implementation. Other elements of poor governance include the absence of adequate accountability mechanisms and a lack of transparency, which all contribute to poor service delivery. The manifestation of poor service delivery includes violent and confrontational service delivery protests throughout South Africa in recent years (Holtzhausen & Naidoo, 2011). The Department of Cooperative Governance and Traditional Affairs (COGTA) identified the causes of poor governance as follows (COGTA, 2009:10):

- Poor ability of councillors to deal with the demands of local government;
- Inadequate accountability measures and support systems and resources for local democracy;
- Poor compliance with regulatory and legislative frameworks;

- Tensions between the political and administrative interface;
- Lack of clear distinction between the legislative and executive; and
- Insufficient separations of powers between municipal councils and political parties.

Political governance includes public participation in decision-making processes regarding socio-economic matters, democracy, representation, inclusion, power sharing and the relationship between institutions of governance, such as the legislature, the executive and the judiciary, political parties and civil society organisations. Factors leading to poor political governance include corruption, nepotism and patronage, all of which erode citizen trust and confidence in government. These factors create a negative perception of the municipal accountability system that is inaccessible and ineffective. The creation of a more responsible local government requires curbing corruption, effective reporting mechanisms and increased public participation in matters relating to service delivery (Holtzhausen & Naidoo, 2011).

Holtzhausen and Naidoo (2011) define government as a structure consisting of public institutions in which people work to deliver public services and products in line with the principles of the country's Constitution. The national government is responsible for formulating and making policy, and developing national norms and standards, and rules and regulations. The provincial and local governments are responsible for policy implementation as per the provisions of the Constitution. Actions of the local government should comply with national and provincial legislation. The provincial government oversees the actions of the local government and ensures compliance with and maintenance of set standards of service delivery. The national executive (the president and Cabinet) should ensure that provinces meet the minimum standards of service delivery.

Governance refers to the implementation of laws and policies developed by government and service delivery as prescribed by these laws and policies (Holtzhausen & Naidoo, 2011). Lodge (2005) points out the delegation of certain areas of financial budgetary authority to provincial governments, that is, the transfer of fiscal powers and functions, following the creation of a new political dispensation in 1994 as a primary cause of corruption. Corruption is a result of dishonesty and weak professional ethics among people. Other causes of corruption include the incorporation of former homeland administrations in the government, black empowerment policies, the movement of members of the ANC leadership into the

corporate sector, tendering and outsourcing of certain public services, and affirmative action policies (Lodge, 2005).

1.3.1 Problem statement

Effective governance is a critical requirement to maintain and strengthen the integrity of government, as well as for effective and efficient service delivery by all spheres of government. The roles, powers and functions of provincial government in relation to cooperative governance, authority and concurrency of functions with other spheres of government in fulfilling their constitutional and developmental mandate constitute the core of the present study. The capacity of provinces *vis-à-vis* their ability to fulfil their constitutional and electoral mandate depends on the legislative and executive discretion granted to them as defined by the powers and functions assigned to them by the Constitution. Service delivery at SNG level will not significantly improve in the absence of effective governance (Holtzhausen & Naidoo, 2011). Thus, good governance serves as a pillar of government administration and provides the mechanisms, namely, the policies and procedures, systems and processes required to strengthen and maintain the integrity of government.

The powers and functions of provinces in the new constitutional dispensation of South Africa (1996 – 2012) are shrouded in ambiguity and uncertainty. This is manifested in the inability of provinces to effectively exercise their legislative authority and functional discretion as enshrined in the Constitution. Thus, the study investigates the extent to which the provinces exercise their constitutionally assigned powers and functions to fulfil their executive and legislative obligations.

1.4 RESEARCH QUESTION

The research question is informed by the political discourse, particularly within the ruling ANC, about the need to review the role and relevance of provinces in the country's constitutional dispensation. These discussions and debates are sparked and fueled by continuing service delivery protests across the country, as well as poor performance within some provinces. These developments are presumed to be a reflection of poor governance and efficiencies within provincial governments. In the Limpopo Province, for example, five departments (Treasury, Roads and Public Works, Transport, Health, and Education) were

placed under financial administration by the national government in 2012 due to their poor performance, which was linked to maladministration and corruption in the provincial government departments. These acts of malfeasance at the provincial sphere of government reflect deep seated problems of failure to exercise legislative authority and functional discretion in accordance with the Constitution. They also reflect the abominable encroachment of national politics and political influence in the provincial legislatures and administration which in turn undermine the electoral mandate and constitutional precepts of good governance and separation of powers and functions.

Another incident in Limpopo highlighting poor governance in provincial administration was the non-delivery of textbooks to schools in 2012. Learners went without textbooks for more than half of the academic year. A similar incident occurred in the Eastern Cape, where the Head of Department of the Department of Education was fired for poor performance. The most recent example of poor performance by provincial government departments occurred in 2017 with the failure of the Gauteng Department of Health to provide adequate health care facilities and services for mental health patients, which led to the death of over 100 patients (www.news24.com retrieved on 22 February 2017). Political influence as manifested by cadre deployment, purging, suppression of dissent, corruption and abuse of state resources for political interests is weakening the systems of governance in the provinces.

Therefore, it is in light of this poor performance and governance by some provinces that the capacity and role of provinces in relation to their responsibilities of democratic governance and service delivery have been questioned. This study thus seeks to provide a better understanding of the impact of poor governance on political governance in South Africa since the adoption of the country's Constitution in 1996. The study takes an exploratory and descriptive approach to analyse governance within the provincial sphere of government and investigate how the constitutional assignment of powers and functions to provinces, namely, centralisation versus decentralisation, affects their capacity to fulfil their legislative and executive obligations in accordance with the constitutional values and principles of good governance. Many studies (Nemec & De Vries, 2015:249; Mutahaba & Pastory, 2015:268; Ryan & Woods, 2015:225; Reddy & Kauzya, 2015:200) on the performance of SNGs focus on local government, due to its proximity to the people. Local government thus provides better opportunities for public participation (bringing government 'closer to the people') and the visible demonstration of good governance values and principles, such as people's voice,

transparency, legitimacy and accountability. The current study thus seeks to fill this gap by investigating the status and role of provinces in the current (1996-2012) constitutional dispensation.

1.4.1 Primary research question

Discussions on the capacity (ability to effectively and efficiently deliver public services) and role (constitutionally assigned powers and functions with respect to executive, legislative and judicial authority) of provinces have sparked debates about the future and relevance of these institutions of democratic political governance and agents of service delivery. These discussions about the role and relevance of provinces have centered on their powers and functions with respect to administration and policy implementation, legislating, and interpreting the law. Possible scenarios regarding the future of provinces, which have been suggested by scholars, politicians and commentators, include the reduction of the functions and powers of provinces, the reduction of the number of provinces, the integration of provinces into metros (district municipalities), the strengthening of existing provincial governments, and the complete abolition of provinces, as illustrated in Table 1.1 below:

Table 1.1: Options for the future of provinces

Options for configuration of government with respect to provinces

- Reduce the powers and functions of provinces
- Reduce the number of provinces
- Integrate provinces into metros
- Strengthen provincial administrations
- Abolish provinces

Source: Constructed from the study

Table 1.1 above illustrates the different options and possible routes that could be taken to address capacity and good governance challenges facing the provinces in South Africa. These questions around the future of provinces form the basis for the primary research question, namely; what is the ideal constitutional or political configuration (systems and structures) of government for the South Africa government that would improve the effectiveness and

efficiency of public administration in the provinces in relation to the assignment of powers and functions? This question in essence highlights the need and importance of good governance in provincial government, in accordance with the principles of good governance as stipulated in section 195(1) chapter 10 of the Constitution (RSA, 1996).

The study analyses how effectively provincial governments in South Africa fulfil their constitutional mandate, that is, perform their functions in line with the principles of good governance given the status of provinces provided for in the current constitutional dispensation. The line of thought on which the research question is based follows the argument that the ruling ANC favours a centralist unitary form of government whereby the national government has dominant powers over the provinces and thus wields overriding legislative and functional discretion over provinces. On the other hand, a highly decentralised federalist form of government would assign constitutionally guaranteed and protected powers and functions to provinces that may not be repossessed and overruled unilaterally by the national government and thus significantly increases their capacity to fulfil their developmental and electoral mandate within their respective jurisdictions. Thus, the study interrogates this research question to propose a constitutional framework of good governance in the provincial sphere of government that would engender, promote and facilitate the effective delivery of the developmental and electoral mandate by the provinces to their constituencies in line with the constitutional values and principles of good governance provided in section 195 of the Constitution. The focus of this research question is therefore to assess the capacity i.e. status and role of provinces to exercise their legislative authority and functional discretion in pursuit of the goal to fulfil their executive and legislative obligations as enshrined in the constitution. The provincial sphere of government is constitutionally obligated to exercise these powers in spite of the inclination of the national sphere of government which has overriding constitutional powers to encroach on this mandate.

1.4.2 Secondary research question

The discussion above on the role, functions and powers of provinces also raises important questions about the capacity of provinces. Capacity is a function of access to financial resources and the capacity to enforce compliance and levels of independence in law making, policy making and implementation, which ultimately relates to effective administration and service delivery. These issues can be addressed by investigating a research question that

seeks to establish the weaknesses and strengths of the provinces with respect to fulfilling their constitutional mandate, that is, how well provincial government administrations are able to fulfil their legislative and executive obligations and, in doing so, to what extent are they able to uphold the constitutional values and principles of good governance (as contained in section 195, chapter 10 of the Constitution). The biggest challenge that hinders provinces from effectively exercising their legislative authority and functional discretion is the lack of political autonomy. This emanates from the structural and institutional organisation of the politics of the country that is hierarchical and highly centralized at the national level and thus relegates sub-national i.e. provincial and local government public representatives and officials to a subordinate position in relation to their national counterparts.

A similar study was conducted by Biela, Hennl and Kaiser (2012:448) to evaluate the output effects of territorial state organisation on the performance of democratic political systems. In this study, they make a conceptual distinction between federalism and its economic counterpart, fiscal federalism, that is, decentralisation¹¹. Braun (2000) and Keman (2000) in (Biela, Hennl & Kaiser, 2012:448) distinguish between a subnational entity's "right to decide" and its "right to act". The latter describes the competence to independently implement policies as mandated by the central government. It is this autonomy of subnational levels to allocate resources within their jurisdiction that is defined as decentralisation (Musgrave, 1959; Oates, 1972). The "right to decide," on the other hand, refers to the competence of the SNG to design and pass policies on its own or in cooperation with the central government.

Federalism thus refers to a constitutionally guaranteed division of competences between territorially defined governmental levels or jurisdictions. Thus, Biela, Hennl and Kaiser (2012:448) posit that by and large, decentralisation exhibits positive effects on the indicators of macroeconomic performance, whereas federalism leads to no or negative effects (Biela, Hennl & Kaiser, 2012:448). Thus, the secondary research question in the present study expands on the primary research question by exploring the capacity of provinces to fulfil their constitutional obligation with respect to the different areas of government in which a jurisdiction, that is, a sphere of government, may exercise its powers, namely, its legislative,

¹¹ Decentralisation entails devolution of authority (fiscal, administrative, political and legislative) and transfer of resources to SNGs, and thus affords these structures some degree of autonomy within their jurisdictions.

political, fiscal, administrative and intergovernmental capacities (Simeon & Murray, 2001; Dickovick, 2005; Benz, 2009; Tockman, 2016:154).

1.5 RESEARCH OBJECTIVES

The purpose of this study is to contribute to the body of knowledge on the status and role of provincial governance in the South African constitutional dispensation from 1996 to 2012. The study aims to identify key success factors, that is, an effective governance framework for an effective constitutional democracy in South Africa that is rational, effective and efficient in meeting its developmental and electoral mandate. In essence, the aim of the study is to determine whether good governance in relation to the status and role of provincial governance in the South African constitutional dispensation between 1996 and 2012 would be best served by adopting either a unitary or federal form of government. A federal form of government is characterised by high decentralisation of powers and functions, namely, greater subnational autonomy, whereas a unitary form of government evinces a high centralisation of powers and functions, namely, limited subnational autonomy. The adoption of either form of government will have major implications for the provinces with regards to the powers and functions allocated to them and the legal discretion granted by the Constitution to exercise their powers and perform their assigned functions. Thus, the legislative authority and functional discretion of provinces rests on whether their autonomy is curtailed or improved, which subsequently will impact on their governance – either positively or negatively. The present study seeks to explore a number of research objectives in order to accomplish its aim (see paragraphs 1.5.1-1.5.4 below).

1.5.1 Key political tenets underpinning the current constitutional dispensation

The current study seeks to establish the rationale behind decisions made by the crafters of the South Africa Constitution of 1996 to adopt the current constitutional dispensation from a democratic political governance perspective. This investigation includes analysis of the reasons for changing from a unitary state of the pre-1994 apartheid South African government to the present quasi-federal framework adopted in the 1996 Constitution. The developments of the Codesa transitional negotiations, which took place in the early 1990s, will be explored to derive a comprehensive understanding of the reasons and objectives leading to the adoption of the current system of government. The study would thus be able to

clarify the fundamental principles and defining values of the architecture and configuration of the current constitutional dispensation that affords prevailing legislative and executive powers to the national government and thus relegates the provinces and local government to a subordinate position characterised by limited political, legislative, administrative, fiscal and intergovernmental relations, capacity and dependency on the national government to fulfil their developmental and electoral mandates.

1.5.2 Alternative frameworks of systems of government

Countries throughout the world practice different variations of unitary and federal systems of government. The study will scrutinise these models, especially federal models, as adopted by countries such as Nigeria, Germany and the US. Both practical and theoretical historical developments in these countries with respect to the degree of autonomy of SNGs and the values of good governance will provide valuable insights and lessons that could assist in constructing a provincial governance framework that facilitates the effective achievement of the developmental and electoral mandates of provinces, in accordance with the constitutional values and principles of good governance. Thus, by analysing modes of governance espoused by other federal countries the study will draw comparisons and lessons which will highlight the characteristics and political tenets inherent in the governance framework of these countries. These structural and institutional features are critical in strengthening democracy and empowering subnational governments to effectively fulfil their electoral mandate and constitutional obligations.

1.5.3 Analysis of the current constitutional dispensation of provinces

The study analyses the structure and configuration of the current South African system of government in terms of Intergovernmental Relations (IGR), the powers and functions of the three spheres of government, the constitutionally prescribed framework of government, and the autonomy and discretion of the SNGs and their assigned political, legislative, fiscal and functional authority. The study further analyses the governance and political challenges faced by the SNGs, their strengths and weaknesses, and the problems and challenges posed by the governance framework prescribed in the Constitution. Hence, the current study investigates the extent to which the provinces are able to exercise legislative authority and functional discretion within their constitutionally defined jurisdiction – see problem statement in

paragraph 1.3.1 above. It further investigates how the concurrency of competences between the national and provincial spheres of government constrain or enhance this capacity given the substantial prevailing legislative powers of the former over the latter. Furthermore, the study undertakes an investigation into the performance of provincial governments in relation to service delivery and good governance. Service delivery is but one of the many outcomes and indicators of good governance and stability of government and since many community protests are targeted at poor service delivery in relation to government performance, it thus becomes one of the key focus areas and indicators in evaluating the level of performance and good governance in the provinces.

1.5.4 Review of provinces

Provinces are institutions of democratic political governance that are constitutionally established to fulfil the developmental and electoral mandates of their constituencies within their respective jurisdiction. Thus, the primary aim of the study in investigating the review of provinces is to identify both key enabling and limiting factors that impact on the capacity of this sphere of government to effectively fulfil this mandate. The capacity available to deliver on this mandate is defined by the Constitution, which prescribes the powers and functions assigned to provinces and other spheres of government, and thus dictates the degree of autonomy and discretion allocated to provinces to exercise these powers and perform their assigned functions. Thus, the review of provinces by investigating and analysing their powers and functions as provided for in the Constitution will provide insight regarding the status and role of provincial governance in the South African constitutional dispensation 1996 to 2012. Thus, the options for the review of provinces as stated in table 1.1 under paragraph 1.4.1 above provides an analytical framework for this investigation. A thorough exploration of the options proposed in this framework provides a clearly defined scope of analysis of the governance framework within the confines of the powers and functions of provinces as prescribed in the constitution. Therefore, the key research objectives presented herein translate the research question into clearly defined units of analysis for the study.

1.6 RESEARCH DESIGN AND METHODOLOGY

Research is a systematic process which uses scientific methods to generate new knowledge that can be used to solve an investigation, increase understanding of a concept being studied,

or improve on the existing system (Bhaskar & Manjuladevi, 2016:646). Babbie and Mouton (2009:72-75) define research design as a plan or layout of a scientific inquiry that outlines the strategies to be followed to achieve the goal of a scientific inquiry. Alternatively, research design is defined as the blueprint for the collection, measurement and analysis of data (see sub-paragraphs 1.6.1 and 1.6.2 below for more details on data collection and analysis respectively). Further, research design entails specifying the subject of enquiry, the methodology of observation, and analysis of the observed phenomena (Blumberg, Cooper & Schindler, 2005:127).

Research design and research methodology are used interchangeably despite the fact that the main research methods are identified as qualitative, quantitative and mixed methods. On the other hand, research design might have different implications in different situations in that in some situations it might refer to the whole research process, including defining the research problem, formulating research questions, the literature review, methods and conclusions. In other situations, research design might be limited only to methodology, including data collection and analysis (Alavi & Habek, 2016:62). Computers play an important role in the different phases of research, including the conceptual, design and planning, data collection, data analysis and research publication phases. Furthermore, computers are used extensively in data processing, including collecting, coding, cleaning and editing the data before interpreting and displaying the research results (Kulkarni, 2016:657).

The present study takes a qualitative approach to investigate the status and role of provincial governance in the South African constitutional dispensation between 1996 and 2012; that is, the level of good governance or lack thereof deriving from the architecture and configuration of the South African political system of government during the period 1996 to 2012. Put differently, the aim of the present study is to establish the effectiveness of the provincial governance framework prescribed in the current (1996-2012) constitutional dispensation in promoting and upholding the constitutional values and principles of good governance in the provinces. The study further seeks to analyse the capacity and relevance of the powers and functions¹² designated to this sphere of government in fulfilling its constitutional obligations,

¹² Powers and functions are a function of the types of competencies, i.e. functions allocated to SNGs from the central government and the degree to which these competencies are exercised autonomously, namely, power. It therefore refers to the level of decentralisation of government, which may be defined in a number of ways depending on the model being used, namely, either devolution or delegation (also known as deconcentration). Thus, in essence, the study seeks to determine whether a greater or lesser degree of autonomy with respect to the

particularly its legislative and executive obligations, namely, the policy development and implementation capacity of provincial government in relation to fulfilling the developmental and electoral mandates of their constituencies within their jurisdictions. Data collection involves reviewing and analysing a variety of literature and policy documents on systems of government, political developments and governance, which include academic journals, government publications, party political reports and media articles.

Further, the study investigates the challenges faced by provinces in fulfilling their developmental mandate as one of the key performance indicators of government and explores alternative governance frameworks that could be implemented in South Africa to improve governance. The qualitative research paradigm that the research espouses will facilitate a phenomenological investigation of the research problem. An exploratory research approach could take a number of different forms, for example, approaching the study from a theoretical viewpoint by deducing and analysing the various aspects, elements and processes of the subject being studied, as is the case in the present study. Another viewpoint could involve a practical approach by using a combination of formal interviews and online surveys. Thus, the exploratory research approach provides insights and understanding about the phenomenon being investigated from both theoretical and practical perspectives (De Roo, De Maeyer & Bourgeois, 2016:1931).

Qualitative research uses variables, which can only be described in words. Babbie and Mouton (2009:33) posit that the phenomenological paradigm emphasises research methods aimed at understanding subjects, rather than explaining them. The phenomenological paradigm is associated with qualitative research and requires research methodology that follows unstructured observation, open interviewing, idiographic description and qualitative data analysis. In this manner, the study will attempt to explore the underlying challenges faced by provincial governments in delivering on their developmental mandate. This way, the study will thus be able to determine whether the current configuration of the South African system of government, namely, quasi-federal or decentralised unitary state, promotes or hinders the effective and efficient fulfilment of the legislative and executive obligations of

powers and functions should be granted (devolution or delegation) to SNGs (provinces and municipalities), with a greater focus on provinces, which largely play an intermediary role between the national and local governments. Hence, the need to define a more appropriate and effective role of provinces within the system of government that will promote and achieve the developmental mandate of a constitutional democracy in South Africa.

the provinces. The present study uses descriptive research, which describes the current state of affairs at the time of the study (Salkind, 2003:188).

Babbie and Mouton (2009:270) define qualitative research as a methodological approach to the study of social action. In the present study, the social action being researched is politics and governance in the South African provincial administration. Key features which distinguish qualitative from quantitative research include the following (Babbie & Mouton, 2009:270):

- Research is conducted in the natural setting of social actors,
- Focus on process rather than outcome,
- The actor's perspective (the "insider" or "emic" view) is emphasised,
- The primary aim is in-depth descriptions and understanding of actions and events,
- The main concern is to understand social action in terms of its specific context (idiographic motive) rather than attempting to generalise to some theoretical population,
- The research process is often inductive in its approach, resulting in the generation of new hypotheses and theories having commenced the inquiry with an idea regarding a social phenomenon,
- The qualitative researcher is seen as the main instrument in the research process.

Mixed research methodology combines both elements of qualitative (designed to collect words) and quantitative (designed to collect numbers) research in order to increase the breadth and depth of understanding and corroboration in the study (Alavi & Habek, 2016:62). Qualitative research is appropriate for studying social actions within their natural setting (Babbie & Mouton, 2009:270), as is the present study, which analyses the developments and discourse around the need to review provinces and the challenges faced by SNGs in delivering on their developmental mandate. Another feature of qualitative research is the study of social processes over time. The present study analyses provincial governance in the South African constitutional dispensation between 1996 and 2012¹³. Insider's perspective is a feature of qualitative research, which holds that the researcher views the social action being studied from the perspective of the actors themselves, who in the present study include

¹³ Despite delineation of the study to a specific period (1996-2012), the study also draws from both historical and recent political developments, which impact on the governance of the provinces and thus provide further insight into the various factors which could be identified to contribute to the effective and efficient governance of provinces in South Africa *vis-à-vis* the constitutionally assigned powers and functions of this sphere of government.

various stakeholders such as government officials, representatives of political parties, labour organisations, civil society organisations, the private sector and the general public.

The study takes a deductive approach to analyse the political developments in South Africa against the theoretical background of the theory of federalism, the historical background of political developments during the different periods of different political dispensations in the country, and the analytical framework (depicted in figure 1.2, paragraph 1.6.2 below) (Babbie & Mouton, 2009:271). Thus, the study is based on a meaningful research methodology and design to understand and define the status and role of provincial governance in the South African constitutional dispensation between 1996 and 2012. An inductive research approach enables the researcher to generate theories, whereas deductive research allows the researcher to test hypotheses (Alavi & Habek, 2016:62).

The present study employs a method of triangulation¹⁴ (Vargas-Urpi, 2017:88; Babbie & Mouton, 2009:277) in analysing the collected data to ensure the credibility, reliability and validity of findings (Bhaskar & Manjuladevi, 2016:646). Credibility in research determines the extent to which the constructed realities that exist in the minds of the respondents or the subjects of the research are compatible with those attributed to them by the researcher. Various procedures used to achieve credibility include prolonged engagement, persistent observation, triangulation, referential adequacy, peer debriefing and member checks (Babbie & Mouton, 2009:277). Collected data is analysed using an approach that combines a theory and typology of decentralisation (Dickovick, 2005) and an analysis approach employed by Simeon and Murray (2001). The analysis approach used by Simeon and Murray (2001) is based on the fact that the success of federalism and IGR depends on the capacity and ability of SNGs to perform their assigned roles and responsibilities. The capacity to perform these roles and responsibilities in turn depends on the degree of fiscal, political, administrative (functional) and legislative capacity or authority granted to them.

¹⁴ A study on state capture in South Africa that was recently (2017) conducted by the State Capacity Research Project (SCRCP) used a triangulation method of analysis to match and confirm the evidence and arguments presented by the organisation with those of the South African Council of Churches' (SACC) Unburdening Panel, which conducted a different research project also on state capture in South Africa following the release of the *State of Capture* report by the former Public Protector, Advocate Thuli Madonsela, in late 2016. The SACC used individual confidential testimonies received from church members, whereas the SCRCP used largely publicly available information (<http://pari.org.za/wp-content/uploads/2017/05/Betrayal-of-the-Promise-25052017.pdf> viewed on 26 August 2017).

Thus, the analysis of the collected data by triangulation is achieved by evaluating and analysing data from three different perspectives of the fiscal, political and administrative competencies of provincial governments. Additional analysis of collected data will be done by means of extracting themes and categorising data to develop a better understanding of the role, relevance, functions and powers of provincial government in South Africa. Qualitative data from relevant literature will be analysed and interpreted to develop an understanding of the research question and to draw conclusions. Analysis of qualitative data proceeds by extracting themes from evidence and synthesising data to present a coherent and consistent picture, that is, thematic analysis (Neuman, 2000:419; Pontis *et al.*, 2016:1883).

Additionally, the researcher will use the findings and lessons learnt from the study to discuss the implications of the current constitutional dispensation on the governance of provinces and to make recommendations (Babbie, 2001:111-112) on the best approach to strengthen and promote good governance at the provincial sphere of government with respect to the assignment of powers and functions. A number of ethical and legal considerations relating to the subject and the researcher must be taken into consideration when conducting research. These legal and ethical principles and issues relate to informed consent, confidentiality, providing incentives, and various forms of research misconduct as provided in various international, regional and national guidelines, regulations and legislation (Yip, Han & Sng, 2016:684). Ethical conduct in research is critically important given the idealistic image and moral expectation of strict adherence to objectivity and emotional neutrality associated with scientific research (Hokkanen, 2017:24). The present study will espouse the principles of ethical and moral research, which promote truth, transparency, confidentiality, honesty, fairness, integrity and responsibility (Kapoor, 2016:626; Lodge, 2005; Naidoo, 2009; Rapoo & Moloji, 2008; Dollery, 1998; Wehner, 2000; Babbie & Mouton, 2009).

1.6.1 Data collection

This section provides an overview of different data collection methods used in scientific social research. A multiplicity of data collection and analysis methods is available for researchers to choose from and the suitability of each method depends of the type of research being conducted and the aim of the study. The present study uses qualitative research that is based on a literature review of available documentation about the systems of government and

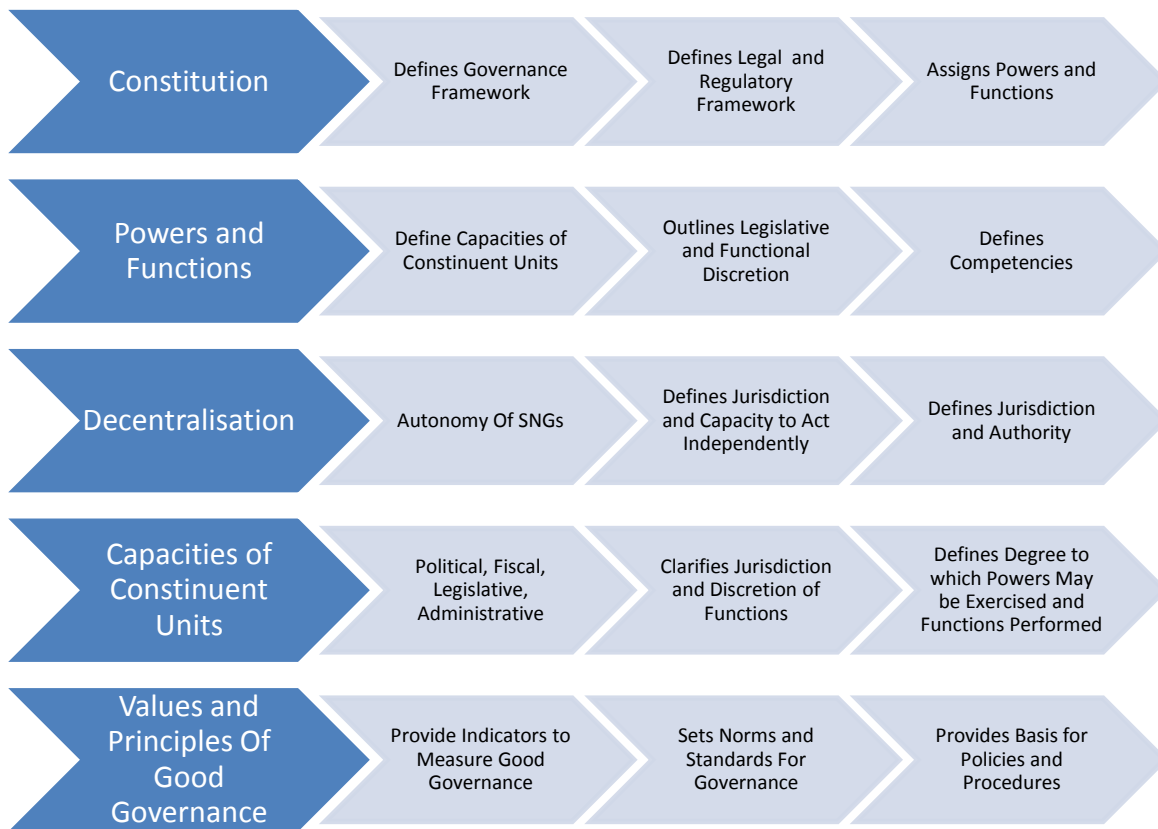
political developments in South Africa, especially focusing on the governance of the provincial sphere of government.

The above overview of data collections methods is not exhaustive as it presents a summary of those data collection methods used largely in the social sciences and particularly qualitative research. However, the overview does provide some insight on the variety of data collection methods which the present study could espouse to collect data on the topic of inquiry. Thus, given the focus and delineated period of study (1996-2012), the chosen methodology, namely a literature review, is adequately suited to address the research problem being investigated. (Pontis *et al.*, 2016:1883; Westerholt, Steiger, Resch & Zipf, 2016:1; Adams, 2015:139; Tranos & Nijkamp, 2015:157).

1.6.2 Data analysis

The present study uses a typology of federal systems postulated by Dickovick (2005) and Simeon and Murray (2001) that identifies four areas of decentralisation in government, namely, political, fiscal, administrative and financial. Devolution of authority from central to SNGs grants these structures autonomy to administer, direct and control affairs within these competencies in their respective jurisdiction. Thus, these competencies and the extent to which they are being exercised by the provinces in South Africa provide an analytical tool to determine the degree to which provinces are constrained or empowered to fulfil their legislative and executive obligations provided for in the Constitution, particularly the executive mandate that accounts for the majority of functions directed at ensuring development and effective governance. Thus, this analysis provides an understanding of the degree of decentralisation in South Africa with respect to the autonomy of provinces and the implications of the constitutional configuration of this sphere of government of good governance – see the graphical representation of the provincial governance analytical framework, as depicted in Figure 1.2 below.

Figure 1.2: Analytical Framework for Provincial Governance



Source: Compiled from the Data Analysis Component of the Present Study

The theory of federalism, as posited by Dickovick (2005), provides the theoretical framework for this analysis. The basis of this theory, which emphasises the potential benefits of decentralisation, for example, efficiency, citizen participation and democracy, accountability, economies of scale and creativity, thus provides an improved understanding of the underlying challenges facing provinces. In addition, it provides the positive outcomes deriving from provinces' autonomy, which then offers better insight into how this sphere of government should be constituted with respect to the devolution and allocation of powers and functions. Such insight would subsequently inform the constitutional configuration of the system of government in South Africa, that it, either unitary (highly centralised) or federal (highly decentralised) government that would strengthen and promote good governance in the country. The theory of federalism thus provides the analytical framework against which

political developments in the country since 1996 are being assessed with respect to the constitutional dispensation of 1996.

1.7 CHAPTERS OUTLINE

Chapter 1: Orientation

This chapter presents a brief background of governance and the political systems of government in South Africa and other countries. It also provides a brief overview of the scope of the thesis and the research methodology employed in conducting the study.

Chapter 2: Theories and models of systems of governance

Chapter two provides a discussion on the theories and models of governance and political systems of government found in unitary and federal states. The discussion entails the definition, characteristics, attributes, purpose, application and implications of the different theories and models of unitary and federal forms of government. This chapter provides a detailed discussion of the different theories and models by dissecting and analysing the characteristics, elements, variations, structure and manifestation in the constitution of the two forms of government.

Chapter 3: Theories of governance

This chapter provides a detailed discussion on the theory of governance and its key features, which serve as the guidelines and yardstick of government performance in upholding and advancing the international values and principles of good governance and constitutional democracy, as enshrined in the Constitution. Furthermore, the chapter presents a detailed overview of the broad spectrum of theoretical configurations of governance and provides examples of governance frameworks and practices in different countries and contexts. It also provides a detailed account of the transformation of the governance model, that is, a shift from governance to good governance since its emergence in the 1990s.

Chapter 4: Federalism in the international context

Chapter four discusses the forms of government in both federal and unitary countries, including Nigeria and German¹⁵. The discussion will focus more on countries that have adopted a similar form of government to South Africa. This approach will enable analytical comparison between South Africa and other federal countries, as well as drawing lessons which could be used to develop the most effective framework of governance in the provincial sphere of government in South Africa.

Chapter 5: South African political dispensation

Chapter five provides a brief historic perspective on the developments in the South African constitutional dispensation since the formation of the Union of South Africa in 1910 until the adoption of the current constitutional dispensation in 1996. The study then looks at the Codesa negotiations and political developments in the transition period between 1990 and 1994. The chapter concludes by analysing and discussing the new South African constitutional dispensation. This analysis and discussion focuses on the configuration, powers and functions of the three spheres of government. In addition, the role and capacity of provinces in fulfilling the overarching developmental and executive mandate are investigated. Lastly, this chapter discusses cooperative governance and its impact on the efficiency and effectiveness of the spheres of government in promoting good governance.

Chapter 6: Critical analysis of the South African governance model

The chapter provides a critical analysis of the South African governance model and focuses on good governance as a framework and mechanism to promote and facilitate effectiveness and efficiency in the state. The study therefore seeks to identify the challenges, opportunities, strengths and weaknesses within the current political system of government which will inform development of an effective governance framework to strengthen and support the

¹⁵ Constitutional reforms and political developments in the structure and composition (organisation) of systems of government in other countries, such as the USA, Kenya, Ethiopia, China, Bolivia, Brazil and Italy are used as examples throughout the study to draw lessons on how the allocation of competencies (powers and functions) among the different levels of government are affected by a number of factors, such as ethnicity, language, religion, economic development and globalisation. These factors and developments ultimately inform the posture and practice of a country's government with respect to the extent to which competencies are allocated among constituent units, i.e. whether they are centralised (unitary states) or decentralised (federal states).

system of governance in South Africa. The main thrust of the present study is on the promotion and enforcement of good governance in all structures and entities of the state to uphold and promote the values and principles of governance in public administration as entrenched in section 195 of the Constitution, while pursuing its constitutional obligation and developmental mandate.

Chapter 7: Governance in the provincial administration

Chapter seven discusses the performance of the nine provinces of South Africa in promoting and upholding the values and principles of good governance. The assessment of provincial performance evaluates the degree to which the provinces promote and uphold the values and principles of good governance in exercising their constitutional powers and executing their executive functions in pursuit of the goals of building a developmental state. In addition, the chapter assesses the performance of provinces against the background of the developmental mandate of poverty eradication and socio-economic development. The plethora of literature available on the performance of provinces with respect to their constitutionally mandated competencies provides insight into the degree to which this sphere of government is constrained or capacitated to fully exercise its autonomy in relation to the national government. The chapter draws on the lessons learnt from successful provinces and the challenges of those struggling to deliver on their mandate. Further, this chapter discusses the role of the national government in intervening in provincial administrations to ensure achievement and maintenance of minimum service delivery standards, as stipulated in section 100 of the Constitution.

Chapter 8: Analysis and findings

Calls for the review of provinces in view of the poor performance of provinces and widespread service delivery protests both during the terms of the former president, Thabo Mbeki, and the incumbent president, Jacob Zuma (2007 - present), necessitates a study to develop an appropriate governance framework for the provinces in South Africa. This study will investigate and identify the challenges, opportunities, strengths and weaknesses of the current form of provincial government that promote or hinder development and good governance in the provinces. The study will propose a governance framework that seeks to improve good governance in provinces by clearly defining their powers and functions,

namely legislative and functional discretion, and employing sustainable, accountable, effective and efficient service delivery and compliance mechanisms in line with best international practices. This undertaking will assist the provinces to acquire and build the necessary capacity to fulfil their legislative and executive obligations.

However, this framework should take cognisance of the realities and peculiarities of the South African history and socio-economic context, as argued by Frödin (2011:S179) that policy-makers often put their trust in context-independent policy solutions, which are assumed to trigger similar effects across a wide range of contexts. Organisational and institutional reforms introduced in developing countries to promote development should not treat these settings as closed systems in which all variables could be controlled. Proposed models and best practice solutions must be adapted to the unique contexts of each setting to adjust and compensate for deficiencies and differences in settings, instead of standard prescriptive models that are not sensitive to the differences and dynamics of settings in these countries. This chapter forms the core of the study and seeks to make a scientific contribution to the body of knowledge on the topic of systems of government and the subject of governance and political transformation from the findings of the study.

Chapter 9: Summary, conclusions and recommendations

Chapter 9 presents a conclusive overview of the study, how all the chapters are linked to one another, and their contribution to understanding and addressing the main research question of the study. The chapter concludes by first presenting an overview of the findings of the study and their implications for the South African political system of government. It makes recommendations for improving and strengthening good governance in the provinces. These recommendations seek to find solutions to the challenges faced by South African provinces in fulfilling their legislative and executive obligations. The recommendations further seek to contribute to the process of building an effective and accountable democratic political system of government.

1.8 VALUE OF THE STUDY

The present study examines the developments regarding the current constitutional dispensation of the South African provincial system of government from 1996 to 2012. The

study is conducted in the context of the role of the provincial level of government in fulfilling its developmental mandate and constitutional obligations. The challenges faced by provinces in fulfilling their executive obligations, along with the areas of exemplary performance by some, presents an opportunity to learn about the drivers and constraints of effective and efficient governance in the provinces. In turn, these lessons provide a better understanding of the role of governance in maintaining the constitutional integrity and democratic legitimacy of government.

A better understanding of the above values and principles of government provides useful tools and measures that serve as guidelines and indicators on how best to construct and capacitate the organs of the state and spheres of government, including the assignment of powers and functions. These lessons contribute to the body of knowledge on the political systems of government and the subject of good governance and political transformation from both the South African and international perspective.

“The most basic question is not what is best, but who shall decide what is best” – Thomas Sowell

CHAPTER 2: CONCEPTUAL FRAMEWORK: THEORIES AND MODELS OF FEDERALISM

“Success is not final, failure is not fatal: it is the courage to continue that counts” – Winston Churchill

2.1 INTRODUCTION

Chapter two presents a detailed discussion on the form of government found in federal states, as identified in the introductory chapter. In this way, a clear theoretical background on the different designs and functions of types of federations and insight into the advantages and disadvantages of these systems of democratic governance are provided. The discussion explores the different types of definitions, forms of federations, applications and implications of the different theories and models of federalism.

This chapter provides a critical analysis of the different configurations and features of federal states by analysing the defining characteristics, elements, variations, nature and manifestations in the constitution of federal forms of government. The design of the South African form of government evinces striking similarities and inclinations to federal governments in other parts of the world, including countries such as Germany, Britain, the US and Nigeria. The constitutional designs of the aforementioned countries have their roots and influences in the theories and models of systems of government that define governments along the lines of democracy, transparency, accountability, diversity, unity, shared and regional self-rule, and common and varied interests of the citizenry of a country, all of which constitute the key indicators of good governance and the key attributes of federations. It is also worth noting that section 195 of the South African Constitution identifies these indicators as the basic values and principles of good governance in public administration (RSA, 1996:74).

Furthermore, this chapter provides an in-depth exploration and analysis of the different forms of government with the intent to develop better insight into the configuration and functioning of the South African system of government and the basis for its design, particularly in relation to the constitutional powers and functions of provinces. This analysis and discussion

of the different models and theories of federalism provides both a theoretical and practical basis against which the governance framework of provinces in South Africa during the 1996 to 2012 constitutional dispensation will be critically analysed. Thus, the study explores the theory of federalism and its different configurations and applications in major federations around the globe with the intention to understand the fundamental principles that inform the form of federation prescribed in the South Africa Constitution. In essence, the study seeks to apply the theory of federalism to explore and understand the factors and reasons that led to the adoption of the current governance framework, as laid out in the Constitution. Furthermore, this analysis seeks to identify the key objectives that the adopted framework seeks to achieve with respect to the constitutional values and principles of governance in public administration. The study will thus establish and describe the governance mechanisms (political and bureaucratic systems and processes of government) that the Constitution prescribes and analyse the current constitutional dispensation from both a theoretical and practical perspective.

2.2 FEDERATIONS: PRINCIPLES AND DESIGN

Watts (1996) defines federalism as a principle of advocating for multi-tiered government, combining the elements of shared rule and regional self-rule. Erk (2006:2) provides a closely similar definition that highlights a common feature shared by federal systems, which is a political structure in which political authority is divided, shared or dispersed among two or more levels of government. Federalism is based on the value of “combining unity and diversity and accommodating, preserving and promoting distinct identities within a larger political union” (Erk, 2004:2). Along similar lines, De Figueiredo and Weingast (2005:104) define federalism as a hierarchical government structure in which each level of government has some autonomy. Dikshit (1971:97) defines federalism in terms of its historical development as a form of constitutional government devised to express imperfect unity or multi-nationalism in Western democracies.

A number of permutations of federal systems are found, based on the composition and character of the population of a state and the interests it seeks to protect, preserve and

advance. For example, Canada¹⁶ belongs to a family of multinational federalism states, along with countries such as Belgium, Russia, and Spain. It means that over and above the division of powers between the federal and provincial governments, another layer exists resulting from the presence of two culturally distinct communities: the French Canadian and indigenous nations. According to Castro-Rea (2016:259), “Their difference has been historically, politically, and legally acknowledged repeatedly; to the point where these communities behave as minority nations within the country, and are entitled to self-government and control over some specific territory as tools to preserve their cultural distinctiveness”.

Cyr (2014:20) states the following: “A federal system of government enables different provinces to pursue policies responsive to the particular concerns and interests of people in that province”. In similar vein, federalism allows citizens to construct and achieve goals on a national scale through a federal government acting within the limits of its jurisdiction, for example, in Canada. This implies that the function of federalism is to enable citizens to participate concurrently in different collectivities and to pursue goals at both a provincial and a federal level (Cyr, 2014:20). Canada is a federation and not a confederation, despite frequent use of “Canadian Confederation”, which refers to the coming together of three British colonies to form the Dominion of Canada in 1867.

Canada is not a unitary state either, despite the fact that the preamble to the Constitution Act, 1867, refers to Canada as a “Union”. Three principles distinguish Canadian federalism from other political forms with respect to the constitutional instruments and jurisprudence, namely, autonomy, subsidiarity and federal solidarity (Cyr, 2014:20). These constitutional principles form the normative structure that gives Canadian federalism its internal logic of cooperative federalism (Gaudreault-DesBiens, 2014:1). Cooperative federalism is a form of federalism that is based on the basis of respect of these three constitutional principles of autonomy, subsidiarity and federal solidarity (Cyr, 2014:20).

¹⁶ The developments and practical applications of the theory of federalism as experienced in other countries, such as Canada, are used as examples to illustrate the motivations, values, characteristics and applications of the different permutations of federalism in different contexts. Thus, this theoretical, historical and practical analysis and discussion provides a valuable theoretical and practical background and basis on which the form of government in South Africa, and specifically the level of governance in the provinces, may be critically analysed.

A federation is formed when a number of autonomous political units mutually agree to merge to form a state with a single sovereign central government, but retain some degree of regional autonomy (Dikshit, 1971:98). The essence of federalism is to achieve the union and non-centralisation in government, that is, liberty and freedom on matters of different cultural or regional interest and unity on matters of common social, political and economic interest. Watts (1996:6) argues that federations and federal political systems both refer to political forms of political organisation. Federal political systems refer to a category of political systems in which there are two or more levels of government, which combine elements of shared rule and regional self-rule. Shared rule is achieved through common institutions, while self-rule applies to regional governments of constituent units.

Federal political systems differ from unitary systems in which there is a single central source of authority. Indonesia is an example of a unitary state where formal powers reside with the centre (Warman, 2016:25). ‘Federal political systems’ is a broad genus that encompasses non-unitary species, that is, forms of government, which include quasi-federations, federations and confederations. Watts (1996:6) argues that other federal arrangements are possible because political leaders and nation builders are more concerned with finding workable political arrangements, rather than considerations of theoretical adherence. The need to find workable political arrangements may lead to hybrids, such as the European Union (EU) (Tirkos, 2010:8-14; Tierney, 2007:732-747), which originated as a confederation and has in recent years moved towards incorporating features of a federation. The concept of European federalism died during the painful constitutional adventure that ended with the ratification of the Lisbon Treaty in 2009. The Lisbon Treaty adopted “significant policy and institutional measures for tightening macroeconomic and budgetary coordination (including a constitutionally enshrined debt brake)” (Borriello & Crespy, 2015:502), thus effectively rendering this monetary union, that is, the EU, a *de facto* union instead of a federation.

Federalisation of Europe has suffered an onslaught as a result of the politicisation of the EU integration and the rise of Euroscepticism by anti-system parties. However, debates about this concept have been resuscitated by the recent financial and debt crisis¹⁷. French and German

¹⁷ The 2008 global economic crisis stemmed from market failure as a result of poor governance practices with regards to borrowing in financial markets. The crisis was triggered by the collapse of Lehman Brothers, a sprawling global bank, in September 2008 which almost brought down the world’s financial system. The taxpayer-financed bail-outs in major economies across the world were used to rescue the financial industry from collapse. The ensuing credit crunch turned the economic downturn into the worst recession in 80 years.

national leaders have brokered the main decisions during the crisis of the Eurozone and are now facing increased pressure for symbolic and discursive legitimisation of further federalisation. EU leaders have legitimised the deepening of federal integration in a context where support for more European federalism is at its lowest. “The deepening of functional federalism in order to cope with economic interdependence is a ubiquitous imperative that justifies further integration” (Borriello & Crespy, 2015:502),

In a federation, both the federal government and SNGs have sovereign powers derived from the constitution, rather than from another level of government. None of the spheres of government is constitutionally subordinate to the other. Each sphere of government is constitutionally empowered to deal directly with its citizens by exercising its executive, legislative and taxing (fiscal) powers, and each is elected directly by its citizens. Common features generally found in federations include the following (Watts, 1996; Dikshit, 1971:98):

- Two orders of government each acting directly on its citizens;
- A formal constitutional distribution of executive and legislative authority, and allocation of revenue resources between two orders of government ensuring some areas of genuine autonomy from each order;
- Provision for the designated representation of distinct regional views within the federal policy-making institutions, usually provided by the particular form of the federal second chamber;
- A supreme written constitution not unitarily amendable and requiring the consent of a significant proportion of the constituent units;
- An umpire (in the form of courts or provision for referendums) to rule on the disputes between governments;
- Processes and institutions to facilitate intergovernmental collaborations for those areas where governmental responsibilities are shared or inevitably overlap.

According to Watts (2006:14), there is a distinction between operational reality in the practice of federalism and what the constitution prescribes. Political practice in political systems of many governments has transformed the way the constitution operates (Watts, 2006:14). In support of this argument, Watts (2006:14) cites the example of India and Canada

Governments of these economies used massive monetary and fiscal stimulus to prevent what could have been the worst depression since World War II, yet GDP in many countries is still low and their economies are struggling to recover from the crisis (www.economist.com viewed on 26 August 2017).

where initial constitutions were quasi-federal and contained overriding powers typical of unitary states. In both countries these unitary features have become disused and modified, to such an extent that operational reality is reflective of a fully-fledged federation. Watts (2006:14) argues that operational practice has similarly transformed the way the constitution operates in such countries as Switzerland, Russia and Belgium.

A better understanding of federations requires a study of their constitutional law and politics and how they interact, including their structural character and political processes. Watts (2006:14) identifies the key characteristics of political processes of federations as a strong disposition to democracy, political decentralisation (Watts, 2006:14; Rodden, 2004:488), open political bargaining in decision-making, an operation of checks and balances (including separation of powers) to prevent the concentration of political power, and respect for constitutionalism (Cameron & Falletti, 2005:246; Erk, 2006; Watts, 2006:14).

Similarly, Tandel, Gandhi, Libeiro, and Marpakwar (2014:112) posit that an institutional structure that creates a separation of powers between the different branches of the government and an accountable electoral system are the two most critical requirements for successful democratic societies. Through the separation of power, power is used to check power through opposite and rival interest, thus creating checks and balances. The two forms of separation of powers are the horizontal separation of powers and the vertical separation of powers. The separation of powers creates checks and balances within the political system where veto players can safeguard against corruption. However, in many democratic developing countries *de jure* constitutional separation of powers does not necessarily foster checks and balances. According to Tandel *et al.* (2014:112). “Formal institutions of separation of powers are likely to be subverted by informal institutions that govern interactions between different actors”.

Federal processes may be territorial or consociational or both. However, in some countries like Belgium, territorial units are not recognised constitutionally. The most common form of political process in federations is the constitutional distribution of powers among territorial units. In most federations, constitutional powers are distributed equally among the constituent units (Watts, 2006:16; Monro, 2001:53). In other federal countries, such as Canada, Malaysia, India, Spain and Russia, the distribution of constitutional powers among constituent units is asymmetric. Asymmetric federalism is a political design process of giving

differential constitutional powers and status to specific units of the federation. For example, in northeast India, Nagaland enjoys special status under Article 371A of India's Constitution (Hausing, 2014:87). Other variations in the distribution of political powers and the arrangements of main constituent units are found in other countries. For example, in Malaysia and Russia main constituent units are classified into two or more categories (Watts, 2006:16).

2.3 PERSPECTIVES ON FEDERALISM

Erk (2006) presents an evaluation of federalism from different points of view or dimensions, namely, democracy, capacity to represent and accommodate territorial interests, public policy and service delivery, and the design of federalism. Erk (2006) undertakes this evaluation by reviewing the views and arguments found in a variety of literature on federalism. A common feature shared by all federations is that they are all political systems, which divide and share political authority among two or more levels of government (Hueglin, 2003:275; Bagchi, 2000:3026; Erk, 2006). Erk (2006) argues that federalism retains its theoretical meaning only in relation to its legal function and that it takes a different meaning in practice given that federalism has varying purposes or rationales. These purposes are the different dimensions mentioned above, which are a result of the different perspectives from which federalism is viewed.

A democratic view of federalism encompasses democratic representation, participation and accountability. The second dimension is its capacity to accommodate and represent territorial interests in a divided society, which include ethnic, cultural and linguistic differences. The democratic dimension of federalism is evident in the highly ambitious Ethiopian Constitution, which allows for ethnic federalism, decentralisation and democratic reforms. This Constitution was drafted in the early 1990s by Ethiopia's ruling party, the Ethiopian People's Revolutionary Democratic Front (EPRDF), yet many of its aspirations remain unrealised (Stremlau, 2014:231).

The third perspective evaluates the impact of federalism on the capacity of government to formulate effective policies and to deliver public services efficiently (Bagchi, 2000:3026; Erk, 2006). Fourth, Erk (2006) evaluates the implications relating to the institutional design of federalism. Federalism impacts on various aspects of government and society, including its

role in helping or hindering democracy, the management of conflict in divided societies, public policy making, and institutional design.

2.3.1 Federalism and democracy

Dikshit (1971:104) states that democracy is a necessary adjunct in defining federalism as it is incompatible with authoritarian forms of government. Federalism is therefore essentially a compact between constituent units. Dictatorship entails autocratic government and denial of free elections and therefore is incompatible with federalism because a government which denies free expression cannot allow for the articulation of regional opinions, which is the essence of federalism (Dikshit, 1971:105). By contrast, in unitary states, all decisions are exclusively made by the central government and no platform exists for the articulation of regional views. In a dictatorship, any compact would at best be between central and regional dictators, resulting in a formation of a confederation rather than a federation (Dikshit, 1971:105).

Arceneaux (2005:297) argues that the US Constitution was explicitly designed to enhance democratic representation. He (*ibid.*) argues further that in the US, federation powers are divided among multiple constituent governments, thereby enabling citizens to exert pressure on the elected officials of various governments to achieve the desired outcomes. If the government does not produce the desired outcomes, citizens can elect a different government to deliver these outcomes (Arceneaux, 2005:297).

Federalism could be seen to help or hinder democracy. The two-level structure of government found in federations could be seen as a hindrance to democracy as it divides the general will and limits large-scale democratic consolidation (Erk, 2006). Federalism advocates for a division of power between the central and lower tiers of government so as to ensure that the liberties of individuals are not threatened (Peterson, 2005:5; Arceneaux, 2005:310-311).

Okpanachi (2010:325-326) attributes economic inefficiency in the Nigerian federation to democratic deficiency, which itself is the result of the country's flawed party system. Political parties in Nigeria are not properly organised and are dominated by so-called 'godfathers' or 'political machines' who determine party nominations and campaign outcomes outside the institutional party framework. This democratic deficit and poor party

system weakens accountability and promotes political corruption (Okpanachi, 2010:326). Common areas of focus in the study of democracy and federalism include socioeconomic struggles, military-civilian relations, party politics, social movements and class relations.

In South America, four federations are found, namely, Argentina, Brazil, Mexico and Venezuela. However, these federations are more linguistically and religiously homogeneous and lack territorially defined social cleavages characteristic in most multinational federations, such as Belgium, Canada and Switzerland. The homogeneity in Latin American federations could be attributed to colonisation patterns and assimilation by the former colonisers, Spain and Portugal. There are exceptions, though. In India, for example, federalism as a state formation process, which leverages a negotiated and shared sovereignty, is stipulated in Article 371A of the Constitution as an innovative institution-building process that entrenches the negotiated sovereignty of the Nagas in matters pertaining to their religious and social practices, customary laws and procedure, administration of civil and criminal justice, and ownership and transfer of land and resources (Hausing, 2014:87).

The motives for the adoption of federalisation in Latin America were initially elite competition and economic differentiation, rather than territorial socio-economic differences. In recent years the resurgence of federalism in Latin America has been due to democratisation. Erk (2006) argues that the resurgence of federalism could also be attributed to the regional actors who once challenged centralised rule. In this way federalism eases the transition to democracy.

Other factors which could be contributing to the resurgence include regime changes, changes in electoral systems, and the fragmentation of party systems. Views among scholars vary regarding the impact of the constitutional structure of federalism on federal institutions and the internal political dynamics of federations. Federal institutions include the levels of government and their branches and the organs of state, which support the state in performing its functions and exercising its powers. Most scholars share an “institutional perspective” of federalism that argues that constitutional design and the formal separation of powers between levels of government impact on federal institutions and internal political dynamics (Erk, 2006).

As an example of democracy in an European federation, Obinger (1998:251) refers to direct democracy in Switzerland. This country's polity is often referred to as *Sonderfall* because of the role of its exceptional direct democracy. Direct democracy in Switzerland is employed through three major institutions, namely, obligatory referendum, optional referendum and constitutional initiative. Obligatory referendum is employed when a constitutional amendment or joining of a supranational organisation, such as the European Union, is considered. To approve a constitutional amendment, a double majority (that is, 50 percent plus of national votes) and a majority of votes in the majority of cantons is required (Obinger, 1998:251). Obinger (1998:251) illustrates the strength of this form of direct democracy by referring to the people of Switzerland blocking attempts to form a strong centralised government.

Obligatory (constitutional) referendums in Switzerland have had a 75% success rate since 1848. Optional referendums, a second form of direct democracy, are employed to challenge any bill or decree passed before parliament by collecting 50 000 signatures within 100 days. Alternatively, eight cantons can call for an optional referendum. When a bill or decree is subjected to an optional referendum, it can only be approved or rejected, but not be altered, and a single majority of votes (popular majority) is decisive. The referendum is considered as a tool to preserve the status quo by challenging the output of parliament. It therefore follows that an optional referendum serves to improve good governance and increase efficiency in government. Some economists and political scientists, however, argue that optional referendums contribute to constraints in public policy innovation (Obinger, 1998:251). The success rate of optional referendums is about 50 percent and less than ten percent of parliamentary bills are challenged by referenda.

The third form of direct democracy is called a constitutional initiative and enables citizens to change an article of the federal constitution by collecting 100 000 signatures within 18 months. "The federal government can endorse or reject this proposal and is allowed to offer a counter proposal which is submitted together with the constitutional initiative to the electorate" (Obinger, 1998:251). Adoption of a detailed constitutional amendment requires a double majority. A constitutional initiative creates the opportunity for new issues to be translated into the political system and is therefore considered as a source of bottom-up innovation. However, constitutional initiatives have a low success rate of less than ten percent (Obinger, 1998:251).

2.3.2 Management of conflict

Deep linguistic, religious and ethnic divisions are not found in Latin American federations and therefore these factors are rarely issues in discussions of the relationship between democracy and federalism in this region. However, Erk (2006:108) argues that territorial cleavages are not evenly accommodated in Latin American federations and tend to cause conflict when they are not adequately accommodated. Territorial cleavages are accommodated in some political systems, whereas in others they become sources of conflict. Erk (2006:109) argues that the institutional recognition of minority nationalism in federalism, thus, ethnofederalism, seems to be the best way to manage ethno-linguistic conflict (Erk, 2006:108; Brown, 2009:1; Christin & Hug, 2006:1-4). Brown (2009:1) states that federalism allows central governments to give up control over local issues to SNGs in order to satisfy minority nationalist ambitions, while simultaneously allowing these minorities to benefit from inclusion in a larger political entity.

Ethnofederalism as an institutional means of managing ethnic problems remains controversial, with critics dismissing it as “an imprudent institutional choice that hardens and deepens ethnic divisions and all but guarantees secession and state collapse” (Anderson, 2016:1). Anderson (2016:1) argues that institutional alternatives, which plausibly could succeed where ethnofederalism failed, do not exist. Ethnofederalism is probably the most touted institutional arrangement for accommodating the demands of ethnic groups (usually minorities) within ethnically-divided societies. Ethnofederalism prevents conflict at the central government level and reduces ethnic tensions across the system by allowing ethnic groups to exercise some degree of regional self-government over sensitive issues like education, language, and religion. Additionally, allowing ethnic groups a level of control over affairs of emotional concern may help diminish the enthusiasm for secession and preserve the territorial integrity of the common state.

Some of the benefits of political and fiscal decentralisation to minority nationalists include political autonomy to contain ethnic nationalism and to allow for “heterogeneous policy tastes” (Brown, 2009:1; Rodden, 2004:488; Freitag & Vatter, 2008:272). However, the downside of such recognition is that it perpetuates and strengthens the differences between groups and eventually leads to the secession of nationalists in the long run (Erk, 2006:108;

Brown, 2009:1). Conversi (2007:121) argues that asymmetrical arrangements in quasi-federal states are more accommodative, durable and practical. Conversi (2007) adds that such arrangements have proven to be more flexible and effective in managing and preventing ethnic conflict.

Spain is a good example of a quasi-federal state, so defined with regards to its model of state and within the sphere of cultural policy. The division of cultural policy between different levels of administration and the coordination between them in Spanish federalism requires a balanced combination of autonomy and governance. Development of cultural administration is broadly decentralised in Spain; a plurinational and multicultural state in which different judicial and political processes are distorting the quasi-federalism constructed over the past three decades. The distortion of the quasi-federal architecture of Spain is evident with the growing tendency to recentralize and to promote a single cultural conception of the country (Rius-Ulldemolins & Zamoranoy, 2014:167).

Erk (2006:109) argues that the fundamental question regarding federalism is whether it provides a stable, long-lasting solution to the management of conflict in divided societies or whether it provides a temporary stop to the eventual secession and independence of nationalists. Institutional recognition of national minorities provides a workable solution to secession on the one hand and makes secession a more realistic alternative to federalism on the other (Erk, 2006:109). In Russian federalism, institutional/constitutional structures of federalism have minor significance since these formal arrangements are routinely disregarded or reshaped. In most new democracies which inherit federalism, secessionist pressures tend to be more pronounced (Erk, 2006:110; Christin & Hug, 2006:1-4).

2.3.3 Policy-making

There is lack of consensus over whether or not federalism helps effective policy making in the sense of governmental ability to respond to changing policy agendas and citizen needs (Erk, 2006:110). On the one hand federalism is seen as an opportunity to experiment with different policies across levels of government and to benefit from variation of public policy, bringing decision-making to the regional level and devising the most appropriate policy for local circumstances (Erk, 2006:110; Brown, 2009:1). On the other hand, federalism is seen as a costly duplication of public policy and bureaucracies, leads to high coordination costs

among governments sharing responsibility, and reduction of economies of scale (Erk, 2006:110; Freitag & Vatter, 2008:272).

Erk (2006:110) identifies both advantages and disadvantages of federalism. The advantages include flexibility, preventing an abuse of power, encouraging innovation, competition, responsiveness and efficiency, management, coping with conflict, fostering participation, and encouraging self-reliance (Erk, 2006:110; Baggchi, 2000:3026). Federalism's disadvantages are a "neglect of externalities, coordination problems, unresponsiveness, localistic bias, inequality, loss of accountability, and evasion of responsibility" (Erk, 2006:110).

Sayed and Soudien (2005:115) argue in support of Erk's views in relation to education in South Africa that policies of decentralisation may exacerbate rather than reduce inequalities in society. The post-apartheid South African government developed a comprehensive and complex policy framework based on decentralisation, aimed at achieving principles of inclusion, equity and redress (Sayed & Soudien, 2005:115).

In many countries, asymmetry at SNG level is a result of heterogeneity in the SNGs' interests and their ability to pursue these interests. Such asymmetries in the distribution of fiscal and regulatory authority are found in countries as diverse as China, Spain and Venezuela (Faust & Harbersy, 2011:52; Congleton, 2006). Erk (2006:110) argues that evaluation of the impact of federalism on public policy is best done by analysing the incentives and constraints that working within federal institutions provide to politicians and officials. Erk (2006:110) uses the example of the case studies in Alain Noel's book, *Federalism and Labour Market Policy*, to illustrate the impact of federalism on public policy. Two methods of comparative study are used to evaluate the impact of federalism on public labour market policy. Firstly, the study makes a distinction between liberal market economies, such as the US and Canada, and coordinated market economies, such as Germany, Switzerland and Belgium. The second distinction is made with respect to the most important purpose of federalism, that is, "to govern democratically relatively large countries (Germany and the United States) or to give autonomy to national minorities in plural countries (Belgium, Canada, and Switzerland)" (McGarry, 2007:105). Large homogenous countries, like Germany and the US, are referred to as majoritarian federations and plural countries with nationalist minorities, such as Canada, Switzerland and Belgium, are called multinational federations (Erk, 2006:111). In Germany,

federalism is highly centralised and public policies are uniform across different SNGs (*Länder*).

This argument about Germany being a highly centralised federation is contrary to Nicola's (2011:67) opinion that "Germany is a federal state with the highest degree of local autonomy" (Nicola, 2011:67). In the past ten years, Germany initiated administrative reforms to transfer or devolve substantial sets of competencies (tasks or functions) from *Länder* governments to local governments (municipalities), based on the general belief that service delivery by municipalities is more cost-efficient, effective and responsive.

Goel and Saunoris (2014:266) argue that decentralisation brings the government "closer" to the people, with reference to the Decentralisation Theorem (Oates, 1972), which states that "local governments are in a better position to more efficiently provide public goods because they possess knowledge of the local costs and benefits". This view is reiterated by Craw (2015:270), who in reference to Oates (1999), argues that local public welfare expenditure is more effective at reducing local poverty and that local governments can offer policies more responsive to local needs, but may also face a welfare migration effect:

In the United States, the central government has turned back significant portions of federal authority to the states for a wide range of major programmes, including welfare, medicaid, legal services, housing, and job training. The hope is that state and local governments, being closer to the people, will be more responsive to the particular preferences of their constituencies and will be able to find new and better ways to provide these services.

Administrative reforms in Germany included changes in the function, structure and territory of their administrations (Ebinger & Richter, 2015:291). These reforms appear to be a win-win situation for both *Länder* and local governments at first glance, with the following benefit:

The *Länder* can streamline their administrative structure, chastise the allegedly sprawling bureaucracy and save money at the same time; and local governments (and, here, particularly the counties and cities with county status) can accumulate new tasks and resources in order to gain organisational leeway and to boost administrative and political power within their jurisdiction and beyond (Ebinger & Richter, 2015:292).

However, empirical evidence backing these claims is inconsistent. Theoretical arguments and empirical evidence on decentralisation effects is extremely conflicting. Performance effects of decentralisation seem to vary depending on the policy field, performance dimension and task considered (Ebinger & Richter, 2015:291; Goel & Saunoris, 2014:264).

Studies show that different countries (the US, Canada, Germany, Belgium, Switzerland) use different public policies to address similar economic challenges. This finding is contrary to the generally held assumption that federalism is “market preserving” and hostile towards redistribution and social programmes (Erk, 2006:111). The study agrees with the support for the concept of different public policies for similar economic challenges by referring to a comparison between two majoritarian and centralised federations, Germany and the US, where the former is interventionist and redistributive and the latter is more “market preserving” by adopting a liberal market economic system (Erk, 2006:112).

Another example that contradicts the prevailing assumption above is Canada, which is more decentralised than the US and yet follows more interventionist and redistributive labour market policies within the confines of a liberal market economy. Historical, social and economic contexts have a bearing on how federal institutions function (Nicola, 2011:67; Erk, 2006:112). Nicola (2011:67) argues that the EU cohesion policy, which seeks to narrow territorial wealth disparities, has empowered or disempowered local governments in the different Member States. Erk (2006:112) argues that when political power is more fragmented at the federal level, component units are given less discretion. The use of regulatory federalism, that is, detailed, inflexible legislation and controversial enforcement, constrains state discretion in implementation (Erk, 2006:112).

2.3.4 Institutional design

Erk (2006:113) argues that merely having a federal constitution is not sufficient to ensure federal success. In other words, having a multi-level government and division of competencies between levels of government is not a true measure of federalism (Erk, 2006:113). Designing federal systems by concentrating on constitutional issues, such as regional representation (Selcher, 1998:33) in the upper house of parliament, the right or prohibition of secession (Erk, 2006:108; Brown, 2009:1; Christin & Hug, 2006:1-4), and amendment procedures, yields suboptimal results. A broader understanding of democratic

stability is necessary to achieve a successful and functioning federal system (Erk, 2006:113). The constitution alone merely provides a legislative basis for democracy and the political-economic processes that describe a society.

Political parties and party systems (Erk, 2006:113; Benz, 1999:55; Brown, 2009:1; Firman, 2003:247-248; Gonzalez, 2008:213) are essential for democracy; they are an important component of a democratic system, which is key to attaining self-sustaining federalism. It therefore holds that institutional parameters that impact political parties and party systems are critical in designing federal systems. “Political parties are critical in providing stability by institutionalizing elite competition... in addition to institutional design, social context (ethnic makeup, social structure, traditions, norms, conventions, beliefs, and culture) also matters” (Erk, 2006:113). This view regarding institutional stability is reiterated by Watts (2006), Rodden and Wibbles (2002), Brown (2009:1), Firman (2003:247-248), and Gonzalez (2008:213).

An increasing number of territorially diverse societies are moving towards federalism. Erk (2006:114) points to a connection between party systems and federalism in which unified political parties (e.g. over national policy) lead to centralisation. Erk (*ibid.*) further argues that it is neither social heterogeneity nor electoral systems that increase federal success, but also the degree of political and economic centralisation. Federalism receives a different meaning in different federal systems. This includes the dispersal of political power to strengthen democracy and bring politics closer to citizens; a system that allows diverse ethnolinguistic groups a form of self-rule; costly inefficiency resulting from divided authority; and a system that encourages experimentation and policy variation (Lindaman & Thurmaier, 2002:915; Souza, 2002:23; Bardhan, 2002:185; Erk, 2006:116).

2.4 ASYMMETRY IN FEDERALISM

Asymmetrical federalism refers to great variations in the territorial, economic and demographic conditions of a country, such as Brazil (Selcher, 1998:33; Libman, 2009:10-11). For example, per capita income among Brazil’s 26 states varies considerably. Selcher (1998:33) argues that institutional anomalies overlaying such variations have produced major distortions in representation across the federation. To illustrate this asymmetry across the states in Brazil, Selcher (1998) highlights the case of the richest and most populous state of

Sao Paulo, which accounted for 37.5 percent of gross national product and 22.2 percent of the national population in 1995. Sao Paulo's per capita income in 1994 was nearly 7.4 times higher than that of the poorest state, Piaui. The state far exceeds others in many other social and economic indicators. Article 45 of the Brazilian Constitution of 1988, however, prevents domination of the federation by a single state by limiting the number of federal deputies per state in the national Chamber of Deputies to a maximum of 70, and a minimum of eight (Selcher, 1998:33).

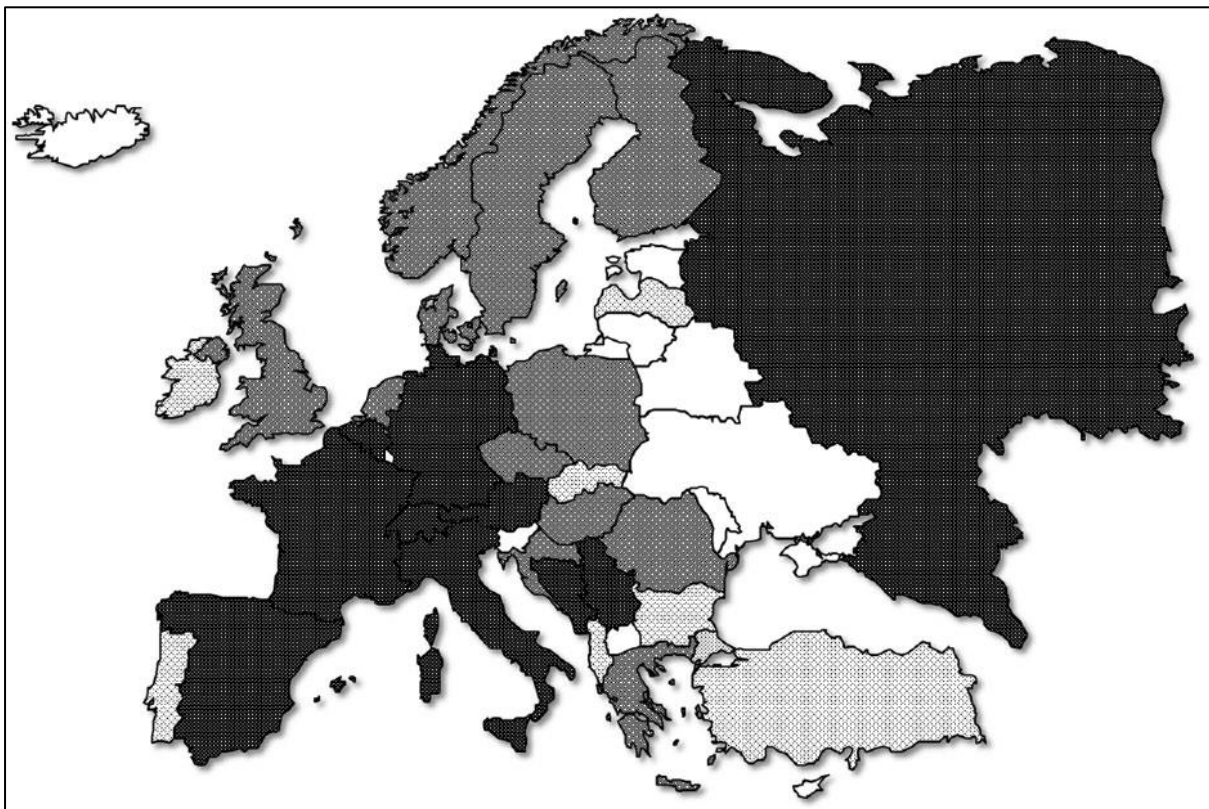
Another example of asymmetric federalism is that of Russia, which is more complex and contradictory. This gives it a special character that distinguishes it from the federalism of other countries, in particular, from US and German federalism. Russia is a multi-ethnic country and this is conducive to a close combination of federal and ethnic principles in its state structure. Peregudov (2015:52) warns about the danger of growing imbalances in the state regulation of federal and ethnic relations in Russia and argues that a new federalism is required that eliminates asymmetries in relations between ethnic Russians and other ethnic groups inhabiting the Russian Federation. Problems of ethnic relations in Russia as an organic component of federal relations include "the issue of relations between so-called titular ethnic groups - above all, between the Russian titular ethnic group and non-Russian titular ethnic groups - and the associated question of the ethnic Russians" (Peregudov, 2015:52). One of the products of the process of evolution of ethnic relations in Russia is nationalism, which has become an important factor in the political development of Russia.

In Romania, asymmetric decentralisation is used to deepen sectoral decentralisation. However, this has led to growing inequalities and differences among various types of local administrative units. Neamtu (2016:47) questions the measurement of administrative capacity as proposed in the recent changes to the Framework Law on Decentralisation 195/2006, which introduced this concept. Decentralisation is regarded worldwide as a key component of good governance and development. Thus, in developed and developing countries decentralisation of state functions to lower sphere governments has been promoted vigorously. "Some of the arguments for decentralisation include: local governments, by being closer to the people they serve, can operate more efficiently and accountable and can be more responsive to local needs and preferences" (Neamtu, 2016:48).

The widely purported benefit attributed to decentralisation for bringing government “closer to the people” is that it improves the opportunities for and frequency of citizen participation in the political system. Yet, many findings generally fail to support the conventional wisdom that decentralisation improves political participation (Spina, 2013:448). Citizen participation is a critical feature of democracy in that an active citizenry holds government accountable, helps ensure the enactment of public demands, and legitimises the political system (Spina, 2013:448).

The political incentives for citizen participation as a result of underlying institutional change, that is, decentralisation of power, vary from one country to another, as evinced by the significant variations in the form and degree of European decentralisation. This variation in decentralisation throughout Western and Eastern Europe in 2006, based on a comprehensive index of 42 states developed by Hooghe et al. (in Spina, 2013:449), is illustrated in Figure 2.1 below:

Figure 2.1: Variation in European decentralisation (2006)



Note: Scale: white = no decentralisation; light grey = limited decentralisation; dark grey = moderate decentralisation; black = extensive decentralisation.

Source: Spina (2013:449)

Figure 2.1 shows that government structures vary dramatically, whereby some countries have no regional governance (e.g. Estonia, Latvia, and Iceland), and others possess influential regional governments with power solidified in a federal framework (e.g. Germany, Spain, and Belgium) (Spina, 2012:450).

Other benefits of decentralisation include reducing the size of the public sector/government and thus averting budget constraint challenges; fighting corruption; and fostering minority rights. In developing and transitioning countries, decentralisation was used to address regional and ethnic conflicts and to promote democracy by returning power to the people in response to pressures from international donors, such as the World Bank (Neamțu, 2016:48). However, in a number of developing countries, decentralisation failed to contribute to the envisioned and expected goals of enhanced local initiatives and responsiveness, improved service delivery and development or local democracy. Neamțu (2016:48) attributes the failure of decentralisation in these countries to the following factors:

...incomplete legal reforms, too much control from the center, lack of qualified personnel at local level, weak political leadership of the newly elected bodies, insufficient financial resources to cope with the new responsibilities, undeveloped civil society and limited pressure from local constituencies, persistent corruption and clientelism.

The aforementioned reasons constitute poor governance; hence, the failure of decentralisation to deliver the expected outcomes.

McGarry (2007:105) emphasises Tarlton's (1965) views that the regions of federations vary in many ways, including size, population, weight in federal institutions, share of natural and financial resources, and culture. These differences suggest a profound inequality or asymmetry in their relations with each other and with the federal system as a whole. However, asymmetrical federalism is generally defined as a state in which all parts have constitutionally guaranteed autonomy, but in which the central government usually has an enhanced level of autonomy (McGarry, 2007:105). Asymmetry is also used to describe states where one part enjoys autonomy and the rest do not. This asymmetric arrangement becomes a federacy if this autonomy is guaranteed and cannot be unilaterally rescinded by the central authority. However, if the central authority can rescind this autonomy, the arrangement becomes an asymmetrically decentralised unitary state.

A good example of a decentralised unitary state is Spain, which has a formal unitary political structure, functioning on the basis of the principles of fiscal federalism. Spain's administrative architecture, which resembles a federal state, derives from its asymmetrical character of regionalism, especially the special statute of the autonomous historical communities. Fiscal federalism claims in Spain are becoming more and more visible and thus leading to secession (Stângaciu, 2016:109). Spain, like Italy, "promotes an advanced regionalization formula which goes much beyond the decentralisation principle, by applying the shades of the philosophy of fiscal federalism and implicitly of subsidiary" (Stângaciu, 2016:109). The federal administrative architecture promotes territorial autonomy requirements related to fiscal, political or institutional autonomy.

This has led to a situation where regions with powerful political and cultural identities have asked the central governments to grant a higher autonomy, as happened in five Italian autonomous communities with special statute, or in the autonomous communities of Basque Country. As a result, fiscal pacts between autonomous communities and the state exist where these communities, for example the Basque Country, enjoy full financial autonomy. According to Stângaciu (2016:110), "The politicization of regionalism, nationalism, economic arguments or identity peculiarities, continue to lead to secessionist formulations such as obtaining independence by pressure (in the Basque Country) or by referendum (in Catalonia)".

McGarry (2007:105) argues that asymmetric institutional arrangements arise for various reasons; including potential economic benefit and the existence of pluri-national diversity (that is multiple nations). For example, China, a unitary state, allowed Hong Kong more extensive autonomy than the rest of the country because it eased its re-absorption and brought economic benefits. However, in most cases, asymmetrical federalism arises in response to the existence of pluri-national diversity. In pluri-national states, a subunit may demand a distinctive degree of autonomy from a mobilised nationality (McGarry, 2007:105; Hetcher, 2007:125), which McGarry (2007:105) defines as a stateless or "minority" nation. Asymmetrical federalism may also arise when an independent entity is granted special self-governing privileges in return for joining a state.

The United Kingdom is one such example, where Scotland, Wales and Northern Ireland all enjoy different levels of self-government, but England remains governed from Westminster. Another example of an asymmetrical institutional arrangement is Indonesia, which has given Aceh more extensive autonomy than the rest of the state. Similarly, in Malaysia and India, some federal regions have more autonomy than others (McGarry, 2007:105-106). McGarry supports asymmetrical institutional arrangements primarily because of numerous limits and problems inherent in symmetrical autonomy. Four common types of symmetrical autonomy in pluri-national states are based on differences in regions, namely, majority-dominated regions, partitioned minority regions, nationalities and regions of *Staatsvolk*, and nations. A *Staatsvolk* refers to a nation that dominates the state and is a substantial majority within it (McGarry, 2007:105-115).

Hetcher (2007:125) supports McGarry's (2007:105) argument that asymmetrical federalism may be the optimal form of governance for culturally heterogeneous societies when different communities seek different levels of autonomy. In asymmetrical federalism the central government offers the best deals to regions or states that are likely to secede and the worst to those that are unlikely to secede. States which are least likely to secede are usually characterised by unfavourable ecology and internal conflict. In contrast, Selcher (1998:34) argues that in Brazil electoral rules, as contained in the country's Constitution, are in favour of smaller, more rural and conservative states.

Selcher (1998:34) illustrates this argument by alluding to the composition of the National Congress in Brazil, where each of the 26 states elects three senators for eight-year terms, which raises the relative representation of smaller, rural and conservative states. This imbalance in favour of smaller states goes as far back as the country's 1946 Constitution. The tilt in favour of smaller states intensified in the 1970s when the military regime shifted electoral rules in favour of more conservative and less economically developed states of the North, Northeast and Centre-West over more urban and economically developed states of the South and Southeast. The shift in electoral rules against these urban and economically developed states was due to their strong opposition to the military regime (Selcher, 1998:34).

Brock (2008:143) argues that asymmetric arrangements in federations are necessary and desirable. However, she (*ibid.*) opines that in Canada federal government encroachment in provincial jurisdiction has led to the increase in protective deals recognising provincial

differences in reaction to federal government encroachment. Brock (2008:143) further says that the nature and variety of such asymmetrical arrangements undermine the sense of federal comity, goodwill and understanding critical to national unity. It is therefore necessary for the federal government to reconsider its role in the federation to prevent continuation of this trend and weakening of the bonds that hold the nation together (Brock, 2008:143). The Canadian federation has over its history ensured its survival by accommodating differences among its provinces.

However, in the 1970s clashes among governments became more acute, frequent and bitter. Constitutional tensions in the Canadian federation occurred from the 1971 Victoria Charter to the 1982 patriation of the Constitution and entrenchment of the Canadian Charter of Rights and Freedoms. These tensions culminated in the constitutional wars of the late 1980s and the early 1990s and finally the 1995 Quebec Referendum that brought the country to the brink of national disunity. The Canadian federation experienced relatively harmonious intergovernmental relations (Staten, 1993:129; Bowman, 2004:535) during expansion of the welfare state. However, these relations began to sour in the 1970s when the federal government became aware of its risky budget situation. In the 1990s, intergovernmental relations deteriorated when the federal government introduced unilateral cuts to transfers to the provinces.

In the 2000s, tensions among governments still abound despite intergovernmental negotiations and the signing of national deals, such as the 2004 Health Accord, the Kyoto Protocol on the environment, and the 2004 and 2007 agreements on equalisation. Brock (2008:143) seeks to find answers to or causes of the deteriorating intergovernmental relations at the conference level in the Canadian federation. One of the questions Brock poses relates to the means used to accommodate provincial differences. Brock (*ibid.*) argues that the two conceptions used in nationwide deals to accommodate provincial differences are conflicting and cause more unhealthy tensions between the subunits and between the federal government and the provinces. The current situation where the two conceptions are competing for dominance poses serious risks for national unity in Canada.

It is necessary to understand the changing roles of the federal government since the 1950s, which have contributed to this dissension and then rethinking its role in light of these reflections. Asymmetry is the inherent nature of federations and is mainly due to differences

within regions in such aspects as geography, economic and fiscal realities, demographics, history, population characteristics and culture (Brock, 2008:144; Libman, 2009:10). It is therefore natural that each province will develop different policies from other provinces, despite national goals and objectives, since implementation and interpretation will depend on the differences in each province and their special needs. However, extreme asymmetry among subunits may engender tensions if such asymmetry affects the ability of each unit to exercise its constitutional responsibility (Watts, 1999:65; Brock, 2008:144-145).

Brock (2008:145) concedes that both symmetry and asymmetry are necessary for the functioning and existence of federations. The two forms of asymmetry that may affect the operation of a federation are political and constitutional. Political asymmetry occurs when the impact of cultural, economic, social and political conditions affect the relative power, influence and relations of different regional units with each other and with the federal government (Watts, 1999:63; Brock, 2008:145; Libman, 2009:10). For example, Ottawa (a federal government in Canada) and its provinces have reached many agreements that correspond to the different needs, assets and abilities of the provinces to pursue public service delivery responsibilities. These agreements are often not contested and different agreements prove to be useful models for different jurisdictions.

An example of the asymmetrical treatment of a province within national agreements is the Quebec pension plan or income tax collection scheme. Another example of the asymmetric treatment of provinces in Canada includes the symmetrical allocation of provincial jurisdiction over education in the 1867 Canadian Constitution. Despite this equal constitutional treatment of provinces, Quebec, Ontario and Newfoundland have different school systems resulting from their pre-Confederation histories, which are reflected in their original terms of entry into the Confederation and common law. Therefore their powers to act in this area are limited by these political and constitutional differences. Contrary to political asymmetry, constitutional asymmetry refers to the degree of lack of uniformity in powers assigned to regional units by the constitution of the federation (Watts, 1999:63; Brock, 2008:145).

In most cases, the form of asymmetry and associated powers accorded to provinces are not contested. However, such differences generate bitterness within some provinces, for example the denial of control over natural resources to the Western provinces. This situation led to

Western alienation and resulted in the 1930s Natural Resources Transfer Act rendering the powers of those provinces symmetrical to the original four (Brock, 2008:145).

A “dynamic interplay of institutions of cooperative federalism, of party competition in a parliamentary system, and of distributive conflicts between governments” has influenced policymaking in the German federal system (Benz, 1999:45). Intergovernmental relations in a unified Germany are hampered by asymmetries between the East and the West and are characterised by a regionalised party system (Benz, 1999:55). Scholars have raised concerns as to whether the German state can be called a federal system. This concern arises from the country’s centralist Constitution, which assigns legislative powers mainly to the federal government, whereas the *Länder* are required in most cases to implement the law. Additionally, the German federal system is “embedded in a society with highly centralised organisations of interest in a highly developed welfare state, in an increasingly Europeanized economy, and in a political culture that emphasises national unity and uniform living conditions in all regions” (Benz, 1999:55).

The contradiction in the German federal system is that territorial diversity is not supported, even though division of power, decentralisation and participation of *Land* governments in national policymaking are basic features of German federalism. Benz (1999:55) argues that “the sharing of legislative, administrative and financial functions between governments and the widespread orientation toward unity and equality have contributed to the emergence of the system of interlocking politics (*Politikverflechtung*) which is typical of cooperative federalism”. Cooperative federalism and a Constitutional requirement of majority votes in the *Bundesrat* (Wehling, 1989:53-64; Pokol, 2003:71) for passing laws have been blamed for increasing policymaking costs, reducing governmental problem-solving capacity, and causing stalemates in passing reforms and allocating funds to regions (Montero, 2005:63; Benz, 1999:56).

The *Bundesrat* is the second chamber of the German parliament where representatives of the *Land* parliaments sit. It also serves as a countervailing power against the federal government and the *Bundestag* (Pokol, 2003:71). There has been an increase in calls by party representatives for a more competitive federalism with a clear division of powers between federal and *Land* governments and for fiscal autonomy of the *Land* governments. Prior to the unification of Germany in 1990, there were no major inequalities among regions of the West

German Republic and this enabled intergovernmental relations despite competition among political parties. After 1990, regional disparities between East and West Germany made the federal system asymmetric. These disparities led to distributive conflicts and complicated intergovernmental cooperation. “However, party system structures are now more pluralistic, and the bargaining strategies of governments led by different parties have become more pragmatic” (Benz, 1999:56). Benz (*ibid.*) further argues that the introduction of competitive federalism will increase regional asymmetries and lead to more policymaking blockades.

Subnational constitutions effectively shape the way self-rule functions in subnational units. “In Germany, subnational constitutions not only establish and structure political systems in the *Länder* but also include provisions on issues not addressed in the German Basic Law such as direct democracy, specific public policies, and social rights” (Reutter & Lorenz, 2016:103). In this pursuit to establish and structure political systems, *Länder* change their respective constitutions to make provisions for these political systems. However, the frequency of *Länd* constitutional changes varies across all *Länder*, for example, “*Länd* constitution of Berlin has been changed forty-one times in sixty-four years, while the one from Hesse has been altered eight times in sixty-eight years”. The features of *Länd* constitutions and structures of party systems influence subnational constitutional politics in the German *Länder* and subsequently the varying frequency of changes in *Länd* constitutions (Reutter & Lorenz, 2016:104).

2.5 FEDERALISM AND MACROECONOMIC OUTCOMES

Rapid economic growth, market expansion and increased efficiency in public service delivery can be achieved by creating incentives for subnational politicians to respond to the diverse interests of multiple, decentralised constituencies (Rodden & Wibbles, 2002). On the other hand, federalism complicates policy-making on such issues as fiscal and monetary management, exchange rates and privatisation of state-owned enterprises. In comparison to unitary systems, federalism has the advantage of empowering regional politicians who act as veto players and the disadvantage of exacerbating collective action problems in relation to macroeconomic policy. SNGs have little responsibility to the electorate to account for their macroeconomic performance and overspending. Economic decisions and extraction of resources from the central government by SNGs weaken the central government’s capacity to provide public services (Rodden & Wibbles, 2002).

The economic outcomes of federations vary dramatically across countries. In the US, federalism promotes secure property rights and fiscal prudence, while in Argentina and Russia it contributes to unstable property rights and macroeconomic volatility. The federal identity of Argentina is stipulated in its Constitution. However, in reality, Argentina has been developed as an excessively centralised political system. Democratisation in Argentina emerged strongly since 1983 through partisan competition and elections that were reorganised around sub-regional governments and political actors. Federalism and decentralisation since 1983 are attributed to the recent denationalisation of the competitive structure of political parties in Argentina (Hye-Hyun, 2014:21).

The outcome of federalism and decentralisation is the increase in sub-regional political strength, that is, the denationalisation of the political structure in Argentina. Increased sub-regional political strength is subsequently due to the “federal electoral system which produces a legislative problem of malapportionment and overrepresentation, as well as the federal revenue sharing system which grants a favourable transfer of fiscal resources to poor provinces” (Hye-Hyun, 2014:21). The aim of the decentralisation policy of the 1990s was to reduce deficits, but in reality it contributed more to increasing provincial political significance rather than achieving economic effectiveness (Hye-Hyun, 2014:21).

An important common feature that runs through all federal states is the presence of institutions that protect the autonomy of SNGs, while limiting the authority of the centre. This feature figures heavily on both sides of the market-preserving (Erk, 2006:111) and market-distorting versions of federalism (Rodden & Wibbles, 2002). Scholars view federalism as either market-enhancing or market-deforming in an effort to define the conditions under which federalism is most likely to produce good macroeconomic outcomes. Rodden and Wibbles (2002) argue that the effect of federalism on macroeconomic management depends on a variety of fiscal and political factors.

These factors include geographic characteristics, the level of fiscal decentralisation, the revenue autonomy of regional governments, and the nature of party systems (Brown, 2009:1; Firman, 2003:247-248; Gonzalez, 2008:213). Gonzalez (2008:213) defines fiscal decentralisation as the means of managing a budget for sub-national resources, raised either sub-nationally or transferred from the central government. Macroeconomic outcomes of

countries like Canada, where SNGs have wide-ranging autonomy on expenditure and setting the base and rates of their own taxes differ from those of countries like Germany where the *Länder* receive virtually all of their resources from central government grants and revenue sharing. Funding decentralisation by means of intergovernmental transfers has the potential to undermine fiscal discipline and create inflationary pressure.

Further, strong political parties and other political variables have an effect both within and across countries. Rodden and Wibbles (2002) state that federalism will have different macroeconomic outcomes in a country like Pakistan, where political autonomy is highly centralised, compared to countries like Spain and Canada where political autonomy is decentralised (Rodden & Wibbles, 2002; Firman, 2003:247). Rodden and Wibbles (2002) identify factors that influence the divergent performance of federations by examining the fiscal and inflationary performances of different federations between 1978 and 1996. Macroeconomic outcomes in federations are influenced by the structure of both fiscal and party systems. Fiscal decentralisation reduces deficits and inflation, especially in SNGs, which have wide-ranging taxation autonomy (Hye-Hyun, 2014:21).

Strong dependence of SNGs on intergovernmental transfers increases deficits and inflation, especially in SNGs that have high levels of fiscal decentralisation. On the other hand, highly centralised political hegemony in intergovernmental relations (IGR) decreases deficits and inflation in SNGs (Rodden & Wibbles, 2002).

2.6 MODELS OF FEDERALISM

Federalism is a founding political principle of the US constitution that has been exported to countries in Europe, the former Soviet Union, and South Africa. Federalism suggests that effective decision-making in a country requires a balanced mix of local and regional governments. Federalism requires that several factors are taken into consideration when deciding on the mix of SNGs, including the number of regional and local governments, and how policy responsibilities are allocated, that is, how powers and functions are assigned to SNGs. In the US, federal debates about the number of SNGs were resolved by their constitution (Inman & Rubinfeld, 1997:42).

However, debates about the allocation of powers and functions have evolved over the past two centuries. They evolved “from a period of "dualism" (1790-1860) in which states and the central government had comparable responsibilities; through an early period of "centralizing federalism" (1860-1933) in which the still modest federal responsibilities grew; through a later time of "cooperative federalism" (1933-1964), which marked a substantial growth in social programmes arising out of the Depression; and, finally, to a period of "creative federalism" since 1964 in which the federal government has taken “a direct and active role in the problems of state and local governments” (Dilger, 2000; Inman & Rubinfeld, 1997:43-44).

In the US today, the state and federal governance are more integrated than separate – signifying the death of dual federalism. However, Bulman-Pozen (2014:1920) disputes the death of dual federalism and argues that the “states are disaggregated sites of national governance, not separate sovereigns”; they continue to serve as vital cells of “democratic sentiment, impulse, and action”. According to Bulman-Pozen (2014:1920), the integrated nature of state and federal governance is demonstrated by the fact that today

... states act as co-administrators and co-legislatures in federal statutory schemes; they carry out federal law alongside the executive branch and draft the law together with Congress. Lacking an autonomous realm of action, states infuse federal law with diversity and competition, aligning themselves with certain federal actors to oppose others. States also participate in national political contests on behalf of Americans both inside and outside their borders.

Dual federalism makes provision for state-federal separation by its commitment to state autonomy and distinctive interests.

The period of creative federalism in the US was spurred partly by calls by Walter Heller and Joseph Pechman in the 1960s for revenue sharing between the central government and SNGs, where the central government would transfer equitable shares of revenue to the SNGs. These calls also argued for grant-in-aid by the central government to SNGs (Dilger, 2000; Inman & Rubinfeld, 1997), called conditional or unconditional grants in South Africa (RSA, 1996:81). In South Africa, the Constitution provides for an equitable share of revenue raised nationally to national, provincial, and local governments to perform their allocated functions. In addition, provincial and local governments may receive other allocations from the national

revenue, either conditionally or unconditionally (RSA, 1996:75). The US is drifting towards fiscal centralisation and reforms are undertaken to decentralise fiscal authority to SNGs (Inman & Rubinfeld, 1997:43-44).

Three principles or models of federalism are found in political debates, namely, economic, cooperative, and democratic federalism. Advocates of federalism value this system of government for three reasons, namely, “it encourages an efficient allocation of national resources; it fosters political participation and a sense of the democratic community; and it helps to protect basic liberties and freedoms” (Inman & Rubinfeld, 1997:44; Bagchi, 2000:3026). Achievement of these objectives requires decision-making about the arrangement and structure of institutions of federalism; that is, the number of SNGs, their representation in the central government, and assignment of powers and functions among the vertical spheres of government (Inman & Rubinfeld, 1997:44).

2.6.1 Economic federalism

A key requirement for the principle or model of economic federalism is the most centralised structure of government that has the capacity to incorporate economic externalities, “subject to the constitutional constraint that all central government policies be decided by an elected or appointed central planner”. Inman and Rubinfeld (1997) argue that two other objectives of federalism viz. political participation and the protection of individual rights can be realised only when the principle of economic federalism is achieved, whereby the regional and local spheres of government are equally efficient in the allocation of resources (Inman & Rubinfeld, 1997; Okpanachi, 2010:311). Okpanachi (2010:311) states that a federal system creates a consistent, credible, and financially sensible line of authority between the central and regional governments, in addition to ensuring efficient allocation of resources capable of promoting economic prosperity (De Figueiredo Jr & Weingast, 2005).

Fiscal federalism assigns responsibility for the provision of public services distinguished by significant externalities involving spatially dispersed populations to the central government. Decentralisation increases the efficiency of public service by local governments where services are tailor-made for immediate constituencies. In contrast, uniform service delivery across all jurisdictions as a result of central decision-making would not achieve efficient and improved service delivery. The appropriate number of local governments is specified so as to

achieve maximum economies of scale in the provision of public services. Fiscal federalism assigns to the central government functions (pure goods), which do not incur additional costs with the unit, and increase with the size of the population being served, such as in national defence and basic research services (Inman & Rubinfeld, 1997)

Such functions would not incur additional costs either when inefficiencies arise from externalities across jurisdictions. This implies that functions that are not subject to the principle of economies of scale, for example, labour intensive production as compared to capital intensive production, are best assigned to the central government. An efficient size of a community is reached when the average cost of service delivery per user equals the marginal cost of adding one more user. Fiscal federalism therefore assigns to the local governments functions (congestible goods) (Baggchi, 2000:3026; Inman & Rubinfeld, 1997) where service delivery costs increase with unit increases in the number of users, since smaller communities can be served efficiently by local governments. Baggchi (2000:3026) defines congestible goods as those varying in supply according to the size of the population to be served.

Such functions that can be efficiently performed by local government include education, police and fire protection, sanitation, recreation, and public health (Inman & Rubinfeld, 1997; Monro, 2001:54). Fiscal federalism prescribes a structure of central government decision-making where a central planner is appointed and charged with providing public services and correcting intercommunity spill-overs. The provision of public services and correction of spill-overs by the central government can be done in two ways: provide services directly (quantity control) or subsidising the local government to provide public services efficiently (price control). “In the United States, national defence, old-age social security, and environmental protection are directly provided or mandated by the central government, while low-income assistance, interstate highways, and basic research are largely managed through central government price subsidies or matching grants to state and local agencies or non-profit organisations” (Baggchi, 2000:3026).

2.6.2 Cooperative federalism

Cooperative federalism is a concept based on a principle of a structure of government that is totally decentralised and capable of dealing internally with all economic externalities.

Further, this concept requires that the constitution binds the central government to pass only policies, which have been agreed on unanimously by elected representatives from each of the lower sphere governments (Inman & Rubinfeld, 1997; Baggchi, 2000:3026; Staten, 1993:131-136). Other terms used for this concept include coordinate and collaborative federalism (Monro, 2001:46; Cameron & Simeon, 2002:49). However, Monro (2001:46) points out, with reference to the Australian government, that cooperative federalism represents an arm's length cooperation where the Commonwealth (central) and state governments unanimously agree on a particular policy area (page 341, paragraph 5.4.5 in chapter 5) (Monro, 2001:46).

Once the agreement has been made, each government acts independently of the other. Agencies enforcing and administering the agreement are responsible only for their respective governments. In contrast, collaboration is an agreement between the central and state government involving the establishment of a joint agency to administer or monitor the agreement. The formed joint agency is responsible for a council comprising both central and state government ministers. Monro (2001:47) argues that cooperative federalism is often characterised by adversarial rather than cooperative behaviour, with frequent attempts of coercion. Monro (2001:47) uses the term 'concurrent federalism' to refer to any arrangement involving both the central and state governments. An arrangement where negotiated, non-hierarchical exchanges occur between the different spheres of government and transnational organisations, such as the European Union, is called multi-level governance (Monro, 2001:47, Peters & Pierre, 2001:131).

Monro (2001:48) argues that cooperative federalism is inevitable and that the division of powers as envisaged by coordinate federalism is impossible. The central government intervenes in constitutionally-assigned state functions to address spill-over effects (Inman & Rubinfeld, 1997; Monro, 2001:54), thereby resulting in joint arrangements. A reasonable degree of concurrency of functions is necessary; however, there should be a clear division of responsibility in areas of joint responsibility. In the Australian Commonwealth parliament, existing arrangements of joint responsibility for Special Purpose Programmes have been criticised for, among other reasons, blurring responsibilities between the Commonwealth and state governments, duplication of administration, delays caused by this duplication, and for unwarranted interference by the Commonwealth government in the state administration of programmes (Monro, 2001:48).

Similar criticisms have been pointed out for coordinate federalism. Monro (2001:48) cites the recommendations put forward by the Commonwealth's Parliament Joint Committee on Public Accounts Report of 1995 to address problems emanating from cooperative federalism. These recommendations include a clear division of responsibilities within a joint arrangement, such that the Commonwealth government was involved in strategic planning and setting broad policies and objectives at national level, which would be implemented by the state governments. This recommendation is similar to German federalism where the central government develops national policy, which is then implemented by SNGs (Monro, 2001:48; Lamb & Wilk, 2014:2).

In support of the view that federal systems are inherently cooperative and that this is inevitable, Monro (2001:49) contends that in areas of joint responsibility, tasks should be shared rather than divided between the levels of government. The advantage of sharing responsibilities between levels of government is that this can help restrain the coercive power of the central government (Munro, 2001:49; Elazar, 1991:74). In order to increase the success rate of joint arrangements, the domination of one level of government over another should be prevented. Prevention of this domination can be achieved by dividing powers between the different spheres of government in joint arrangements. Monro (2001:49) further argues that joint responsibility increases government responsiveness to the people as there are more points of access to the system.

As a result of this responsiveness to the people, joint responsibility also enhances efficiency and democracy (Monro, 2001:49; Fletcher, 1991:3; Fletcher & Walsh, 1991:27-28; Walsh 1993:44). Another reason in support of the view presented above regarding division of powers between governments in a joint arrangement is that "competition between governments for support from the population to implement policies can lead to increased efficiency as well as responsiveness" (Monro, 2001:49). Views in support of coordinate federalism give priority to efficiency, while those in support of cooperative federalism give priority to government responsiveness to the citizens. Supporters of concurrent federalism argue further that joint arrangements facilitate sharing of information between central government and SNGs.

Furthermore, joint arrangements enable innovations to be piloted in one jurisdiction before being implemented nationally (Monro, 2001:53). On the other hand, intergovernmental conflicts could make policymaking unresponsive and inefficient (Montero, 2005:63). Montero argues in support of Riker's view that intergovernmental conflicts could be eliminated by the centralisation of the administrative structure of the state, or if not effectively eliminated, could alternatively be mediated by the centralisation of the political party system. The central objective of cooperative governance is economic efficiency, which promotes efficient provision of congestible public services by the local government. Cooperative governance requires all central government policies to be unanimously approved by the elected representatives from each of the SNGs, unlike economic federalism, which requires the central government alone to resolve intercommunity inefficiencies that might arise.

These unanimous agreements can take place in two ways: directly through the central government legislature or through intergovernmental agreements among SNGs, which are then approved by the central government or by an appointed third party, such as a court. "Cooperative federalism views the primary function of the central government as encouraging and enforcing inter-jurisdictional contracts to provide pure public goods and to correct the failings of lower-tier fiscal competition" (Inman & Rubinfeld, 1997:49). In summary, the advantages of joint arrangements between central government and SNGs are "constraining the coercive power of governments; increasing the responsiveness of governments to its citizens; and enabling governments to learn off each other" (Monro, 2001:53).

Cooperative federalism "emphasises a longstanding tradition of cooperation among levels of government, the overlapping of governmental functions and the sharing of power to deal with policy problems" (Lamb & Wilk, 2014:2). Cooperative federalism is often compared to another model of American federalism, known as creative federalism. This model is more nation-centred and views the federal government as playing a far more dominant role in creating programmes and supervising their implementation at the subnational level.

The effects of cooperative federalism are evident in the US' Fair Housing Policy based on The Fair Housing Act of 1968, commonly known as Title VIII. The Act "requires that subnational governments have the first opportunity to enforce that federal law if they pass

legislation substantially equivalent to Title VIII” (Lamb & Wilk, 2014:1). This cooperative federalism requirement enabled state and local civil rights agencies to play an essential role in enforcing the national fair housing policy at a SNG level in the US. Thus, cooperative federalism is both valuable and resilient in the policy arena. The implications of cooperative federalism in the interpretation and application of the law (Duffy, 2016:205) are also evident in what is commonly known as the statutory preclusion provision. This “provision prevents the federal government from prosecuting an action when a state acts first – even if the state has only acted administratively against a violator” (Lamb, 2016:841). An example is the loophole in the Clean Water Act that has significant potential to limit the US’ ability to prosecute those who spill oil.

2.6.3 Democratic (majority-rule) federalism

The principle of democratic (majority-rule) federalism favours the most decentralised structure of government that is capable of internalising all economic externalities (Rodden, 2004:488-489; Inman & Rubinfeld, 1997:39). However, this principle is subject to a constitutional condition that requires all central government policies to be agreed to by a simple (51 percent) majority of elected representatives from lower-tier governments (Inman & Rubinfeld, 1997:39; Rodden, 2004:488-489). Democratic federalism advocates for the use of local government to provide congestible public services (Baggchi, 2000:3026; Inman & Rubinfeld, 1997:39), as does both economic and cooperative federalism (Inman & Rubinfeld, 1997:40). Democratic federalism stands between economic and cooperative federalism with regards to the economic performance of the central government. Kincaid and Cole (2015:51) argue that the viability of democracy depends substantially on the ability of political institutions to elicit public trust and reinforce trust within civil society – trust promotes democracy; withdrawal of trust weakens it.

Democratic federalism contrasts with economic federalism in that it does not implicitly assume that the central government will provide public goods and regulate inter-jurisdictional spill-overs efficiently (Inman & Rubinfeld, 1997; Mathews 1980; Monro, 2001:41). It also differs from cooperative federalism in that it requires only majority-rule and not unanimity among SNGs to make a decision (Inman & Rubinfeld, 1997:40). Democratic federalism serves as a balancing mechanism between the potential efficiency gains of the central government’s correction of local spill-overs and provision of pure public goods (Bagchi,

2000:3026; Inman & Rubinfeld, 1997:41), and the inefficiencies that might arise when a democratic central legislature sets policies. Democratic federalism makes provision for this trade-off by specifying the structure and composition of the federal government in terms of the extent of local government representation (Dikshit, 1971:98; Arceneaux, 2005:297) in the central legislature, the need to appoint an independently elected executive with veto powers, and the criteria for assignment of powers and functions (policy responsibilities) to the different tiers of government (Inman & Rubinfeld, 1997:42).

Two commonly used approaches of legislative decision-making are based on the assignment of agenda-setting powers. The first method assigns agenda-setting powers to a small subset of members of the national legislature, such as a legislative committee or a speaker of the house. In this method, other members of the legislature are required to simply vote for or against the policies contained in the agenda. In most cases this involves the approval of policies by a simple majority of votes, that is, a minimal winning coalition.

The second method entails sharing agenda-setting powers among all members of the legislature. This method gives each legislator a right to select a most preferable policy that is most suitable for their constituency in the given policy area. This second method is a bargaining mechanism whereby each legislator defers to the preferred policies of all other legislators – provided other legislators defer to the legislator's own policy requests (Colomer & Negretto, 2005:61; Inman & Rubinfeld, 1997:42; Rodden, 2004:486).

As Inman and Rubinfeld (1997:43) put it, this method of legislative decision-making of deference is a situation of “You scratch my back, I’ll scratch yours” and results in the unanimous approval of legislative proposals. Legislative approaches using deference which then result in unanimity are called universalistic. Inman and Rubinfeld (1997:43) state that legislatures using the simple majority (minimal winning coalition) approach of decision-making tend to be more economically efficient than universalistic legislatures. However, legislators mostly prefer the more open rules method of universalistic approach over the closed rules simple majority method. The reason for this preference is that a legislator must belong to a winning coalition to have their constituency's policies approved. The probability of a legislator being in a winning coalition is 50:50 in a legislature with several political parties or in the absence of additional side-deals.

Universalism, a method of unanimous approval of legislatures, guarantees funding of policies, however small, and is therefore preferable for legislators in constituency-based politics. In constituency-based politics, legislators' continued appointment or election is based on their ability to deliver on policies germane to their constituencies. On the other hand, the winning coalition's approach does not guarantee approval of a legislator's policies. Policies approved through a universalistic approach run the risk of being economically inefficient. Inefficiency in policies of universalistic legislatures occurs as a result of each legislator choosing "a programme that will disproportionately benefit their own constituency, with the costs paid by residents of all jurisdictions. Because of this cross-subsidy, each legislator has an incentive to ask for too much of their own preferred good or regulation" (Inman & Rubinfeld, 1997:52).

The universalistic approach "allows these inefficiencies to stand, not just for one jurisdiction but for all jurisdictions represented in the legislature" (Inman & Rubinfeld, 1997:52). Inman and Rubinfeld (1997:52) suggest that the legislative process of the central government should be reformed in ways that would discourage economically inefficient universalistic legislatures. Some ways of achieving that include strengthening the hand of political parties over members' decisions or by increasing executive powers. Alternatively, institutions of federalism could be adjusted. Policy responsibilities could be reallocated between the central and the local governments based on the size of the local jurisdiction in situations where it is economically inefficient to assign functions to either the central or local government. Another option for adjusting institutions of federalism involves adjusting the extent of representation of local governments in the national legislature.

This determination will depend on whether each community has direct representation or a constituency combines communities whereby groups of local jurisdictions elect one representative. Direct representation of each community results in larger central legislatures and combined communities with appointed representatives for groups of jurisdictions result in smaller central legislatures. In universalistic legislatures, that is those using the deference approach, economic policy inefficiencies will be greater if the legislature is larger and the unit of representation (jurisdiction) smaller. For the sake of efficiency, smaller legislatures and larger jurisdictions are preferable. Setting an efficient size for legislature requires balancing "the gains from having more voices heard against the risk that too many bargainers means only inefficient or unstable deals are done" (Inman & Rubinfeld, 1997:53). The role of

legislatures as platforms for bargaining and advancing constituency preferences strengthens the importance of striking the correct balance when setting the size of efficient legislatures.

2.7 ROLES OF STATE AND NATIONAL GOVERNMENTS IN AREAS OF JOINT RESPONSIBILITY

Monro (2001:34-45) in his study on the results of federalism examines the roles of state and national governments in areas of joint responsibility in achieving the advantages of federalism. He emphasises the importance of intergovernmental relations between state and central government as a criterion to determine the success of the arrangement involving areas of joint responsibility. Some of the claimed advantages of federalism include an increase in political cohesiveness, government responsiveness to citizens, and efficiency. Monro (2001:35) identifies the three broad normative concepts of federalism as coordinate, cooperative, and competitive. Cooperative federalism is discussed in paragraph 2.6.2 above by analysing the views of Inman and Rubinfeld (1997:43-53) and Monro (2001:34-45) on this subject.

2.7.1 Coordinate federalism

Coordinate federalism requires the separation of state and central government functions, and makes no provision for shared responsibility arrangements. Federalism prevents concentrating power in the central government. However, in a federal system, disagreements between state and central governments could lead to inaction or deadlocks in matters of policy (Monro, 2001:36). Monro (2001:36) argues that division of power between state and central governments may prevent any government from taking difficult but necessary decisions as the other level of government will seek political advantage by blocking the action. Thus, coordinate federalism prefers the division of power between state and central governments so as to allow each level of government to function independently in its sphere of operations.

In addition, coordinate federalism prevents the danger of concentrating power at one level of government. Another advantage of coordinate federalism is the prevention of duplication and inefficiency resulting from the overlapping of functions by the state and central governments (Monro, 2001:36). Other disadvantages of joint responsibility arrangements, as stated by

Mathews (1980:32-34) and Monro (2001:37) with reference to Special Purpose Grants in North America and Australia, include the following:

proliferation of overlapping programmes; uncertainties and the growth of grant lobbies and 'grantmanship'; the duplication of bureaucracies at each level of government; the tendency to encourage unrestrained growth of public sector; inadequate arrangements for consultation and policy co-ordination between governments; unwarranted interference by granting governments in the detailed administration of grant programmes; failure to match grant programmes to policy objectives; inadequate accountability; lack of systematic analysis of expenditure needs; and failure to distribute grants on a basis which reflects needs and fiscal capabilities (Mathews, 1980:32-34).

Monro (2001:38) points out another advantage in favour of coordinate federalism: that some functions are better carried out by the national government, while others are better carried out by lower level governments. The view that some functions are best suited for national government, while others are best suited for lower level governments is called the 'functional theory of federalism'. Peterson (1995:18) and Monro (2001:38) assert that the central government is best suited to perform redistributive functions while lower level governments are best suited to perform developmental functions. If a state performs redistributive functions, this will lead to a common denominator approach whereby a state provides a significantly higher level of services causing a migration to that state of people desiring those services. An increased number of people in a given state due to inward migration will put tremendous pressure on the finances of that state, thereby deterring that state from providing a higher level of services.

The provision of low levels of service due to prohibitive high costs is referred to as the 'lowest common denominator approach' (Monro, 2001:38). On the other hand, if the central government is involved in developmental programmes, national legislators are likely to favour projects that will bring them political advantage rather than those needed, thereby distorting priorities for developmental projects among states. Proponents of decentralisation in relation to the division of functions between central and lower level governments argue that having decisions made by the lowest practical level of government increases the economic efficiency and responsiveness of government to its citizens. The principle of subsidiarity states that public functions or decisions should be carried out by levels of

government closest to the people affected by those decisions, unless that level of government cannot achieve that objective (Mathews, 1980:8; Monro, 2001:40).

The principle of subsidiarity is also contained in article 34b (2) of the European Union treaty. Monro (2001:41) argues that neat division of responsibilities and independent spheres of government as advocated by coordinate federalism is no longer possible in current times. The main reasons for this include “the growth in the size of the public sector, which has resulted in turn from the great complexity of the modern economy, the democratisation of the political processes and the general acceptance of the need for a greatly expanded range of publicly provided social and economic services” (Mathews, 1980:4). Services such as transport, economic development, urban services, education, health and welfare services have national, state (or regional) and local dimensions, and thus cannot be regarded as the sole responsibility of a single level of government.

There are, however, areas where only state or central governments should take sole responsibility. Central government should take responsibility for functions which would generate external effects in adjoining jurisdictions, also known as spill-over effects, if carried out by lower level governments. Therefore, central governments should take responsibility for “international, economic stabilisation and redistribution policies as well as for the supply of public goods and services the costs or benefits of which extend beyond the boundaries of a single State” (Mathews, 1980:4). Monro (2001:41) gives an example of housing in Australia where the central government pays rent assistance to social security recipients who are renting in the private market. This additional payment to pensioners is seen as part of the income maintenance systems, a redistributive programme which is correctly the function of the central government, according to Peterson (1995:18).

However, in this case spill-over effects do occur as the amount of public housing provided by the state will affect the total cost of rent assistance paid by the central government. The central government’s involvement in other state functions such as housing and disability services is justified as it seeks to maintain the provision of minimum national standards of service in these areas (see page 323, paragraph 5.4.3 in chapter 5). However, such involvement does not require the central government to take total control of that function away from the lower level government. Therefore, some social services, such as housing and disability services, have both redistributive and developmental aspects. Thus, the central

government should not be involved in functions which are constitutionally assigned to the lower level governments unless it is absolutely necessary (RSA, 1996:19-20; Steytler & Fessha, 2005:2; Monro, 2001:42).

Ideas of coordinate federalism in Australia were influential in the 1990s and primarily aimed at reducing areas of overlap and duplication between the levels of government to achieve complete division of functions (Galligan, 1995:197-8; Edwards & Henderson, 1995:27; Monro, 2001:45). Monro (2001:45) summarises the characteristic central-state government arrangements as advocated by the coordinate federalism approach as follows:

First, inefficiency should be avoided through unnecessary overlap and duplication of services and administration. Second, both levels of government should avoid areas allocated by the Constitution to the other level or for which the other level is more suited unless a clear reason, such as a spill-over effect makes involvement necessary. Third, the objectives that led to joint involvement, for example alleviation of a spill-over effect should be met.

2.7.2 Competitive federalism

Competitive federalism encourages competition between governments, either between different states or between the state and central government. Drew and Dollery (2015:165) argue that federalism fosters “democratic laboratories” whereby competitive tensions result in increases in relative efficiency *ceteris paribus* of sub-optimal jurisdictions over time. In addition, through competitive federalism, imitation of best practice leads to converging efficiency between comparable peer jurisdictions. The economic principle of federalism “ascribes various efficiency characteristics to the operation of federal systems of government, particularly the welfare gains which can flow from decentralised government” (Drew & Dollery, 2015:165).

The three alternative principles of federalism, as identified by Inman and Rubinfeld (1997 in Drew & Dollery, 2015:165), hold that a federal system of government encourages an efficient allocation of national resources, fosters political participation and a sense of the democratic community, and helps to protect basic liberties and freedoms. Positive innovations in service delivery occur when several states are motivated by providing public services in the most cost-effective way and simultaneously pursue cost-reducing innovations. The result of this

competitive federalism is that other states imitate the innovative methods of delivering public services by some as a way of reducing costs (Drew & Dollery, 2015:166).

The advantages and efficiency gains of a decentralised system of government include “democratic laboratories” represented by competing jurisdictions seeking enhanced economic benefits. “When governments develop unique policies, they become laboratories of democracy” (Bednar, 2011 in Drew & Dollery, 2015:165). Competitive federalism manifests at all SNG levels, including local governments, and “in common with many other countries, Australian local government policymakers have focussed heavily on improving financial sustainability and operational efficiency through structural change and other modes of systemic reform” (Sinnewe, Kortt, Dollery & Hayward, 2015:150).

Cooperative federalism is, however, criticised for having centralist tendencies and for creating collusion between governments at different levels. Monro (2001:54) defines collusion in this case as a situation where governments at different levels combine to advance their mutual interests at the expense of third parties. Monro (2001:54) argues that competition between governments is a way of ensuring that governments advance the interests of the citizens. SNGs are seen as being closer to the wishes of the citizens when compared to central governments, hence competition between same level governments, that is, between states, is perceived to assist government responsiveness to citizen interests.

Monro (2001:54) further advances his argument in favour of competitive federalism by making reference to Tiebout’s (1956:424) assertion that citizens will move to jurisdictions where service delivery levels are favourable and expenditure-revenue patterns are fixed and known to voters, thereby compelling SNGs to become more responsive to their interest. This concept of citizens moving from one jurisdiction to another in pursuit of better SNG services is referred to as “voting with their feet” (see page 389, paragraph 6.4.4. in chapter 6). Monro (2001:54) argues that a decentralised system affording maximum authority to lower levels of government and competition among them is a desired approach to a federal system as it leads to a coordinate position between lower levels of government with no role for joint arrangements. However, in such a competitive environment the issue of spill-over effects and the question of national minimum standards become a concern as these matters are best dealt with through joint arrangements.

The national government should have a limited role in competitive federalism; however, in most federations, such as Australia, the functions of the national government are much more extensive, including welfare, defence, foreign relations, monetary stability, nationwide transport, and communication, rules and regulations concerning civil and business interaction (Inman & Rubinfeld, 1997; Monro, 2001:54; Bagchi, 2000:3026). According to Monro, in Australia spill-overs are bound to occur given the division of powers as contained in the Commonwealth Constitution. To support this view, Monro (2001:54) gives an example of the Commonwealth's (national) income maintenance function, which produces spill-overs both in housing and disability services. Therefore, joint arrangements are necessary to deal with such spill-over effects, once again defeating the case for competitive federalism.

2.8 DECENTRALISATION

As countries around the world transform, authority and resources are being migrated from central government to SNGs (Rodden, 2004:481; Canaleta, Arzoz & Garate, 2003:71-72; Inanga & Osei-Wusu, 2004:72). Inanga and Osei-Wusu (2004:73) adopt Manor's (1998) definition of decentralisation as a process by which a central government formally transfers powers to actors and institutions at lower levels in a political-administrative hierarchy (Spina, 2013:449; Inanga & Osei-Wusu, 2004:72; Dickovick, 2005). A similar definition of decentralisation posits that it refers to the shift of powers and responsibilities from a centralised government to components of its jurisdiction.

These powers/responsibilities can be political (making decisions), administrative (managing allocated resources and responsibilities), fiscal (taxation and revenue raising) and/or market-related (privatisation and deregulation of private industry). Similarly, but phrased differently, Escobar-Lemmon (2006 in Spina 2013:449) posits that "decentralised systems are generally designed with three forms of power allocated to lower levels of government: political (the direct election of subnational officers); administrative (the authority to design and manage public policy); and fiscal (the power to design, raise, and spend taxes independently)". Raut and Sekher (2013:236) argue that decentralisation seeks to achieve a number of objectives, namely, technical, political and financial.

Technical decentralisation seeks to improve administrative and service delivery effectiveness. Political decentralisation seeks to increase local participation and autonomy, redistribute

power, and reduce regional tensions. Financial decentralisation is aimed at increasing cost efficiency, giving local units greater control over resources and revenues, and sharpening accountability. Decentralisation may take one of four different institutional forms, namely, deconcentration, devolution, delegation, and privatisation (Mills Vaughan, Smith & Tabibzadeh, 1990 in Raut & Sekher, 2013:236).

Decentralised governance is distinct from federal systems (for example, in Australia, Malaysia, or the US) where the delineation of powers is clearly spelt out in a constitution (Warman, 2016:25). Fleurke and Willemse (2004:523-524) define decentralisation as a doctrine of the right to self-government or local autonomy of constituent parts of a state whereby local autonomy is codified in the principle of subsidiarity (Rodden, 2004:486-487; Concise Oxford English Dictionary, 2004). Decentralisation of governance in developing countries was advocated by developed countries and international development agencies in the 1950s and 1960s; particularly colonial powers seeking to establish what they considered were the good governance benefits of sharing power with local government jurisdictions. Decentralisation was introduced again in the late 1970s and 1980s by international development organisations as a vehicle to further rural development in developing countries (Warman, 2016:25; Mohammed, Ashton & North, 2016:232).

Mohammed, Ashton and North (2016:232) posit that decentralisation involves the dispersal of power or authority to manage, plan, and make decisions from higher to lower levels of an organisation or system. Based on this definition, it follows that “decentralisation aims to promote a more efficient system that brings services closer to the people, improves access, allows for community participation and empowers the decentralised bodies to deliver better services by having greater responsibility” (Mohammed, Ashton & North, 2016:232). Quaranta (2013:502) argues that political protest depends on the level of institutional decentralisation; thus implying that greater decentralisation improves citizen participation. Hence, through citizen participation “decentralisation increases the number of state actors, implies a multiplication of access points to the political system, and provides greater chances of influencing the decision-making process” (Quaranta, 2013:502).

Decentralisation and federalism (Cameron & Falleti, 2005:246; Dahl, 1986: 14; Elazar, 1994; Watts, 1996) are assumed to be complementary and interchangeable. An emerging view of decentralisation is that of an organic, intertwined transfer of political, fiscal and policy

autonomy from central governments to SNGs. Some of the advantages of decentralised governance structures include information revelation and accountability. Rodden (2004:481) argues that decentralisation could be used as a measure of economic growth, accountability, corruption, and the quality of governance (Bagchi, 2000:3026; Erk, 2006). Further decentralisation could be used to measure the implications of fiscal decentralisation (Firman, 2002:247; Inanga & Osei-Wusu, 2004:72) on deficits, inflation, macroeconomic stability, and the size and growth of governments.

Public choice theories, on the one hand, “explore the possibility that mobility in a decentralised, multijurisdictional context can facilitate better matching of citizen preferences and government policy and can lead to smaller, more efficient, less corrupt governments” (Rodden, 2004:482). In some conditions, decentralisation could lead to more secure markets and faster economic growth (Rodden, 2004:482; Rodden & Wibbles, 2002). On the other hand, empirical studies found that decentralisation and federalism could lead to higher levels of corruption (Okpanachi, 2010:326; Bagchi, 2000:3026; Erk, 2006), larger governments, macroeconomic instability, and lower growth. Studies on decentralisation focus on three areas of decentralisation, namely, fiscal, policy and political authority (Rodden, 2004:482).

2.8.1 Fiscal decentralisation

Strong fiscal federalism refers to “the competitive model of federalism, in which sub-central jurisdictions compete for a mobile tax base¹⁸ in a common market by exercising their autonomous regulatory and taxation powers, while facing a ‘hard budget constraint¹⁹’ that limits their ability to take on debt” (Sorens, 2016:25) (see paragraph 4.3.9 in chapter 4). Strong fiscal federalism is absent or dysfunctional in the developing world because the fiscally decentralised systems often lack hard budget constraints and an open, common market. In contrast, Western industrialised democracies like Canada, the US, Switzerland, and the European Union come closest to this model. “Many developing democracies have adopted federal or decentralised systems of government, among them India, Indonesia, Mexico, Brazil, Argentina, South Africa, Pakistan, and Malaysia. Yet none of them have

¹⁸ Mobile tax base refers to mobile production factors such as capital and human capital, which may exit underperforming jurisdictions to more competitive jurisdictions.

¹⁹ Hard-budget constraints are an element of market-preserving federalism and refer to a situation whereby SNGs are unable to create and to borrow money unlimitedly.

adopted anything remotely resembling the competitive system of fiscal federalism described above” (Sorens, 2016:25).

Fiscal decentralisation reforms have been adopted by multilateral financial institutions like the World Bank to encourage fiscal responsibility, by matching revenue-raising powers to spending powers, and by allowing more autonomous economic policy-making at the sub-central level. Yet, developing countries have failed to decentralise autonomous taxation powers despite having decentralised expenditure responsibilities significantly over the past several decades. Instead, “the new sub-central spending is financed through ‘shared’ taxes (with rates and base set by the central government) or grants, which are commonly discretionary and opaque” (Sorens, 2016:25).

Most empirical studies on fiscal decentralisation focus exclusively on the balance of expenditures and revenue between governments (Rodden, 2004:483; Firman, 2002:247; Inanga & Osei-Wusu, 2004:72). The International Monetary Fund’s (IMF) Government Finance Statistics Yearbook provides expenditure decentralisation data for the countries it covers. In decentralised federations like Canada and Switzerland, regional and local governments account for more than half of total public expenditure. In highly centralised African countries, this figure is less than four percent. Over the years, IMF statistics have shown a general increase in public expenditure by regional and local governments, indicating a general increase in fiscal decentralisation in most countries, especially in Spain and most of Latin America (Inanga & Osei-Wusu, 2004:72).

However, Rodden (2004:483) is quick to point out that IMF data is not entirely useful as a measure of decentralised authority as some countries, for instance Denmark and Nigeria, are rated as having high fiscal decentralisation, whereas these countries tightly regulate finances of the local and regional governments. Increased efficiency gains and improved responsiveness are associated with increased autonomy from central control, a result of decentralisation (Rodden, 2004:483; Freitag & Vatter, 2008:273-274; Rodriguez-Pose & Krøijer, 2009:387). A regulatory framework on the SNG’s finance of a country, in addition to the expenditure decentralisation data, is required to make a meaningful assessment of the implication of fiscal decentralisation. Rodden (2004:485) argues that expenditure decentralisation alone is not an adequate and reliable indicator of the locus of authority. An

alternative measure of decentralisation is the value of the SNG's own revenue source as a share of total government revenue.

This measure is relatively adequate as a measure of decentralisation as it reflects the extent of subnational autonomy in raising own revenue. Rodden (2004:485) argues that even this variable could be an overestimation of subnational revenue autonomy since the central government may nonetheless maintain the power to set the rate and the base, leaving SNGs as mere collectors of centrally determined taxes. It therefore follows that true subnational revenue autonomy is only possible when the SNG is able to set its own revenue rate and base, independently from central government control. In fact, an IMF study reveals that "several countries in which subnational governments account for large total spending and taxation have very little autonomy over tax rates and bases" (Rodden, 2004:485) – with the exception of the US, Canada and Switzerland (Rodden, 2004:485; Freitag & Vatter, 2008:273-274). Other methods which might be used by central governments to restrict subnational fiscal autonomy include conditional grants, regulations governing local taxation, and formal limitations of subnational borrowing (Rodden, 2004:485).

2.8.2 Policy decentralisation

Rodden (2004:486) argues that in most countries the central government does not have the legal right to override the decisions and policies of SNGs (Rodden, 2004:486). Also, in most countries, regional and local governments have more influence in decision-making in SNG policy areas of primary education, infrastructure, and local policing. It is rare for central governments to fully cede autonomy to SNGs. Rather, decentralisation in most countries entails a move from complete central dominance to shared policy authority with SNGs. Even in cases where the central government is not involved in policy making, authority is often shared between two or more SNGs. Federalism presumes that the provision of public services should be located at the lowest level of government so as to achieve the relevant benefits at appropriate costs.

This presumption is in line with the principle of subsidiarity (Mathews, 1980:8; Monro, 2001:40), which states that a central authority should have a subsidiary function, performing only those tasks that cannot be performed at a more local level (Rodden, 2004:486-487; Concise Oxford English Dictionary, 2004). However, despite central governments lacking the

legal right to override SNG policy decisions, studies indicate that central governments and SNGs are in most cases jointly involved in both subnational education and infrastructure policy decisions (Rodden, 2004:487; Rodden, 2004:488; Freitag & Vatter, 2008:272; Colomer & Negretto, 2005:60).

2.8.3 Political decentralisation

Trends in local and regional government elections are a good indicator of the level of political decentralisation (Watts, 2006; Rodden, 2004:488) in a country. There has been a dramatic increase in the number of countries where regional and local governments were popularly elected, an indication of a broader shift from authoritarianism to democracy in the late 1980s and early 1990s (Watts, 2006; Rodden, 2004:488; Canaleta, Arzoz & Garate, 2003:71-72). Popularly elected local officials have higher levels of policy autonomy than appointed officials and control large shares of public expenditure, a good indication of high political autonomy in such cases (Rodden, 2004:488; Freitag & Vatter, 2008:272).

Rodden states that it is also important to assess the relationship between central and subnational electoral arenas. This relationship is important because subnational candidates might be chosen by central government party officials. Also, subnational officials might play a role in selecting central government candidates. Australia and Germany are good examples of countries where federal party lists are drawn up by state party leaders. In the US, states play a key role in selecting presidential candidates²⁰ (Rodden, 2004:488). The relationship between central and subnational electoral arenas is also important in assessing the independence or interdependence of central governments and SNGs. Rodden (2004:488) cites an example of the US gubernatorial elections, which are influenced by the voters' evaluations of the president and his/her co-partisans. State governors might get elected on the basis of the popularity of the president during times of economic growth or might lose elections during an economic downturn.

Another example of central and subnational independence or interdependence cited by Rodden (2004:488) is that of Germany where state elections are viewed by voters as federal mid-term contests because they directly determine the party composition of the powerful upper legislative chamber. The politics of Brazil are the exact opposite of the US in that

²⁰ Parliamentary and presidentialism are not part of the present study.

federal (presidential) elections are heavily influenced by state-level politics in which governors play a key role. In the US, the re-election of state governors is based on the evaluations of both local and national performance (fiscal and macroeconomic). Therefore, in countries like the US, incentives for re-election of governors are based on intergovernmental cooperation, local performance and fiscal discipline. Another measure of the relationship between national and subnational electoral arenas, which was introduced by Riker and Shaps in the 1970s, involves the evaluation of the number of state chief executives sharing political affiliation of the federal chief executive. A higher figure reflects a high level of political centralisation and a low figure indicates a high level of political decentralisation. This figure may also indicate the level of party dominance, fragmentation of the federal system, and reforms from authoritarian to democratic federalism (Rodden, 2004:488-489).

2.9 DISTRIBUTION OF POWERS

The design of federations with respect to the distribution of powers between the central government and SNGs is influenced by strong motives for either unity or autonomy of constituent units. This section discusses the defining characteristics of federations by focusing mainly on the balance between unity and diversity, on the one hand, and the distribution of powers and functions in the three branches of government, namely, executive, legislative and judiciary, on the other hand.

2.9.1 Balancing unity and diversity

A common feature in all federations is the powerful motive to be united for certain purposes, and powerful motives for autonomous regional governments for other purposes (Erk, 2006; Cameron & Falletti, 2005:246; Rodden & Wibbles, 2002). These motives for federal unity and regional autonomy have influenced the design of federations in the distribution of powers between those assigned to the central government and those assigned to regional governments (Watts, 2006:31; Monro, 2001:53). Powers are assigned to central governments for shared purposes and to regional governments for expression of regional identity. Two key characteristics which define federations are combined within a single political system of shared-rule and self-rule through the constitutional distribution of powers between the federal and regional governments (Watts, 2006:31).

The degree of common interest and diversity within a society informs or defines the form and allocation of powers between the central and regional governments. Further, the strength of motives for union or for regional identity is influenced by various factors, such as geography, history, ecology, security, language, intellectual, demographics, and international factors and their interrelation (Watts, 2006:31; Brown, 2009:1). These factors also influence the distribution of powers between the central and regional governments. The federal government will have more powers allocated to it in a more homogenous society, whereas more powers will be assigned to regional governments in a more diverse society. However, it is generally considered desirable to have more powers assigned to the federal government to resist tendencies of balkanisation.

In addition to maintaining a balance between unity and diversity, the design of federations also requires a balance between the independence and interdependence of federal and regional governments in relation to each other (Watts, 2006:32). The classic view of a federation considers the ideal distribution of powers between governments of a federation to enable each government to act independently within its own sphere of responsibility. However, in reality, overlaps in the responsibilities of spheres of government and some degree of interdependence are typical of all federations. In illustrating the point of the interlocking relationship between the governments of a federation, Watts (2006:32) points to the example of Germany where 60 percent of federal legislation is administered by the states.

However, such coordination through joint decision-making has the disadvantage of reduced flexibility and the opportunity for a variety of policies through autonomous decision-making by different governments. Therefore, a balance between independence and interdependence between the governments of a federation is necessary (Watts, 2006:32). The character of the distribution of powers among the spheres of government is influenced by the process by which a federation was established. In countries such as the US, Switzerland and Australia, federations were established by the aggregation of previously distinct units giving up some of their sovereignty to form a new federal government. In these countries, the emphasis has been on specifying a limited set of exclusive and concurrent federal powers with unspecified residual powers remaining with the constituent units.

Belgium and Spain are examples of countries where the federations were established by a process of devolution from a formerly unitary state. In this situation, the powers of the

regional units have been specified and the residual authority has remained with the federal government. Canada, India and Malaysia provide examples of countries which were established by a combination of aggregation and devolution, where exclusive federal, exclusive provincial and concurrent powers with residual authority were specified (Watts, 2006:32). Cameron and Falleti (2005:246) define federalism as a constitutional political system that creates separate executive, legislative and judicial branches of government at the SNG level.

A SNG should have its own constitutional institutions, that is, executive, legislative and judiciary, to be able to represent the sovereign will of its citizens. These subnational constitutional institutions will act within the capacities granted in the national constitution. The subnational legislature will make laws that affect the subnational territory, the judiciary will enforce the laws enacted by the subnational legislature, and the executive will implement the laws and policies made by the legislature (Monro, 2001:48). Cameron and Falleti (2005:246) argue that most literature on federalism focuses on the division of sovereignty between the federal and the constituent units, and overlooks the separation of powers within both levels of government (Cameron & Falleti; 2005:246).

2.9.2 The relationship between the distribution of legislative and executive powers

In Anglo-Saxon countries, such as the US, Australia and Canada, the assignment of executive responsibilities coincides with the field where legislative powers have been assigned. Reasons for favouring this arrangement include the following: it reinforces the autonomy of legislative bodies and it assures each government of the authority to implement its legislation. The third reason for favouring this arrangement is that the legislature can exercise control over the body (executive) executing its laws only if the legislature and executive jurisdictions coincide (Cameron & Falleti, 2005:249; Watts, 2006:31). This applies to situations where the principle of parliamentary executives responsible to their legislatures has been adopted. In European federations such as Switzerland, Austria and Germany, it is common that administrative responsibility does not coincide with the jurisdiction of the legislative authority.

In these countries, the administration of most federal legislation is assigned by the constitution to regional governments. This practice allows the federal legislature to make

considerable uniform legislation, which can be implemented by regional governments in ways that take into account varying regional circumstances (Monro, 2001:48). However, this arrangement requires extensive collaboration between the levels of government (Watts, 2006:31). Watts (2006:31) argues that in practice there is little contrast between the two approaches, where even in Anglo-Saxon countries federal governments delegate considerable administrative responsibility to regional governments to implement federal programmes. This is usually done by providing financial assistance to regional governments through grant-in-aid programmes (Watts, 2006:31).

In Canada, the constitution offers an exception by providing for the federal government to develop criminal law and for the regional government to administer it. In India and Malaysia, the constitution provides for federal legislation and provincial administration of federal laws made in areas of shared concurrent jurisdiction. In Belgium, the assignment of executive powers coincides with the assignment of legislative powers, in contrast to other European federations. This implies that in Belgium regional governments are responsible for both developing and implementing their own laws. In Russia, the constitution constitutes the executive bodies of both the federal and regional governments as a single system of executive authority within the federation (Watts, 2006:31).

2.10 VARIATIONS IN THE FORM OF DISTRIBUTION OF LEGISLATIVE AUTHORITY

The form and degree of distribution of legislative powers between the central government and SNGs in federations varies from country to country. The distribution of legislative powers is done in three basic forms, namely, exclusive, concurrent and residual. The theories and motives for the degree of legislative powers to both central governments and SNGs also vary. This section discusses the variations in the form of distribution of legislative authority between the central government and SNGs by analysing governments in both developing and developed countries.

2.10.1 Exclusive legislative powers

In Switzerland, Canada and Belgium, “most legislative powers are assigned exclusively to either the federal or constituent unit governments” (Watts, 2006:32). In the US and Australia,

the federal government is assigned limited exclusive powers and more shared concurrent powers. In Austria, Germany, India and Malaysia, both exclusive and shared concurrent powers are constitutionally specified in a variety of categories (Watts, 2006:32).

Watts (2006:32) identifies two advantages of assigning powers exclusively to one government or another. “It reinforces the autonomy of that government and it makes it clear which government is accountable for policy in that area” (Watts, 2006:32). However, in practice it is impossible to avoid overlaps of jurisdiction – even in federations where most powers have been assigned exclusively to one level of government or another, such as in Switzerland and Canada (Monro, 2001:36-45).

2.10.2 Concurrent (shared) legislative powers

The fact that it is inevitable to have overlaps, shared jurisdictions, and collaboration in many areas has led to extensive areas of concurrent legislative jurisdiction (competence) in the constitutions of the US, Australia, Germany, India and Malaysia. In Canada, the only areas of concurrent jurisdiction specified in the constitution are agriculture, immigration, old age pensions and benefits, export of nonrenewable natural resources, forest products, and electrical energy. The advantages of concurrency (Monro, 2001:48; Watts, 2006) in a federation include that it provides an element of flexibility in the distribution of powers, enabling the federal government to postpone the exercise of potential authority in a particular field until it becomes a matter of federal importance. The federal government may use concurrent jurisdiction to legislate federation-wide standards, while giving regional governments room to legislate the details and to deliver the services in a manner sensitive to local circumstances.

In Austria and Germany, there is a special constitutional category of concurrent jurisdiction specifying a federal power to enact framework legislation only and leaving the *Länder* (Rodden & Wibbles, 2002; Watts, 2006; Benz, 1999:55) to fill out that area with more detailed law. Concurrent lists of legislative power also avoid the need to specify minute differences or individual functions to be assigned exclusively to one area of government or the other, and reduce the likelihood that such minute differences will over time become obsolete with changing circumstances. Normally, in areas of concurrent jurisdiction, the constitution specifies that in cases of conflict between the federal law and regional law, the

federal law prevails. An exception to this occurs in Canada where old age pensions are an area of concurrent jurisdiction, but in cases of conflict provincial law prevails over federal law. This has enabled the Quebec Province to preserve its own pension system and other provinces to accept federal pension jurisdiction (Watts, 2006).

2.10.3 Residual powers

Any function, competency, or power not listed in the constitution of a country or assigned to any level of government is referred to as residual power (Watts, 2006). Federations formed by aggregation of previously separate sovereign governments (Watts, 2006:32; Bowman, 2004:535; Dikshit, 1971:98; Monro, 2001:36-37; Mathews, 1980:32-34), such as the US, Switzerland, Australia, Austria, Germany, Malaysia and Czechoslovakia, assign residual (Watts, 2006:32; Monro, 2001:36-37; Mathews, 1980:32-34) powers to the SNGs. Where a federation is formed by devolving authority from a more centralised regime to a decentralised one, such as Canada, India, the Federation of Malaya and Belgium, residual powers remain with the federal government. In regimes where an exhaustive and comprehensive list of legislative powers has been enumerated, the resulting residual power is less significant (Watts, 2006).

The constitutions of some federations such as India, Malaysia and Canada set out comprehensive and exhaustive lists of exclusive federal, exclusive provincial, and concurrent legislative powers. As a result of the enumeration of such exhaustive lists of powers, residual powers in these federations are less significant. In contrast, other federations such as the US, Australia and Germany do not enumerate state powers exhaustively and instead cover these powers under unspecified residual powers (Watts, 2006). In this manner, states are assigned more significant residual powers than the federal government. However, in these federations, practice by courts has tended to centralise residual “implied” powers to the federal government – contrary to the intended purpose to let these powers reside with the state governments.

In addition, the constitutions (Cameron & Falleti, 2005:248) of some federations provide federal governments with specific override or emergency powers to prevail over provincial constitutional powers under certain conditions (Rodden, 2004:486; Watts, 2006; Rose-Ackerman, Desierto & Volosin, 2011:248). Watts (2006) describes this tendency as a “quasi-

unitary” situation and argues that it is a mechanism employed by governments to counter the prospects of potential balkanisation or disintegration.

2.11 FEDERALISM AND SUBNATIONAL SEPARATION OF POWERS

Cameron and Falleti (2005) define a federation as a constitutional arrangement that creates executive, legislative and judicial branches of government in its constituent units (Cameron & Falleti, 2005:248; Watts, 1996; Rodden & Wibbles, 2002; Inman & Rubinfeld, 1997:42). The key features of a constitutional government are the separation of powers, and the capacity to legislate and adjudicate (see paragraphs 1.2.1 in chapter 1 and 5.4.3 in chapter 5). A SNG must have its own constitutional institutions for it to represent its citizens. The constitutional institutions are the executive, legislature and judiciary. The legislature makes the laws that affect the subnational territory, and the judiciary enforces the laws enacted by the subnational legislature. The existence of legislative bodies and a system of courts guarantees the constitutional autonomy of subnational units (Erk, 2006:111; Brown, 2009:1; Hechter, 1999; Treisman, 2007; Firman, 2003:247-248; Gonzalez, 2008:213; Cameron & Falleti, 2005; Dickovick, 2005).

Cameron and Falleti (2005:248) define a constitution as a set of conventions and laws that establish the arrangement of public powers, functions and institutions, including the executive, legislature and judiciary. The constitution is a set of laws that confer legal power to legislate or judge. Federalism is a constitutional principle in which the constitution specifies the existence of usually two levels of governments: national and subnational (Cameron & Falleti, 2005:248; Watts, 1996). A SNG requires its own executive, legislature and judiciary in order to have autonomy to make rules, apply them, and govern itself under the rule of law. Federalism has three dimensions: the primary attribute of federalism is the vertical division of executive power, thereby creating subnational executives (Ackerman, Desierto & Volosin, 2011:247; Cameron & Falleti, 2005:248; Pokol, 2003:67-68).

Executive federalism refers to a political system where only executive power is divided between the federal government and the SNG. Legislative federalism is created by a horizontal separation of subnational legislative powers, a secondary attribute of federalism. Nearly all federal systems have both subnational legislatures and executives because the laws enacted by the subnational legislature must be implemented by the subnational executive.

The third attribute of federalism is judicial federalism, which refers to the creation of subnational courts.

A different conceptualisation of federalism is presented by Vile (1961) who posits that federalism consists of the following principles: a political system that is divided into three branches of government, namely, executive, legislature and judiciary; each branch must exercise its powers within the confines of its function and not encroach upon the functions of other branches; and, the persons charged with the responsibility of composing the three branches of government must be independent and not allowed to be a member of more than one branch (Cameron & Falletti, 2005:248).

2.12 CONCLUSION

Federalism is a political system that combines the principles of multi-tiered governance and both shared and self-rule. Further, federalism is a political structure, which combines unity and diversity, and accommodates distinct identities within a larger political union (Watts, 2006; Erk, 2006:110). In essence, federalism seeks to achieve goals of both regional and common national interest by promoting autonomy in the former and unity in the latter.

The study of federalism can be explained in terms of three key dimensions, namely, democracy, capacity to represent and accommodate territorial interests, public policy and service delivery, and the design of federalism (Erk, 2006:110). The constituent units of many countries display variations in many aspects, including size, population, weight in federal institutions, share of natural and financial resources, and culture.

The economic outcomes of federations vary dramatically across countries. This variation is due to the different degrees of SNG autonomy, which can be either market-preserving or market-distorting. The effect of federalism on macroeconomic management depends on a variety of fiscal and political factors (Rodden & Wibbles, 2002; Erk, 2006:111). The three models of federalism are economic, cooperative and democratic federalism.

The advantages of federalism include the efficient allocation of national resources; the promotion of political participation and a sense of the democratic community; and the protection of basic liberties and freedoms. The resultant model of federalism adopted by a

country depends on the structure and composition of the institutions of federalism in terms of the number of SNGs, their representation in the central government, and the assignment of powers and functions among the vertical spheres of government (Inman & Rubinfeld, 1997:44; Bagchi, 2000:3026).

These profound inequalities in the territorial, economic and demographic conditions of constituent units translate into asymmetry in their relations with each other and with the federal system as a whole (McGarry, 2007:105). Constitutional reform within many countries is characterised by the migration of authority and resources from central governments to SNGs (Rodden, 2004:481). This process of subsidiarity, local autonomy, and transfer of authority to SNGs is what constitutes decentralisation (Inanga & Osei-Wusu, 2004:72). Decentralisation and federalism are complementary and interchangeable.

An emerging view of decentralisation is that of an organic, intertwined transfer of political, fiscal, and policy autonomy from central governments to SNGs (Cameron & Falleti, 2005:246). The design of federations with respect to the distribution of powers between the central government and SNGs is influenced by strong motives for either the unity or autonomy of constituent units.

The defining characteristics of federations include the balance between unity and diversity, on the one hand, and the distribution of powers and functions in the three branches of government, on the other (Erk, 2006). The form and degree of distribution of legislative powers between the central government and SNGs in federations varies from country to country.

The distribution of legislative powers is done in three basic forms, namely, exclusive, concurrent, and residual. The theories and motives for the degree of distribution of legislative powers to both central governments and SNGs also vary. The defining features of a constitutional government are the separation of powers, and the capacity to legislate and adjudicate. Federalism requires a SNG to have its own constitutional institutions for it to represent its citizens. These constitutional institutions are the executive, the legislature, and the judiciary (Cameron & Falleti, 2005:248).

This chapter provides a theoretical background and analysis of federalism, which is interchangeable and complementary with decentralisation. This background is critical for both the understanding and analysis of the theory and practice of governance, which is also based on the transfer of political and economic power, therefore, decision-making power, to SNGs and other key stakeholders.

These key government and non-governmental stakeholders, such as NGOs and the private sector, constitute the network with which the state should interact to enhance good governance. Furthermore, the values and principles of federalism and decentralisation, such as democracy, public participation and the rule of law, constitute key indicators of good governance. Hence, the clear analysis and theoretical background provided in this chapter is critical for an enhanced discussion and analysis of the theories of governance, as discussed in the next chapter.

CHAPTER 3: THEORIES OF GOVERNANCE

“A Bill of Rights is what the people are entitled to against every government, and what no just government should refuse, or rest on inference” – Thomas Jefferson

3.1 INTRODUCTION

Good governance in this study is used as a basis or framework for assessing the performance of the state in upholding its constitutional values and international norms and standards of good governance. In other words, the good governance framework and the set of values and principles of good governance, as stipulated in section 195 of the South African Constitution, are used as an assessment tool to evaluate the performance of provinces between 1996 and 2012.

South Africa was established as a constitutional democracy in 1994 following a negotiated settlement period between 1990 and 1996, and the general elections of 1994. The negotiated settlement committed South Africa to becoming a ‘constitutional state’, that is, one in which laws passed by parliament or actions taken by a government might be judged by a Constitutional Court as not conforming to the Constitution and hence would be subject to rejection as unconstitutional.

The new dispensation in South Africa followed many years of apartheid, a legislated form of white minority racial oppression (Southall, 2014:48). The transition period from apartheid to democracy and the general elections of 1994, based on the 1993 Interim Constitution, was characterised by the formation of a constitutional democracy that embodied fundamental constitutional values and provisions. These values included the Constitutional Court as the highest court in the country; a Bill of Rights to protect basic human rights; a commitment to redress the past imbalances and injustices; and a separation of powers between the three branches of the state. The first democratically elected parliament of this constitutional democracy resulting from the 1994 general elections was required to revisit and revise the Interim Constitution for approval by the new Constitutional Court in accordance with the previously negotiated constitutional values (Southall, 2014:49).

Particular attention is given in this study to governance in the executive arm of the state, namely, the government and in particular the provincial government in South Africa, notwithstanding the checks and balances provided by the separation of powers between the three branches of the state. South Africa is constituted as three spheres, namely, the national, provincial, and local spheres of government. The local sphere of government is called the municipal level. Klug (2015:154) correlates democracy with accountability in the South African post-apartheid democratic dispensation and posits that the responsibility for democratic accountability in South Africa is partly held by the parliament and a range of independent institutions that emerged from the history of the country's democratic transition. Furthermore, the courts, and in particular the Constitutional Court, are responsible for the allocation of constitutional authority and resolving conflicts brought before them by different institutions promoting legal accountability for government failures and individual malfeasance.

For democracy and accountability to co-exist, it is necessary to institutionalise a system of checks and balances. This system must be strong and effective to promote and facilitate good governance. Yet, this system should be flexible enough to accommodate a variety of contexts and situations, and still maintain good governance. Such a system provides a constitutional system of governance in which there are multiple sites of power and authority that all sectors of the society may trust to resolve their conflicts (Klug, 2015:155). The separation of powers entrenched in the Constitution is aimed at preventing the concentration of power in one branch of the state and to ensure accountability, responsiveness and openness in the practice of governance.

Good governance values give credence to the notion of constitutional democracy on which the Constitution of South Africa is founded. The notion of constitutional democracy is adopted as a central tenant of governments and states in many countries across the world. Democracy as a form of government is the most accepted model of political order in liberal Western and non-Western societies, and is typical of modern, advanced nations (Vigoda-Gadot, Shoham & Vashdi, 2010:290). The prevalence of democracy as a preferred model of government globally is illustrated by many European countries that embraced some form of democratic government since the end of World War II (WWII) and especially following the disintegration of the former Soviet Union. In pursuit of democratic order, many European

democracies have also tried to be more responsive to citizens' needs and demands, to listen to and communicate with social organisations, and to transform their policies to meet at least some of the aspirations of the various segments of society (Vigoda-Gadot, Shoham & Vashdi, 2010:291).

Therefore, the South African Constitution embodies and reflects these values and forms the basis of all legislation in the country as the supreme law of the country. Thus, good governance is the cornerstone of a democratic dispensation that ensures alignment with and enforcement of the values and principles enshrined in the Constitution. The values of democracy and the principles of good governance are enshrined in the Constitution of 1996; for example, section 1 of the Constitution states that the Republic of South Africa is a sovereign, democratic state founded on human dignity, non-racialism and non-sexism, supremacy of the Constitution and the rule of law, universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness (RSA, 1996:3).

Furthermore, section 215 of the Constitution on national, provincial and municipal budgets states that all the budgets of the three spheres of government, as well as budgetary processes must promote transparency, accountability and the effective financial management of the economy, debt, and the public sector (RSA, 1996:75). These provisions in the Constitution illustrate the country's commitment to democracy and good governance. This chapter provides a detailed discussion of governance and its key features, which serve as the guidelines and yardstick of government performance in upholding and advancing the international values and principles of good governance and constitutional democracy as enshrined in the Constitution. Chapter three presents a detailed discussion on the theories and models of governance found in both developing and developed countries throughout the world. The main driver of the governance agenda is the World Bank (WB) and other international organisations' demands for improved effectiveness and efficiency in public institutions as a precondition for funding.

Good governance was first introduced in low- and middle-income countries (LMICs) as a set of normative principles to strengthen the capacity of their public bodies and as a prerequisite for donor funding (Houngbo *et al.*, 2017:1). Thus, good governance is expected to bring about political, social and economic stability and development in a country. This chapter

presents a detailed overview of the broad spectrum of configurations of governance and provides examples of governance practices in different countries and contexts. It also provides a detailed account of the transformation of the governance model, that is, a shift from governance to good governance since its emergence in the 1990s (see page 351, paragraph 6.1 in chapter 6) (Ayhan & Ustuner, 2015:4; Rothstein, 2012:146; In'airat, 2014:63).

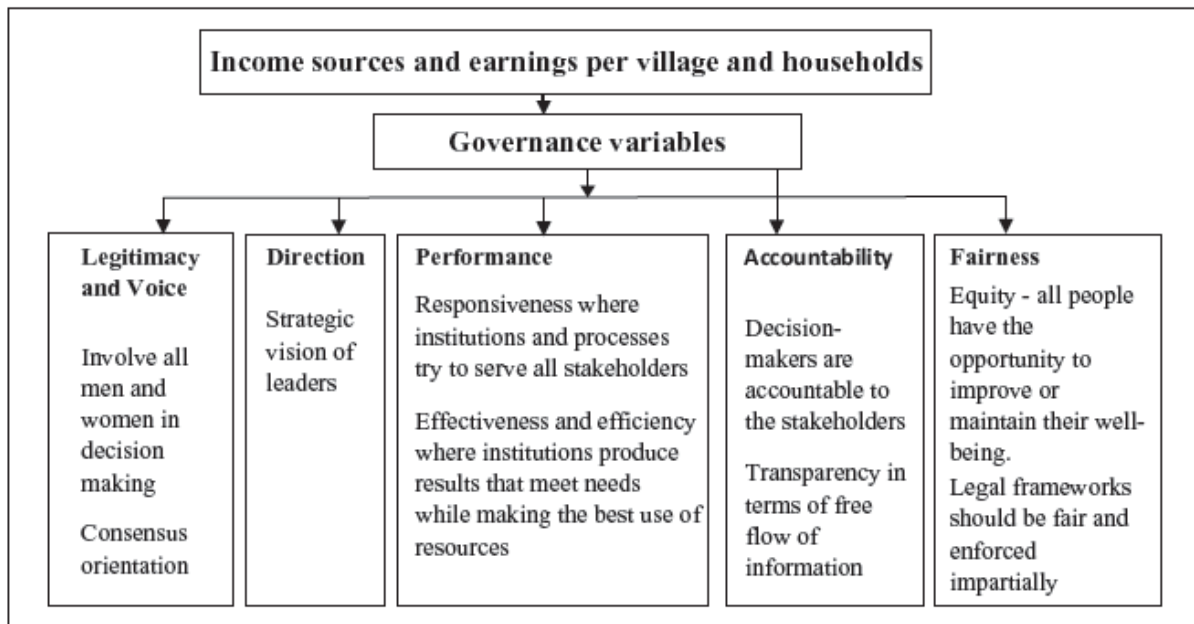
3.2 GOVERNANCE DEFINED

Governance is defined in many different ways, but the common characteristic in all definitions is the institutions in which authority is vested to exercise control and direction over their constituencies – be they private or public (Levi-Faur, 2012:49). Thus, governance refers to the action or manner of directing, guiding or regulating individuals, organisations, nations, or multinational associations, either public, private or both, in how they conduct their business (*ibid.*).

Governance refers to the form of the political system and the manner in which legitimate power is exercised in the management of the country's economic and social resources for development (Singh, 2013:191; Mwakaje *et al.*, 2013:51; Baird, 2012:266; Tabi & Verdon, 2013:216). Hegre and Nygard (2014:984) provide the most succinct and direct definition of good governance as the extent to which policy making and implementation benefit the population at large. Michalski, Miller and Stevens (2001 in Levi-Faur, 2012:4) define governance as the exercise of authority by institutions, both private and public, to maintain control and enforce accountability. Governance is commonly viewed as a synonym for government; that is, providing direction to society by the state. In non-profit literature, governance has primarily been associated with the operation of a board of directors, while in the public policy and management literature it has been equated with government (Stone & Ostrower, 2007:416).

There are five principles of good governance, namely, legitimacy and voice, direction, performance, accountability, and fairness (see Figure 3.1 and Table 3.1 below):

Figure 3.1: Conceptual framework: Governance of income and expenditure conservation



Source: Mwakaje *et al.*, 2013:52

Legitimacy and voice is a principle that requires governance structures to be participatory and to seek the consensus of all the stakeholders. The groups from whom the government must seek legitimacy have diversified greatly in countries that have experienced rapid development, such as South Africa. As a result, the legitimacy of governments and their policy-making mechanisms, such as committee-based policy-making models in South Korea, depends on their ability to incorporate these diverse voices in policy-making processes (Kim & Campbell, 2015:551; Sinclair & Bolt, 2013:760). In the EU context, these diverse voices include NGOs and organised civil society (OCS) groups that operate within dense coalition structures and networks that include national and local-level social movements, academics, experts, think tanks, and the EU and national political elites.

These organisations collaborate and exchange information to improve the quality of democratic practice and to influence policy-making (Cullen, 2015:205). Democratic protests usually indicate challenges in government's ability to deal with issues such as socio-economic inequality, environmental degradation, endemic corruption, or problems of accountability and abuse of power. These protests challenge the political legitimacy of the government and signal serious governance challenges at the lowest levels of the formal political system, that is, local government (Lagerkvist, 2015:137). For example, frequent

strong popular unrests in Vietnam are a result of the failure of law makers to incorporate public views and inputs in laws. Thus, effective and active public consultation is likely to improve the quality of laws and regulations (Hanh, 2016:1).

Direction requires leaders to have a strategic vision with a long-term perspective on good governance and human development; good governance should therefore be responsive to the present and future needs of society. The performance and strength of governance mechanisms is measured by their effectiveness and efficiency whereby responsiveness refers to the institutions and processes that serve all stakeholders. Effectiveness and efficiency refer to how or the extent to which processes and institutions produce results that meet needs while making the best use of resources.

The paradigm of New Public Management (NPM) in public administration advocates for the division of roles in a mixed economy whereby the public sector would manage the relevant markets, while the private sector and other stakeholders would provide public services. This approach is expected to create substantial efficiency gains and quality improvements from using competitive mechanisms as a result of externalisation and unbundling in the delivery of public services. Thus, these gains would be for the benefit of the general public (see page 407, paragraph 6.5.3 in chapter 6) (Bovis, 2013:187; Pillay, 2008:374; Cameron, 2010:680; Bovis, 2013:187).

Accountability requires decision-makers in the government, the private sector, and civil society organisations to be accountable to the public and institutional stakeholders. Transparency ensures the accessibility of information about institutions by stakeholders and that enough information is provided to understand and monitor them. In India, the parliament passed the Right to Information Act, 2005 (RTI) to improve accountability, responsibility, efficiency, and transparency in the public administration. Mehra and Mehra (2016:185) argue that RTI serves as a tool for the promotion of public participation, transparency, and effective and responsible public administration. Fairness is measured in terms of equity and rule of law whereby equity refers to equal access to opportunities for all (all groups including minorities and vulnerable groups) to improve or maintain their well-being and to ensure that their voices are listened to by decision-makers. The rule of law ensures that legal frameworks are fair and enforce impartially, particularly concerning human rights. Good governance is expected to

result in a good quality of life for all citizens and a society in which corruption is minimised (Mwakaje *et al.*, 2013:57-58).

A number of the definitions of governance provided above highlight the key values and principles, particularly those of public administration that should be pursued, promoted, and advanced in delivering public goods and services by authorities. A more generic definition of governance refers to governance as a process of decision-making and implementation of decisions made. The main principles of good governance require it to be participatory, consensus-oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive, and to promote the rule of law (UNESCAP, 2009 in Pečarič, 2015:909).

Levi-Faur (2012:49) states that in the 1990s new meanings of governance emerged in scholarly discourses to reflect the emergence of new forms and types (or tools) of ordered rule and collective action that were said to be transforming the governing of advanced and many developing societies. This new meaning of governance depicts its expansion into areas where the government role was reduced (Levi-Faur, 2012:49).

Stone and Ostrower (2007:416) argue that increasing political pressure in the past three decades has led to a reduction in government scope and a shift of responsibilities for public policy implementation to non-governmental entities. There has been a shift in the role of the public regime in the provision of services from a role of command and control to that of enabling and enhancing the potential for self-organisation. Sectors of state responsibility are gradually becoming spaces of mobilisation for a plurality of actors. Bifulco (2011:301) argues that it is now difficult to define what distinguishes the structures of governance, the actors involved, and the problems and interests treated as being of a public nature. In European institutions, the state and the centralised architecture of power have traditionally been accorded a prominent role. The European institutional tradition is, however, different from the American institutional system, which is “centered on the Madisonian model and rooted in the idea that individuals are the basis of political life and conflicts” (Bifulco, 2011:302).

In Europe, the concept of “enabling state” entails two corollaries with respect to governance and the public. First, the general interests of the public are no longer defined by the discretion or legal opinion of the authorities or public decision-makers in a hierarchical fashion. Instead,

there is now an increasing demand to identify new frameworks of public action to allow participation and engagement of a variety of actors such as NGOs, business, labour, etc. Public participation, also called community participation, is a process of involving the public in the decision-making, implementation and evaluation of programmes affecting their lives. Thus, public policies of the nation state should reflect the interests and needs of the citizens they represent and serve. Governments are expected to create enabling structures for public participation in policy-making processes. Allowing and facilitating public participation is universally accepted as a foundation of democracy. Furthermore, public participation affords public officials the opportunity to tap into diverse citizen knowledge that may help solve complex social problems (see p.49, paragraph 5.4.3 in chapter 5) (Hafer & Ran, 2016:206; Lues, 2014:789; Zonke & Matsiliza, 2015:86).

However, Sebola (2016:55) argues that a public participation approach that considers the interests, contributions, and needs of citizens in policy decision-making processes is difficult to achieve in practice. Public participation for improved public administration governance is not crucial only in developing countries, but in developed countries as well. In developed countries like Britain, policy advocates and government officials expanded public administration reforms to increase opportunities for direct public engagement in decision-making in response to concerns about ‘democratic deficit’ in these governments, that is, the declining legitimacy of national democratic institutions. The benefits of greater public engagement include greater policy efficiency and effectiveness, accountability, social capital, and the development of citizens’ skills and “democratic revitalization” (Johnson, 2015:765).

Public agencies are constantly under pressure from public stakeholders to achieve both economic efficiency and democratic legitimacy in the allocation of public resources. The biggest obstacles hindering good governance in public institutions include dogmatic bureaucratic norms and standards such as efficiency, effectiveness, and top-down control. These norms and standards seldom promote democracy ethos, such as inclusiveness and bottom-up decision-making (Neshkova, 2014:64).

Neshkova (2014:64) correlates public agency autonomy with public participation and argues that participation offers an opportunity for agencies to enhance the legitimacy of their decisions; thus, agencies with a higher degree of autonomy tend to be more open to public comment than agencies with more centralised budget processes. The second corollary relates

to the structures of provision, which consist of both private and public organisations as well as the regulative framework that entails the coordination and the criteria for the allocation of resources (Bifulco, 2011:302). The task of improving public sector governance remains an important challenge for developing countries. Public sector governance can be achieved through partnership with the public sector and civil society (Birner & Wittmer, 2006:459).

The delegation of authority to an independent agency that is jointly managed by professionals from the public sector, the private sector, and civil society is an example of an innovative option for public sector reform. This model of delegation and partnership has the potential to reduce corruption and political interference in public enterprises and agencies, but it involves potential problems of so-called 'delegatee drift' and 'legitimacy drift'. Thus, these trade-offs are necessary to cultivate and improve good governance in public institutions. The success of delegation and partnership depends on the level of organisation among the stakeholders, their managerial capacity, and the degree to which they share common interests (Birner & Wittmer, 2006:459). In other words, the feasibility of this partnership model depends on the capacity of the private sector and civil society to form organisations at the national level and to elect professionals as representatives to serve on a board.

This new meaning of governance reflects the expanding role of civil society in directing and regulating the uses of public resources and increasing reliance on deliberative, as opposed to representative, forms of democracy (Levi-Faur, 2012:49). Government and non-profit organisations have become more interdependent as a result of increasing devolution and privatisation (Stone & Ostrower, 2007:416). Two divergent views emerge in the new definition of governance; one views government and the private sector as integral though not dominant participants in new governance with an emphasis on adaptation. The other views the society as the custodian of governance whereby societal direction is provided primarily by non-governmental actors with an emphasis on transformation (Levi-Faur, 2012:50).

A conceptual framework on modes of governance that is based on relations between the state, the market, and civil society has been developed particularly with respect to the regeneration of villages in the city (ViCs) in China and consists of seven modes of governance. These modes are centralised governance, decentralised governance, public-private governance, interactive governance, self-governance, public-collective-private governance, and collective-private governance. The role of the state is in self-governance, and collective-private

governance is limited to the regulator or it may be absent from bottom-up initiatives that are informal or illegal in nature. These modes of governance are distinguished according to three different dimensions: stakeholder features, institutional features, and features concerning policy content (Lin, Hao & Geertman, 2015:1777).

3.2.1 Beyond New Public Governance

Different priorities that emanate from various levels of government create competing values for government officials at all levels of government, thus creating frustrations for these officials. For example, central government directives prioritise effectively meeting certain policy goals, while provincial governments prioritise efficiency in the work of their officials due to their limited resources. On the other hand, citizens put pressure on local authorities (political and administrative leaders) to mitigate the impact of work done on their lives (Bao, *et al.*, 2012:444).

The challenge facing government officials at different levels of government is how to balance the competing political values of efficiency, effectiveness, and responsiveness. It is therefore necessary to develop a framework that will enable government officials to triage the competing political values, while honouring the structures of authority and regime values within which they operate. Key aspects of good managerial practices in public administration include responsiveness, innovation, professionalism, organisational politics, leadership and vision, and ethics and morality (Vigoda-Gadot, Shoham & Vashdi, 2010:290). In the same vein, five core values of good urban governance stand out, namely, responsiveness, effectiveness, procedural justice, resilience, and counterbalance. Good governance frameworks or codes usually consist of a universally acceptable set of public values (Hendriks, 2014:553).

However, Graaf and Paanakker (2014:1) argue that these values cannot be achieved all at the same time; that is, good governance frameworks are inherently characterised by a conflict of values. Two common conflicts occur, namely, lawfulness and transparency in procedure on the one hand, and the attainment of effectiveness and efficiency as performance values on the other (Graaf & Paanakker, 2014:1).

Four clusters of values that are relevant to the assessment of good governance, which serve as good governance indicators, are lawfulness, integrity, democracy, and effectiveness/efficiency. In addition to the above, a plethora of good governance indicators have been developed by different agencies, the more visible and well-known being: Transparency International's Corruption Perceptions Index (CPI), Freedom House's 'Freedom in the World', the World Bank's Country Policy and Institutions Assessments (CPIAs), the International Country Risk Guide (ICRG), and the World Bank Institute's World Governance Indicators (WGI) (formerly known as 'KKZ' indicators) (Buduru & Pal, 2010:512).

Good governance values usually clash, and good governance criteria are contradictory, to some extent. Graaf and Paanakker (2014:1) highlight the conflicting values of good governance by giving two examples of the performance values of efficiency and effectiveness, which are related to output and outcome, on the one hand, and procedural values that indicate the quality of the process, thus, the integrity of administrative action, on the other hand. Good governance frameworks do not merely focus on the results, namely, performance outputs and outcomes, as this increases the risk of neglecting other dimensions, such as the integrity of administrative action. According to Graaf and Paanakker (2014:1), "Citizens hold public actors accountable for procedure as well as performance". In other words, politicians and public officials should be held accountable for the way they do things, as well as the results they achieve; therefore, for the ends as well as the means.

Many good governance frameworks consist of procedural values, such as integrity, transparency, equality, lawfulness, and honesty. Bao *et al.* (2012: 444) propose a value-based framework consisting of leadership, governance, and performance management as its key elements aimed at addressing the challenges and criticism of NPM). The main idea of NPM is that public sector organisations need to be more businesslike in their attitudes and operations; that is, they should adopt an enterprise culture based on efficiency and economy. The public sector reforms that embraced NPM were characterised by the adoption of instruments originally developed for the business sector, for example, budgeting techniques, market analysis, and performance management (Inauen *et al.*, 2010:631). Oomkens, Hoogenboom and Knijn (2015:852) state that "NPM is a broad set of management approaches and techniques, borrowed from the private sector, that are applied in the public sector". Most definitions of NPM emphasise the following four key features (Laffin, 2015:3):

- Agencification and specialisation
- Business culture of competition and high performance
- Performance measurement using explicit performance standards and output/outcome indicators rather than process controls
- Stronger central steering functions to facilitate effective policy-making

Public-sector networks became recognised as alternative decision-making and service-delivery models in the 1990s when bureaucracies and markets failed. A network in the context of governance refers to the formal and informal interactions that take place between public and private actors where both are interdependent on one another to achieve their policy goals (Daugbjerg & Fawcett, 2015:3). NPM is a theory and practice demanding less government involvement in public service delivery and it prescribes a market-based approach for achieving government efficiency. It emerged as the principal way for providing services in response to the devolution of the Reagan years (Grabiele, 2013:394).

This framework also provides public officials with a tool to address more purposefully, systematically, and reflectively the competing political values. This framework is aimed at improving government performance, and advancing the development of a shared research and leadership development agenda that is useful across a wide variety of political systems (Bao *et al.*, 2012: 444).

NPM was introduced in the 1980s and is described as decentralising large (public) bureaucracies into smaller agencies that compete with other public or private agencies. The principle or hypothesis of NPM is that market-oriented forms and private sector styles of management in the public sector will lead to greater cost-efficiency for governments and better quality service delivery. In Lithuania, the government undertook a series of steps aimed at reforming public administration over the past decade. These initiatives were inspired by the New Public Governance (NPG) ideology and EU subsidiarity principle, and sought to increase citizen participation in local policy. However, these initiatives were met with resistance by local communities. This resistance was based on public perceptions of the government's failure to respond to the needs of the citizens (Bileisis, Guogis & Silinskyté, 2014:22).

Public Management has recently received increased attention from public utilities through such mechanisms as governance performance indicators. For example, the French central government seeks to improve governance in its public utilities through performance measurement and management tools (Tabi & Verdon, 2014:213). Complex public administration issues, such as welfare policy and service innovation, have led to the emergence of new collaborative governance practices in the public sector that involve stakeholders across public, private, and non-profit organisations. This emerging collaborative governance approach is part of NPG, which is contrasted to, but works alongside other discourses such as NPM. NPG as a governance paradigm is a newer version of NPM and places more emphasis on partnership, networking, and lateral modes of organising than the vertical “command and control” forms typical of the NPM paradigm (Plotnikof, 2016:109).

However, Tabi and Verdon (2014:213) argue that these tools alone are not sufficient to address the governance challenges facing the public utilities. The efficiency of public service delivery and policy implementation hinges on the social and political context within which public administration is located. The Bretton Woods Institutions, like the International Monetary Fund (IMF) and the WB, strongly encourage modernisation and NPM as mechanisms to influence policy initiatives to improve good governance across the globe. Examples of such mechanisms include privatisation and the restructuring of state-owned enterprises. However, the success of these initiatives depends upon a fortuitous constellation of actors and events. A non-corrupt public administration is essential for improved good governance in state-owned enterprises. In Africa, the implementation of neoliberal structural adjustment policies did not enable nor prevent numerous economic crises (Massey, 2010:194).

In support of the argument about failure of the international financial community in the 1990s, Best (2014:275) posits that these institutions were influenced by the US and British governments, with support from NGOs, academics and others to move away from structural adjustment, then, to provisional programmes today. Structural adjustment programmes (SAPs) were the narrow, high-conditionality, and ultimately failed lending prescriptions of the 1980s prescribed by these institutions. These programmes were based on downsizing government and promoting market solutions to development challenges, and eventually proved to be a complete failure. Their failure is partly due to the fact that they were not explicitly intended to diminish poverty, but were instead aimed at promoting growth. The

assumption was that with growth, poverty would automatically decline. Instead, growth and the socio-economic challenges that accompany it made it difficult for many governments to meet the conditions to which they had agreed. Some of the outcomes of these rigid, undifferentiated lending programmes included disease, wars, and economic meltdowns in Africa, Latin America, and Asia (Best, 2014:275).

This failure is attributed to ‘bad’ governance practices, namely, the existence of corruption, nepotism, and self-serving officials in the public sector. The root cause of weak economic performance in most developing countries is the failure of public institutions. Private sector initiative and market mechanisms must be coupled with good governance; thus, a public service that is efficient, a judicial system that is reliable, and an administration that is accountable to its public (Waheduzzaman & Mphande, 2014:3). The failure of weak public institutions in developing countries as a major cause of poor governance and corruption is reiterated by Yagboyaju (2016:70). He (*ibid.*) argues that corruption is a universal phenomenon that is found not only in developing countries, but even in advanced economies such as the US, the UK, Canada, Japan, and Australia. However, the low prevalence of corruption in these economies as compared to developing countries is due to the existence of strong law enforcement agencies and institutions that promote good governance and discourage corruption (Yagboyaju, 2016:70).

Funaki and Glencorse (2014:841) argue that the definition of corruption can take different forms, including “deviation from a norm that affects development”. The WB and the US Agency for International Development (USAID) define corruption as abuse of public power for private gain. The Liberian Anti-Corruption Commission Act describes corruption as the unlawful use of public resources in an official capacity to pursue self-interest and personal gain, and in the process deprive the state and others of similar benefits (Funaki & Glencorse, 2014:841).

Many governments, international governmental organisations, and non-profit organisations have invested enormous amounts of resources and efforts to fight corruption, yet the results are very disappointing. The lack of success of anti-corruption interventions and programmes is due to the folk remedies or one-size-fits-all approaches used by these organisations, which are not effective in fighting or deterring corruption (Tantardini & Garcia-Zamor, 2015:599). Thus, being an abuse of entrusted power, corruption cannot be legitimate. However, “elite

corruption may have a significant role in ending conflicts and shaping post-conflict development” (Biddulph, 2014:872).

In post-conflict environments such as Cambodia, elite corruption is seen as a necessary evil; thus, Machiavellian realism that is part of a strategy to consolidate rule, foster development, and facilitate order and stability, especially in a context where other political actors may not be relied upon to act virtuously. In such situations, corruption plays a role of ‘buying the peace’ in that parties to the conflict may have become accustomed to financial gains from the conflict and thus, through elite corruption, legitimately provide financial incentives to encourage parties to forego those financial gains and subscribe to peace. Post-conflict situations create fertile ground for the intensification and entrenchment of corruption, including legitimisation of corruption. Corruption risks undermining state legitimacy, exacerbating inequality, generating mistrust between different social groups, and making development less sustainable. Despite introducing and integrating anti-corruption measures in post-conflict countries, war-time structures and practices of corruption often prevail. Thus, deliberately ignoring corruption is sometimes done to sustain a fragile peace truce. Thus, the trade-off of allowing corruption and sustaining peace is sometimes necessary to achieve reconstruction through foreign aid in post-conflict situations (Lindberg & Orjuela, 2014:724).

A case of legitimised elite corruption is also witnessed in the post conflict Bosnia-Herzegovina and Kosovo where international state builders, the WB and the OECD, played a major role in a ‘decade of reconstruction’ following the wars in the Balkans (1991–1999). However, this period and intervention was rife with criminal and informal activities when these international organisations began to take a hardline approach to promote good governance and anti-corruption. Since international interventions, both countries have adopted legal frameworks modelled on the best practices of Western democracies. Yet, corruption remains rampant in both countries due to the heavy involvement of international organisations and their strategies of promoting elite corruption to transition from socialism and war. The collusive actions between politicians and criminals during the transition process played a role in establishing formally liberal but substantively “hybrid” institutions (Belloni & Strazzari, 2014:856).

The spread of corruption in these countries was legitimised by the international organisations because, while advocating for good governance framework and structures among both

parties, they ignored extra-legal structures and practices essential for political stability. Access to power and resources is often the root cause of conflict. Ethnic and religious identities may be mobilised to pursue access to power and resources. In this respect, identity politics can be a politics of domination or resistance. A politics of domination involves “the construction of a state that represents and imposes a certain national identity through language policies, cultural and religious symbolism or unequal access to political influence, employment and development resources” (Orjuela, 2014:755). On the other hand, a politics of resistance occurs when marginalised groups mobilise a struggle for rights and power on the basis of a shared identity. Thus, a state promoting ethnic nationalism might be resisted by popular revolt and ethnic nationalism from the marginalised ethnic group and result in polarisation between identity groups (Orjuela, 2014:755).

3.2.2 Governance and government

Boyer (1990 in Bevir, 2011:50) defines governance as government action and its interaction with its non-governmental partners in the process of governing, particularly in areas of economy and public policy. Mwakaje *et al.* (2013:52) define governance as a society-led process of decision-making on public matters, and deciding on key stakeholders in the process and how to hold them accountable. Governments are working more and more with civil society in collaborative action to achieve these goals and address societal policy problems. The formation of collaborative networks involving politicians, public managers, and planners contribute to enhanced and effective governance, and sustainable planning (Torfing, Sørensen & Fotel, 2009:283).

The concept of sustainable development and collaborative networks is emphasised by Liargovas and Apostolopoulos (2014:603), who argue that targets for sustainable development in Europe’s Regions 20 should be set jointly by regional and national authorities and not national authorities alone, as is currently the case. The Europe 2020 strategy seeks to transition Europe to a smart, sustainable, inclusive and growing economy through a strong governance framework (Chirleşan, 2015:143). Targets concerning the environment, energy, and entrepreneurship should receive the highest priority in this proposed approach of setting targets, particularly because the environment and energy are the resources that create sustainable economic activity (Liargovas & Apostolopoulos, 2014:603). Good governance

focuses on sustainable and equitable economic development through political stability, transparency, and accountability of the state (Sayeed & Pillay, 2013:85).

This shift in governance structure prevails across the US where the state and local governments are increasingly utilising collaborative, inter-organisational approaches to the delivery of public services. Public managers are now expected to lead both the agency in which they are employed and resulting networks. Furthermore, governance is based on networks as it emphasises the horizontal relationships between governmental organisations and other organisations, that is, business and civil society actors, thus forming governance networks (Silvia, 2011:66).

In Europe, new forms of sub-regional governance have emerged, and a different approach to multiscalar governance linked to economic space is embedding the principles of subsidiarity/territorial cohesion within member states (Pemberton & Morphet, 2014:2354). However, Klijn (2008 in Bevir, 2011:51) argues that governance is not a network in the sense of a traditional bureaucratic government, neither is it NPM, nor “good government”. Governance is a process that operates within the range of government influence. In Europe, the growing interest in engagement between citizens, civil society organisations and business with government in the formulation and delivery of public policy is on the increase. Democratic innovations that promote public participation such as citizens’ juries, deliberative forums, multi-sector partnerships, and co-production have emerged. Direct public participation strengthens the role of the citizen as the principal in relation to political decision-makers and public bureaucrats. These democratic innovations of direct public participation serve as mechanisms that involve citizens in government and confer authority on their inputs to the policy process (Bever, 2011:51).

On the other hand, indicators of a strong democracy include trust in governance, satisfaction with state services, and the overall image of the bureaucratic and democratic system (Vigoda-Gadot, Shoham & Vashdi, 2010:290). In a theoretical review of the potential link between democracy and bureaucracy, Vigoda-Gadot, Shoham and Vashdi (*ibid.*) posit that bureaucracy is based on a conventional hierarchical model where substantial authority, thus, leadership, management and decision-making power, is vested in high-ranking public officials. Democracy, on the other hand, is based on an inverted hierarchical model where such power is vested in the people who then decide who to delegate. These two socio-

political mechanisms are interrelated in that democracies could not respond to the needs of their citizens in the absence of bureaucratic mechanisms. Governance without government is emerging as a dominant form of management in many industrialised democracies (Bevir, 2011:51). This new reconceptualisation of governance places greater emphasis on the boundary between state and civil society. Bevir (2011:51) defines governance as a model of governing that co-exists with government and yet maintains autonomy from the state.

According to Onuoha (2015:71), the concept of autonomy is represented strongly in the Niger Delta region on the west coast of Nigeria along the estuary of the Niger and Benue Rivers converging into the Atlantic Ocean. Niger Delta is a natural oil basin of Nigeria supplying 15% of the oil needs of the US, with this figure expected to increase to 25% within a decade; it is also a major oil supplier to Western Europe. Major ethnic groups in this region are the Ijaw and the Ogoni, yet they constitute the minority in the rest of Nigeria. The quest for autonomy and regional status of the Niger Delta emanates from claims of marginalisation of the local ethnic groups (Igbo) by other majority ethnic groups from other regions, particularly in relation to the lower likelihood of attaining positions of authority and power in Nigerian politics on the basis of their meagre population size compared to other ethnic groups. This quest for autonomy dates back to the build-up period to the country's independence in 1960 and was driven by the minority ethnic groups' desire for freedom and independence (Onuoha, 2015:71).

Smith (2014:787) posits that the revival of Igbo nationalism and resentment of the federal government is largely fueled by perceptions of marginalisation of the Igbo ethnic minority by the federal government, which is perceived to exploit financial gains from natural resources in the southeast to benefit ethnic groups in the north as punishment for the failed secession attempt by the Niger Delta in the 1960s. The minority ethnic group in the southeast region of the Niger Delta – previously known as Biafra – lives with daily concerns of corruption and the legacy of the failed secession attempt to form an autonomous and independent state of Biafra, which led to a civil war between 1967 and 1970 (Smith, 2014:787; Onuoha, 2015:71).

Civil society is increasingly demanding larger roles in the exercise of public authority, that is, in governance of the state. The primary focus of governance is on the governing mechanisms, which do not rest on recourse to the authority and sanctions of government (Stoker, 1998 in Bevir, 2011:51). “Governance structures must be improved to make them gender equitable,

participatory, transparent, and fully accountable to the communities and all citizens” (Mwakaje *et al.*, 2013:51).

3.3 WAVES OF GOVERNANCE

Governance introduces changes and improvements in the processes and meaning of government. It entails new processes of governing in the state and how it interacts with its citizens (Bevir, 2011:33). From the public administration and public policy perspective, governance refers to the changing boundaries between public, private, and voluntary sectors, and to the changing role of the state. Furthermore, from this perspective, the informal authority of networks of non-state sectors supplements and supplants the formal authority of government. Bevir (2011:33) observes a change in the pattern and exercise of state authority from government to governance; thus, from a hierarchic or bureaucratic state to governance in and by networks.

Enroth (2014:60) observes this shift and posits that governance emphasises and puts democracy and public participation in the centre of state policy and decision-making. The discourse of governance has gained momentum as a result of the widespread perception of the existence of problems with countless areas of public life, which state policy and hierarchical modes of action fail to address (Enroth, 2014:63). In an attempt to find solutions to the problems of governing in the public administration, the concept of governance became equated with policy-making by network. The term ‘network’ dominated in an ideal-typical trichotomy of forms of governing within the modern welfare state: hierarchies, markets, and networks in the 1990s. Conventional forms of governing by state hierarchy gave way to market and quasi-market solutions to deliver public services as a result of the states’ declining ability to govern effectively in the course of the 1970s and 1980s (Enroth, 2014:63).

This decline in the capacity of the state was due to the ever-increasing pressure on key service functions in the modern state, coupled with ever-increasing public spending during the post-war era. There are three waves in governance literature, namely, network governance, metagovernance, and interpretive governance. Governance is constructed differently by many actors working against the background of diverse traditions. Network governance and metagovernance are facing an intellectual crisis; there is a growing need for

alternative ways of conceptualising the institutions, actors, and processes of change in government, and interpretive governance is the new way (Bevir, 2011:33).

3.3.1 THE FIRST WAVE OF GOVERNANCE: NETWORK GOVERNANCE

Network governance (NG) studies are about the institutional legacy of neoliberal reforms of the state. “Network governance is associated with the changing nature of the state following the public-sector reforms of the 1980s” (Bevir, 2011:34). Furthermore, NG refers to coordination characterised by informal or semi-formal coordination, rather than by hierarchical structures and formal contractual relationships. Network governance entails collaboration among state and non-state actors on more or less equal terms (Bogdanova, Tkach & Aasland, 2016:140). The reforms mentioned above are a result of a shift in policy administration from government to network governance. In network governance, political traditions and systems of direct government policy administration are being replaced by a network of agents who either by-pass the state completely or work in partnership with it. Commercially driven interests have taken over the role of government, including the responsibility for allocation of resources and labour, with the result that the central state is “hollowing out” and losing steering capacity (Groutsis, Van den Broek & Harvey, 2015:1562).

The network narrative argues that operative policies should be produced and implemented in horizontal and reciprocal patterns, where hierarchical relations are of limited relevance (Hertting & Vedung, 2012:28). NG or networked forms of governance are organisational arrangements mixing public and private resources, involving interactions rooted in trust, and rules that are negotiated and agreed by network participants which empower, to a certain extent, civil society to participate in public decision-making (Laranja, 2012:657). These reforms resulted in a shift in government from a hierarchic bureaucracy toward a greater use of markets, quasi-markets, and networks, especially in the delivery of public services. In public policy matters, public deliberation around social equity occurs in an evolutionary manner as members of progressive networks engage networks of business and pro-growth interests in a series of skirmishes throughout a region and over time (Lester & Reckhow, 2012:115).

In other words, public deliberation does not take place around one fixed 'table', but rather these exchanges occur at 'real scales', such as city council chambers or state legislatures, and involve traditional forms of political action rather than 'network governance' per se. Sørensen (2007 in Laranja, 2012:656) refers to this shift to multi-actor governance as a trend towards "pluricentric forms of governance". Governance introduces reforms that challenge and discard old centralised forms of public administration based on Weberian notions of bureaucratic structure and authority. Governance embraces and promotes decentralisation and privatisation guided by market-oriented principles of competition and performance. Governance has recently placed more emphasis on public-private partnerships, co-production arrangements, and networked governance structures (Chaskin & Greenberg, 2013:248).

However, for governance networks to be democratically accountable, they should be responsive, predictable, transparent, and are required to have control through open arenas (Holmen, 2010:399). Global changes such as an increase in transnational economic activity and the rise of regional institutions, such as the EU intensified the effects of these reforms. Furthermore, these reforms resulted in a complex and fragmented state of government whereby the state increasingly depends on other organisations to implement its policies and deliver public services. In network governance, state power is dispersed among a vast array of spatially and functionally distinct networks of public, private, and voluntary organisations, which interact with the centre, thus, the state (Chaskin & Greenberg, 2013:249; Phillpots, Grix & Quarmby, 2010:265).

Non-profit and voluntary associations often act as providers through contracting arrangements in which non-profits act as a 'third party government' in the provision of public goods or services or as advocates seeking to influence government to act in ways that support organisational interests or those of their constituencies. As providers, non-profits and voluntary organisations respond to government or market failure to provide goods and services where the government is lacking or as a result of the consumers/public losing confidence in the government and the private sector. As advocates, NGOs often act in opposition to government, putting pressure on state actors or providing input into agenda-setting and policy-framing processes. However, NGOs also participate in a range of government-non-profit collaborative arrangements in which they contribute to policy implementation through contracting relationships but also, in some cases, to policy-making

through consultation arrangements, government-non-profit liaisons, and formal membership on decision-making bodies (Chaskin & Greenberg, 2013:249).

This dispersal of power among many actors has diminished the ability of the state to control policy. However, a study in UK sport by Phillpots, Grix and Quarmby (2010:265) suggest otherwise; they found that grassroots sport policy delivery does not take place via partnerships. Instead, government policy delivery is centrally managed, monitored, and controlled. Bevir (2011:34) refers to this shift from hierarchy to governance by markets and networks as functional differentiation of the modern state or public sector marketisation. Public policy delivery in the UK has witnessed a move from big government to governance by and through networks and partnerships. Network governance shifts from strong, hierarchical government, to inclusive governance by and through networks and partnerships (Phillpots, Grix & Quarmby, 2010:265).

The key actors and stakeholders in network governance include a range of agencies, quangos, task forces, and a host of parastatal bodies who all work collectively in partnership to contribute to policy-making and delivery. Network governance literature treats networks as a mode of governance instead of interest group intermediation. Furthermore, this literature focuses on more effective ways of steering networks and embraces working in partnerships and collaborative management. The literature then turns from describing the growth of networks to the normative implications of that growth and how to find ways of participating in networks that preserve legitimacy and accountability; thus, the search for new forms of democratic governance (Phillpots, Grix & Quarmby, 2010:265).

Network governance has four faces. First, it provides a modernist-empiricist description of public sector change in terms of both increased fragmentation caused by the reforms of the 1980s and the search for better coordination of the 1990s. Second, it explains government change by arguing that hierarchic models of responsible government are no longer accurate. The shift from a hierarchic government to governance through networks is a consequence of functional differentiation and modernisation. Third, it offers policy advice for public managers on how best to steer networks and work collaboratively. Fourth, it offers a democratic governance framework on how governance and networks could increase participation. The first-wave of governance narrative is criticised for being one-dimensional and for its positivist underpinning. Bevir and Rhodes (2006, in Phillpots, Grix & Quarmby,

2010:266) adopted an interpretivist version or decentred approach which emphasises the role of agents and their beliefs, rather than the structures favoured by “governance narrative” scholars (Phillpots, Grix & Quarmby, 2010:266).

3.3.2 THE SECOND WAVE: META-GOVERNANCE

The first wave of governance is criticised for resulting in hollowing out the state in reference to the argument that the shift to network governance could increase public (government) control over the society because governments rethink the mix of policy instruments. In other words, the state often reviews its policies to strengthen its control over the society while its capacity to deliver public services weakens. The state is perceived to be ‘hollowing out’ due to the emergence of new forms of network governance. Damgaard and Torfing (2010:258) argue that the proliferation of new decentred/decentralised forms of governance has not led to a weakening (hollowing out) of the state as many traditional state powers are still in place and new ones are being developed. Damgaard and Torfing (2010:258) refute the view that the state is hollowing out and argue that the exercise of state power has not reduced, but has instead transformed to accommodate new forms of governance.

A plethora of meta-governance tools have been developed by public authorities to adapt state administration to new forms of governance that permit autonomy and decentralisation. Such autonomy promotes empowered participation and self-governance, while ensuring conformity to common objectives and functioning of institutional, political, and discursive mechanisms. These objectives include decentred governance and monitoring of outputs and outcomes. Meta-governance can be exercised by elected politicians, public managers, and other legitimate and resourceful actors (Damgaard & Torfing, 2010:259).

This review of the mix of policy instruments by the state results in the predominance of softer policy instruments over coercive or regulatory instruments. A decentred approach of a change in governance views British politics as a system whereby a state is hollowed out; hence, a state in which central governmental power has eroded and with it, the state’s ability to determine and deliver policy (Phillpots, Grix & Quarmby, 2010:266). Bevir (2011:36) argues that the state has not hollowed but rather reasserted its capacity to govern by regulating the mix of governing structures such as markets and networks and deploying indirect instruments of control. Meta-governance entails the state’s role and capacity to secure coordination in

governance, as well as its use of negotiation, diplomacy, and more informal modes of steering (Bevir, 2011:37).

Meta-governance is a kind of counter-process to governance, where control is an issue. It seeks to create forms of coordination, coherence, and integration in fragmented structures of network governance without completely undermining the autonomy, engagement, and self-regulation in governance networks (Zonneveld & Spaans, 2014:544). Damgaard and Torfing (2010:258) broadly define meta-governance as the “governance of governance”, but as governance networks are often considered to have a capacity for self-regulation, they argue that meta-governance could also be defined as the “governance of self-governance”. Furthermore, meta-governance, thus, steering capacity, is defined as the “regulation of self-regulation”.

The network governance literature argues that decentred and self-organising networks replaced hierarchy, and governance replaced government. Daugbjerg and Fawcett (2015:3) argue that the extent to which these trends of a shift in governance had taken place had been exaggerated. Greater interest has been shown in how networks are steered with the aim of influencing and shaping particular forms of network governance. Meta-governance is a term that has emerged in response to this interest as an overarching concept that describes the role of the state and its characteristic policy instruments in the new world of network governance (Daugbjerg & Fawcett, 2015:4).

Based on these observations, meta-governance is defined as the state’s capacity to steer networks by influencing the context within which they function to ensure that its outcomes correspond with its broader interests, particularly in relation to the legitimacy of its policies (Daugbjerg & Fawcett, 2015:4). There are four different tools which elected politicians can use to meta-govern or coordinate governance networks (Torfing, Sørensen & Fotel, 2010:286):

- Network design: Determines the scope, character, composition, and institutional procedures of networks;
- Network framing: Defines the political goals, fiscal conditions, legal basis, and discursive storyline of networks;

- Network management: Reduces tensions, resolve conflicts, empower particular actors, and lower the transaction costs by providing different kinds of material and immaterial inputs and resources; and
- Network participation: Influences the policy agenda, the range of feasible options, the decision-making premises, and the negotiated outputs and outcomes.

However, the varied ways in which the state now steers organisations, governments, and networks rather than directly providing services through state bureaucracies (rowing) is a big concern for both the views of the first and second waves of governance. Network actors undertake much of the work of governing, that is, they implement policies, provide public services, and at times regulate themselves. This results in a situation where the state governs organisations that govern civil society, a process referred to as “the governance of government and governance” (Bevir, 2011:37). Furthermore, network actors, thus, voluntary or private sector groups and governmental agencies or spheres of government, separate from the core executive, and act autonomously from the state. Despite this autonomy of network actors, the state can steer other actors involved in governance in several ways (Bevir, 2011:37):

- The state can set the rules for other actors and allow them to operate autonomously within these rules. They thus work “in the shadow of hierarchy”. By doing this, the state can redesign markets, regulate policy sectors, or introduce constitutional change.
- The state can influence what other actors think and do by using storytelling; that is, organising dialogues and fostering meanings, beliefs and identities among the relevant actors.
- The state can steer other actors by the way in which it distributes resources such as money and authority. By doing this, it can play a boundary-spanning role; alter the balance between actors in a network; act as a court of appeal when conflict arises; rebalance the mix of governing structures; and step in when network governance fails.

3.3.3. THE THIRD WAVE: INTERPRETING THE CHANGING STATE

The interpretive view of governance explains a shift in governance patterns from focusing on the actors’ own interpretation of beliefs and practices to a different paradigm. These everyday practices arise from agents whose beliefs and actions are informed by traditions and

expressed in stories (Bevir, 2011:39). Furthermore, an interpretative view of governance “explores the diverse ways in which agents are changing the boundaries of state and civil society by constantly remaking practices as their beliefs change in response to dilemmas” (Bevir, 2011:39). Interpretive approaches to governance emphasise contingency; that is, the meaningful character of human actions and practices that are subject to change rather than historical or social logic to define and analyse governance. It is based on the premise that people act on beliefs, ideas, or meanings; thus, their actions can be explained properly only if the relevant meanings are understood (www.britannica.com viewed on 28 August 2017).

Interpretive governance uses a hermeneutic process of communal self-interpretation; hence, interpretive approaches that value views and interpretations of social organisations and the community to promote policy innovation in support of democracy. This process of public participation in policy formulation and making shifts the boundary between the state and civil society. Thus, hermeneutical interpretive approaches play an important role in the maintenance of liberal democracy, strong civil society, and human flourishing (Hodgett, 2006:726).

Interpretive governance reveals that the narratives of agents, thus, beliefs, ideas, or meanings, are contingent and contestable. In contrast to the first and second waves of governance, the interpretative wave of governance focuses on the social construction of patterns of rule through the ability of individuals to create meanings in action. Casey (2015:115) argues that an interpretive, narrative approach can illuminate important holistic differences across cases. A more nuanced understanding of how individuals within a given context interpret administrative centrality in public values authorisation and creation can be achieved by using interpretive techniques, such as participant observation, interviews, or focus group (Casey, 2015:124). This view is emphasised by the argument that social justice must be grounded in democratic action, which is a prerequisite for social justice (Gabriele, 2013:394).

This implies that real and lasting social reforms could only transpire if they were achieved through the democratic processes of public participation and legitimacy (see paragraph 3.2). Furthermore, governance processes should not focus solely on administrative processes, but rather embrace policies and theories of management that more closely tie public administrators to the needs of the citizenry. This approach highlights the importance of beliefs, practices, traditions, and dilemmas for the study of the changing state. This concept

of interpretive governance is evinced in a case of deliberative governance in the Dairy Gateway Project in the US. According to Metze (2011:31), “In this project government, academic researchers, farmers and environmental organisations built cooperative voluntary networks to improve the quality of water, air and soil. They introduced dialogue, learning and stewardship as alternatives to governmental ‘command and control’”.

Network governance²¹ is increasingly becoming a preferred approach to manage complex problems as the informal dynamics of networks offer a greater capacity to support learning and innovative solutions than do hierarchical, top-down approaches (Conrad, 2015:349). Collaboration creates opportunities to develop learning-based mechanisms for solving complex and hard-to-solve problems, and for constructively managing differences. Even though collaborative forms of governance, such as network governance, are proliferating, hierarchical approaches of public management and markets continue to play an important role in controlling and regulating society and the economy, and delivering public and private services (Ansell & Torfing, 2015:315).

Interpretive struggles in the form of boundary work among different stakeholders demonstrate that participants considered dialogue and learning in networks a credible new way to cooperate. Bevir (2011:39) draws distinctions among the three waves of governance by first arguing that the changing state is explained in terms of institutions of the state as the contingent meanings that inform the actions of the individuals involved in governing, thus, in all kinds of practices of rule. The narratives of the first wave of governance explain the changing state in terms of such parameters or issues as the objective characteristics of policy networks and the oligopoly of the political market place. These narratives emphasise power dependence, the relationship between networks and policy outcomes, and the strategies by which the centre (central government or executive branch of government) might steer networks. Narratives of the second wave of governance “focus on the mix of governing structures such as markets and networks and on various instruments of control such as changing the rules of the game, storytelling, and changing the distribution of resources” (Bevir, 2011:40).

²¹ See paragraph 3.3.1 for a detailed discussion on network governance.

In contrast, the third wave of governance, that is, the interpretative approach “focuses on the social construction of patterns of rule through the ability of the individuals to create meanings in action. An interpretative approach highlights the importance of beliefs, practices, traditions, and dilemmas for the study of the changing state” (Bevir, 2011:40). In other words, interpretive governance seeks to make meaning; that is, understand how people interpret governance and how people are being ruled, managed, led and controlled. The people’s interpretation of how they are being ruled is based on their beliefs and traditions. Thus, in a participatory democracy, people’s voices play an important role in the design and implementation of governance practices. The state must play a facilitative role in policy-making to incorporate the dialogues and learning among citizens, particularly what they mean and how they mean it (Ben-Ishai, 2011:537).

Any form of governance, that is, pattern of rule, will have some failings and different people will have different views, thus, interpretations about these failings, since the failings are not simply produced by experience but rather constructed from interpretations of experience infused with traditions. When people’s perceptions of the failings of governance conflict with their existing beliefs, the resulting dilemmas lead them to reconsider their beliefs and traditions. People’s perceptions and the manner in which they confront these dilemmas are informed by a diverse background of traditions; thus, resulting in a political contest over what constitutes the nature of the failings and what should be done about them. This political contest of ideas leads to a reform of governance, which then creates new dilemmas. New dilemmas in turn lead to a further contest over meanings and policy agendas (Bevir, 2011:40).

All these contests take place within the ambit of a set of laws and norms that prescribe how they should be conducted. Sometimes these laws and norms can change as a result of simultaneous contests over their content and relevance. However, the activity of governing continues during these contests and most contests occur partially in local practices of governing. The result is a complex and continuous process of interpretation, conflict, and activity that produces ever-changing patterns of rule. The interpretative view of governance is explained in terms of narratives that relate actions to the beliefs and desires that produce them. Narratives use the conditional connections between people, ideas, and events to explain actions and practices. In order to explain the different and changing patterns of rule, we need to understand the beliefs and practices of the actors in the context of their particular traditions

and in response to specific dilemmas; that is, we have to adopt an actor-centred or bottom-up approach to explaining any pattern of rule (Bevir, 2011:40).

The interpretive theory of governance argues that governance is an intersubjective process constituted by many different actors, meanings, arguments, situated knowledge, ideas, and cultural specificity. Thus, in interpretive governance, policymakers interpret governance through contextualised meaning rather than through primary focus on institutions. “Governance is a practical and interpretive process in which individuals and organisations make sense of the world and respond” (www.elgaronline.com viewed on 28 August 2017).

3.4 GOVERNANCE AS ANALYTIC FRAMEWORK

Governance can be viewed as an organising framework or perspective for understanding the changing process of governing (Bevir, 2011:51). An attempt to describe governance as an analytical framework is depicted by an adaptive view on governance, which consists of three types of social direction. They are government, business, and organisations of civil society, prominently NGOs. Government’s role in this social interaction is to raise revenue through taxes and debt to finance and deliver public goods and services directly to the citizens. Charitable organisations and not-for profit organisations are financed by individual donors and foundations in the form of gifts and grants to provide services to various clients in society. On the other hand, business use loans and investments from individuals and financial institutions to provide goods and services directly to customers. Increasingly, an interconnected web of public, private, and non-profit actors works across organisational, institutional, and sectoral boundaries to deliver public services. Governments undergo transformation whereby actors from a range of sectors are increasingly involved in the process of governing (Wachhaus, 2014:573).

This transformation is characterised by an emphasis on “collaboration among interdependent actors, the growth of horizontal relationships, networking, decentralisation, and indirect provision of government services through contractual relationships with private and nonprofit organisations” (Wachhaus, 2014:573). The changing patterns of government are referred to as the shift from government to governance (see paragraph 3.7.3). This shift involves moving the focus of administrative practice away from government bureaucracy and direct state

provision of services toward a “third party government” (Wachhaus, 2014:573; Hendriks, 2013:554; Khan & Islam, 2014:25).

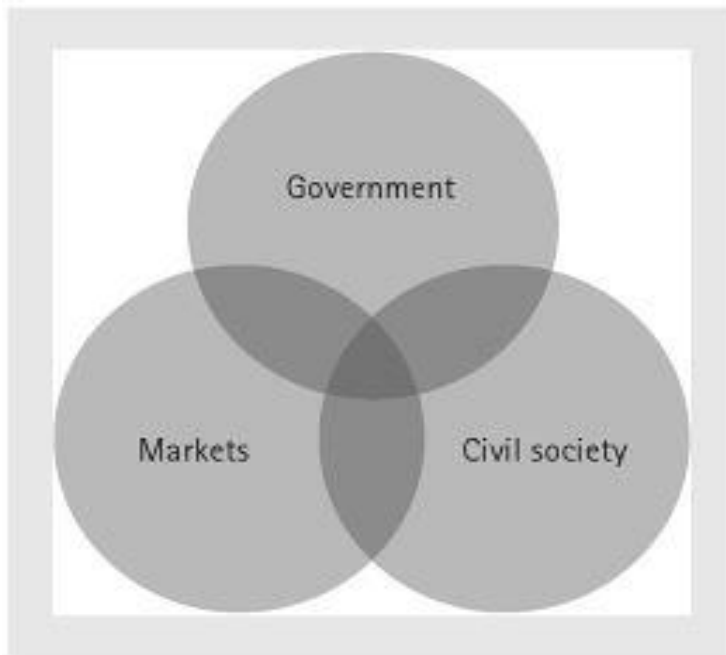
Furthermore, this shift is not restricted to national governments only, but occurs at city and municipal level as well. Plüss (2014:491) observes that there is an emergence of new forms of governing, which affect local policy-making and the very nature of democracy. This shift in governance is toward a more horizontal style of decision-making, characterised by closer cooperation between state and civic actors in policy networks and informal arrangements, as observed in more industrialised countries. Major aspects of this international phenomenon are, first, a spreading of administrative reforms under the heading of NPM (see paragraph 3.2.1); second, increased collaboration between public actors and representatives from the local business world, local associations, or interest groups in informal networks; and, third, the introduction of new forms of citizen participation (Plüss, 2014:491; Gabriele, 2013:394).

Until recently, governance debates focused more on functional arguments, while issues of democratic legitimacy received little attention. A distinction exists between a pessimistic and an optimistic perspective on governance and democracy. On the one hand, the “pessimistic perspective draws on liberal democratic theory and regards governing arrangements rooted in rather informal interactions as a challenge or even a threat to representative institutions and local democracy” (Plüss, 2014:491). Proponents of this view argue that this phenomenon of new governance is missing electoral accountability and entails selective inclusion of private actors as well as decreased transparency of policy decisions; thus, the role and position of elected councils is weakening.

On the other hand, the optimistic perspective focusses on the deliberative side of governance whereby steering mechanisms based on trust, cooperation, and informal interaction are considered a benefit for local democracy because they provide new channels of participation and produce more publicly-oriented outcomes and improved civic skills. “Elected politicians are thereby expected to define the overall political objectives and ensure the democratic functioning of governance through meta-governance” (Plüss, 2014:492). Meta-governance refers to the role of the state in securing coordination in governance and its use of negotiation, diplomacy, and more informal modes of steering (Bevir, 2011:36).

The new institutionalist perspective of governance views councillors, that is, elected officials, as acting on the basis of logic of appropriateness associated with roles, routines, rights, obligations, and standard operating procedures and practices. Plüss (2014:493) defines governance as interactions and collaborations between the public and private sectors to achieve common goals, thus attesting to the observation that the traditional demarcations between state and civil society are becoming blurred. The key features of government are representation and institutionalisation; hence, government exists as a set of activities relegated to a set of actors (representatives) within a defined context (institutions). On the other hand, “governance is fundamentally about power, relationships and accountability, that is who has influence, who decides, and how decision-makers are held accountable” (Wachhaus, 2014:573).

The key features of the administrative practices of governance when compared to those of institutionalised government are hybrid in form and emphasise horizontal, networked associations and a collaborative approach to service provision. Wachhaus (2014:573) argues that direct service provision activities of a “standard bureau model” of government are increasingly taking place outside the walls of government; that is, they are increasingly being performed by a complex web of government agencies, regions, non-profits, partnerships, and collaborative networked arrangements. Governance seeks multilevel coordination rather than authoritative decision-making; hence, it involves the interaction of active stakeholders. Despite moving from government to governance as characterised by networks, decentralisation and privatisation, these concepts still occur in the shadow of hierarchy; thus, the processes of governing are still viewed from a framework of the institutions of government. Hierarchy is still central in governance whereby horizontal relationships add to, rather than supplant, vertical ones (Wachhaus, 2014:575).

Figure 3.2: Types of social direction

Source: Levi-Faur, 2012

The abovementioned three sources of social direction may take place in virtual independence from one another, and are said to co-exist. The co-existence refers to the cooperation or collaboration that may exist between or among these three sectors; for example, government may contract either an NGO or business to deliver services to the public. Different government levels and agencies subject both the NGO and business to various forms of regulation in their interaction with them. These three sectors increasingly form networks or partnerships to serve collective interests. Interactions among the three sectors may take various forms, such as contracts, subsidies, self-organising networks, independent regulatory authorities, new organisational formats, and participatory budgeting (see paragraph 3.7.3). The different sectors may act independently, with each other, or among the three of them (Bevir, 2011:52; Jabeen, Jadoon, Mubashar & Salman, 2016:17).

This interaction among the three sectors in different forms constitutes the analytical framework through which the new governance literature can be understood. It further provides a framework to consider the extent to which the society uses these types and forms of steering, how societies differ from each other in patterns of steering, how societies change over time, and whether the boundaries between the sectors are being redrawn. This framework can also be used to compare the different definitions of governance. Traditional

state-centric governance refers to the directive activity of government in its interaction with the other two sectors, that is, business and the not-for-profit sectors. On the other hand, civil society-centred governance refers to civil society interactions with government (Bevir, 2011:53).

3.5 GOVERNANCE AS STRUCTURE, PROCESS, MECHANISM, AND STRATEGY

Governance can be defined in four different ways: as a structure, process, mechanism, and strategy. In a structure format, governance refers to the architecture of formal and informal institutions. It takes a process form when referring to the dynamics and functions of such processes as policy-making. Governance also takes the form of a mechanism when referring to instruments used in institutional procedures, such as decision-making, compliance, and control. Lastly, governance takes the form of strategy when referring to actions taken by different actors (government, civil society, or private sector) to govern (lead and direct) and manipulate the design of institutions and mechanisms in order to shape choice and preferences. Institutionalism dominates in the social sciences and as a result most literature focuses on governance as a structure. The meaning of structures in social sciences is understood and conceptualised in many ways, including as some systems of rules, regimes of laws, rules, judicial decisions, and administrative practices (Levi-Faur, 2012:8; Rosenau, 1995:13).

In addition, structures are understood and conceptualised as institutionalised modes of social coordination, a set of multi-level, non-hierarchical and regulatory institutions, and comparative stable institutional, socio-economic and ideational parameters, as well as the historically entrenched actor constellations (Levi-Faur, 2012:8). The diverse conceptualisation of governance structures therefore permits several approaches of the study of alternative institutions of government, such as networks, markets and private standards. On the other hand, the conceptualisation of governance as a process focuses on the dynamic aspects of governance as compared to governance as a structure. Thus, governance as a process is conceptualised as an ongoing process of steering or enhancing the institutional capacity to steer and coordinate, rather than a stable or enduring set of institutions (Levi-Faur, 2012:9).

Other definitions of governance further support or emphasise the conceptualisation of governance as a process and these include references to governance as a norm generating process, practices of governing, and the exercise of authority. “Governance is also about the institutionalization and naturalization of procedures of decision-making” (Levi-Faur, 2012:9). Five major mechanisms of decision-making are found, namely, monetised exchange, non-monetised exchange, command, persuasion, and solidarity. Monetised exchanges are market exchanges and are characterised by minimal or moderate transaction costs. Non-monetised exchanges are characterised by resources that are difficult to monetise or assign value to. Decision-making in both monetised and non-monetised exchanges is about whether to exchange or not, as well as when, where, and how. Command is a decision-making mechanism that involves rule-making with the expectation of compliance by those being commanded. “It is an authoritative and hierarchical mechanism of decision-making which often is associated with the state” (Levi-Faur, 2012:9).

Persuasion is a decision-making mechanism that emphasises values, preference, and interest. Persuasion further emphasises rationalisation and the framing of options for action, and the exchange of ideas and information in a deliberative manner. Lastly, solidarity is a decision-making mechanism based on “... loyalty rather than voice, love rather than interest, faith rather than critical thinking, and group identity rather than individualism” (Levi-Faur, 2012:9). Governance as a strategy is referred to as governancing and is the design, creation, and adaptation of governance systems. On the one hand, governancing refers to the act of government and the design of a hierarchy of government institutions. On the other hand, governancing is about the decentralisation of power and the creation of decentralised, informal, and collaborative systems of governance.

According to Levi-Faur (2012:9), “Governancing therefore refers to governance-in-action and to the institutional designs by actors that go beyond the formal institutions of government”. Levi-Faur (2012:9) provides examples of governance to illustrate his view, which include the set of strategies of the EU to extend its control of the system of comitology. “Another example of governance as a strategy is the active design of soft architectures of governance such as networks, soft mechanisms of decision-making such as the Open Method of Coordination and hyper innovation and experimentalism as an art of governance” (Levi-Faur, 2012:9). Levi-Faur (2012:9) concludes by stating what governance is not: it is not a unified, homogeneous, and hierarchical approach to the study of politics,

economics, and society. It is neither a study of causal relations, nor is it synonymous with government.

3.6 GOOD GOVERNANCE

The concept of good governance emerged in the mid-1990s and made a huge impact in policy circles (Rothstein, 2012:143). Good governance received the most attention in policy matters of developing and transitioning countries. It is now used mostly by national development agencies and international organisations, such as the World Bank and the UN. An example of another such international organisation is the International Monetary Fund (IMF), which in 1996 touted good governance as a framework within which economies can prosper. The IMF identifies factors such as the rule of law, improving the efficiency and accountability of the public sector, and tackling corruption as essential elements of the good governance framework. However, good governance is equally important for developed countries, especially with the recent financial and economic crisis serving as a good example of such a need (see paragraphs 2.4 and 2.8. in chapter 2 and 4.4.1.1 in chapter 4) (Rothstein, 2012:143; Sorens, 2016:25; Bardhan, 2002:185; Neamtu, 2016:48).

Good governance is particularly problematic when the citizens control political, legal, and administrative institutions that enact and implement public service policies. Public services are susceptible to free rides and thus cannot be supplied competitively on the basis of the free market system. Therefore, public service delivery requires some form of binding and enforceable regulations. Thus, good governance is closely related to such concepts as state capacity, quality of government, and the possibility of establishing sustainable systems for governing various types of common-pool resources. Public service delivery of urban services may be the competence of local government, but requires multilevel cooperative governance, as well as political involvement from all levels of government to be effective and efficient (Hughes, 2012:382). On the other hand, cooperative governance may be challenged by the lack of responsiveness to public needs, for example, in emergencies due to the poor coordination resulting from the requirement of unanimity in approving policy decisions and converging the efforts of all the spheres of government; thus, defeating the purpose of economic efficiency and effectiveness (see paragraph 2.6.2 in chapter 2 and 4.2.2 in chapter 4).

There is a clear link between “good governance” and the “effectiveness of local governance” (Panday & Rabbani, 2011:293). Good governance does not only refer to certain qualities of government institutions, but also government’s interaction with the various sections of the private sector. Government is solely responsible for producing good governance, but in most cases it needs to collaborate with business and voluntary organisations (Rothstein, 2012:144).

Decentralisation promotes and facilitates better governance and deeper democracy at the local level because it requires administrators to be accountable to their local constituencies, and ensures their active involvement and greater engagement in local affairs. Thus, a stronger local government facilitates effective democracy, which in turn is the precondition for good governance (Panday & Rabbani, 2011:294). Decentralisation has become a dominant policy all over the world in the last three decades and has deep implications for the nature and quality of governance. It has become part of the overall development strategy of many countries and is one of the most important trends in governance around the world. The benefits of decentralisation as compared to centralisation include reducing waste, corruption, and macroeconomic instability (Adams & Taabazuing, 2015:88).

Furthermore, decentralisation can be a powerful tool to promote stability, democracy, and economic growth in developing countries. Decentralisation facilitates efficient utilisation of local resources for development and public service delivery. Thus, decentralisation improves the quality and value of development and services provided (Kundishora, 2009 in Adams & Taabazuing, 2015:88). Probably the most important benefit of decentralisation is its ability to engender citizen participation in governance, thereby creating a platform for citizens to participate in decision-making processes and hold their elected representatives accountable. The overall outcome of such participation is improvement of both the level and quality of public service.

However, decentralisation does not always yield positive results. For example, it works well where people share information amongst themselves, take part in the process of decision making about resource allocation, and monitor implementation of different policies, such as in different municipalities of Kenya, India, Philippines, and South Africa. However, decentralisation of power at the local level has been found to enhance corruption (Adams & Taabazuing, 2015:89).

3.6.1 Intellectual and policy background

The ‘institutional turn’ in the social sciences, which occurred in the 1990s, led to the rise of the good governance agenda. This ‘institutional turn’ was spurred by the view that challenged the dominating societal view in studies of social and economic outcomes. This view argued that political institutions, rather than variables like economic power or the structure of class divisions, were central in explaining social outcomes. The institutional approach argues that the character of a society’s political institutions to a large extent determines its economic and social development (see paragraph 3.5). The good governance agenda has been inspired by the need to produce and implement optimal regulations for various sectors of the economy (Rothstein, 2012:144).

Rothstein (2012:144) argues that the good governance agenda has replaced the Washington Consensus in development policy circles. The Washington Consensus stated that economic growth could be achieved by massive deregulation of markets, tightening of public spending (austerity measures), guarantees for property rights, and large-scale privatisations. The Washington Consensus did not work because poor countries lacked the necessary type of institutions that were taken for granted in neo-classical economics. These institutions include a regulatory framework to curb fraud, anti-competitive behaviour, and moral hazard; a cohesive society that embodies the values of trust and social cooperation; social and political institutions that mitigate risk and manage social conflicts; the rule of law; and, clean government. The importance of institutions of governance is further illustrated by the failure of the shock-therapy capitalism that was introduced in the former Communist countries. This failure was a result of the incapacity by the proponents of the system to pay adequate attention to the need for institutions that would hinder fraudulent, anti-competitive, and other similar types of destructive behaviour (see paragraph 4.4.1.1 in chapter 4 and 5.4.4 in chapter 5) (Rothstein, 2012:144; Stepan, 2000:145; Ngqulunga, 2009:72; Bardill, 2000:106).

3.6.2 Empirical research: good governance and human wellbeing

Good governance has a positive impact on a large set of outcomes related to human wellbeing and this contributed to the rise of the good governance agenda. This agenda aimed to develop a number of widely used measures and indexes to measure various aspects of good governance. These included government effectiveness, levels of corruption, and the quality of

legal systems. The most critical part of this agenda has been the link between the quality of government institutions that implement policies and economic growth. Empirical research evidence shows that good governance leads to lower economic inequality. There is also a positive link between measures of good governance and subjective wellbeing, that is, a measure of an individual's evaluation of their quality of life in total. Research evidence further shows that bad governance practices, such as corruption and lack of property rights, has detrimental consequences for human wellbeing, for example, in such areas as population health and people's access to safe water. High trust in legal institutions, however, has a positive impact on interpersonal trust. In addition, good governance measures are stronger than democracy measures in predicting the absence of violent interstate conflict and civil wars. The importance of governance in this regard is illustrated by Brinkerhoff and Brinkerhoff (2002:511) who use the failed states as an example of the need to build viable governance systems. Weak and ineffective governance systems lead to instability, oppression, conflict, and unchecked political and economic opportunism in a society (Binns & Robinson, 2002:25-26; Brinkerhoff & Brinkerhoff, 2002:511; Posel, 2013:59).

Improved governance plays an important role in reducing the incidence of conflict. This assertion is based on the empirical study that found that the risk of conflict in countries characterised by good governance drops rapidly after conflict has ended or after independence, whereas in countries with poor governance this process takes much longer. General governance, that is, a composite of the rule of law, control of corruption, and government effectiveness, has an overarching importance in global citizen evaluation of states. Furthermore, general governance variables have a stronger impact on political legitimacy than variables measuring democratic rights and welfare gains (Hegre & Nygard, 2015:984). There is negative correlation between the measures of the degree of democracy and measures of human wellbeing. However, a positive correlation exists between the measures of good governance and the measures of outputs of a political system. Governance has a positive impact on sustainable development and is one of the crucial preconditions for political, social, and economic development (see paragraphs 6.3 and 6.5 in chapter 6 for a discussion on governance and sustainable development in South Africa) (Dang, Visseren-Hamakers & Arts, 2015:1; Wenzel, 2007:61; Du Toit & Forlin, 2009:645).

People's participation in local government affairs increases the accountability of the authority and the transparency of the works, which are, in turn, conducive to local good governance

and sustainable development (Waheduzzaman & Mpande, 2014:38; Hawkins & Wang, 2012:7). Dang, Visseren-Hamakers and Arts (2015:1) developed a framework for assessing governance capacity that is based on the policy arrangement approach. This framework highlights three elements: enabling rules of the game, converging discourses, and facilitating resources and their inter-linkages. Effective governance occurs when societal actors cooperate in order to solve collective problems. The key elements of governance commonly found in the definition of governance include decision-making processes and the capacity of authorities to effectively formulate and implement policies. An alternative definition describes it as the process of decision-making and the process by which decisions are implemented (or not implemented) (Dang, Visseren-Hamakers & Arts, 2015:1).

3.7 DIFFERENT CONCEPTIONS OF GOOD GOVERNANCE

A single universal definition of governance is hard to find and thus the debate about how it should be defined rages on. Two main thoughts that emerge are the procedure approach, like most definitions of representative democracy, and the policy approach. Some of the key definitions that emerge include equating governance to efficiency, how well those who govern represent those who are governed, and the capacity to steer the society (Rothstein, 2012:146).

Vigoda-Gadot, Shoham and Vashdi (2010:290) correlate democracy and bureaucracy, and argue that bureaucracy promotes efficiency and effectiveness, not only in democratic regimes, but also in organisations and governmental agencies. Thus, from the perspective of efficiency in governmental agencies, bureaucracy could be associated with good governance. The most frequently used definition of governance was launched by the World Bank Research Institute which defines governance as the traditions and institutions by which authority in a country is exercised. It includes the process by which governments are elected, monitored, and replaced; the capacity of the government to effectively formulate and implement sound policies; and, the respect of citizens and the state for the institutions that govern economic and social interactions among them (see page 354, paragraph 6.2 in chapter 6) (Debnath & Shankar, 2014:237; Rothstein, 2012:146).

The World Bank's Worldwide Governance Indicators (WGI) use this definition as a basis to measure such aspects as voice and accountability, political instability and violence,

government effectiveness, regulatory quality, rule of law, and control of corruption (see Table 3.1 below).

Table 3.1: World Bank's dimensions of governance

1. Voice and accountability	Measuring political, civil and human rights
2. Political instability and violence	Measuring the likelihood of violent threats to, or changes in, government, including terrorism
3. Government effectiveness	Measuring the competence of the bureaucracy and the quality of public service delivery
4. Regulatory burden	Measuring the incidence of market-unfriendly policies
5. Rule of law	Measuring the quality of contract enforcement, the police, and the courts, as well as the likelihood of crime and violence
6. Control of corruption	Measuring the exercise of public power for private gain, including both petty and grand corruption, and state capture

Source: Ayhan and Ustuner, 2015:5

Effective public institutions are crucial in delivering better economic and development outcomes. The prevalence of rent-seeking behaviour in public institutions is considered to lead to corruption, irrationality, and inefficiency. This observation led to the broadening of the neo-liberal reform agenda to match economic and political liberalisation with a strong institutional framework. International institutions applied these second-generation reforms, particularly good governance as an integral aspect of their criteria and condition for providing financial aid to countries (Ayhan & Ustuner, 2015:4).

This new perspective on good governance is emphasised by the World Bank, which highlights the benefits of good governance as predictable, open, transparency, and enlightened policymaking. Other characteristics of good governance as identified by the World Bank include a bureaucracy that embodies professional ethos; an executive arm of government accountable for its actions; and a strong civil society participating in public affairs; and all behaving under the rule of law (World Bank, 2000: xx). This implies that good governance encompasses democratic notions such as transparency, accountability, and participation. Thus, good governance combines the values of new public management with the advocacy of liberal democracy (Rhodes, 1996: 656). Ayhan and Ustuner (2015:4) argue

that the World Bank's governance reforms could be considered a highly political agenda that produces market-friendly politics in public administration. Elements of this new market-friendly politics are evident in the World Bank's dimensions of governance, as shown in Table 3.1 above (Ayhan & Ustuner, 2015:4).

The World Bank's definition of governance has been criticised for being too broad and including both policy content (sound policies) and procedures (rule of law). Other indicators of good governance include leadership, people's participation, transparency and accountability, and equity (Panday & Rabbani, 2011:293). Another criticism of the definition alludes to its content of both the institutions for access to political power, as well as those that exercise and implement laws and policies. The other criticism of the definition is regarding the sound policies indicator, which raises the question whether international experts can be relied upon to develop reliable sound policies. Secondly, the concern with such a definition that is not restricted to procedures but also includes the substance of policies raises the Platonian-Leninist problem. The Platonian-Leninist problem occurs when those with superior knowledge decide policies, resulting in a situation whereby the democratic process lacks the most substantial issues (Rothstein, 2012:146).

3.7.1 Good governance and corruption

Alesina and Angeletos (2005 in Rothstein, 2012:147) state that good governance equals a small government and that a large government increases corruption and rent seeking. Large governments have the power to dispense patronage and similar corrupt activities. However, Rothstein (2012:147) argues that empirical findings present a different picture that proves the opposite. The study finds that comparatively minimally corrupt countries, most of which are found in the northern parts of Europe, have generally much larger governments than very corrupt ones. The most efficient countries in Europe have the smallest governments and thus lowest GDP expenditure on government, namely, Switzerland and Ireland (see paragraph 4.3.10 in chapter 4) (Roden, 2003:695; Prohl & Schneider, 2009:641). Rothstein (2012:146) argues that good governance cannot simply be defined as the absence of corruption because corruption itself is difficult to define. Corruption is generally defined as the abuse of public power for personal gain (Rothstein, 2012:146; Stockemer, LaMontagne & Scruggs, 2011:74); thus, misuse of entrusted power or a dishonest use of one's office or position for personal gain (Ijewereme, 2015:1).

Stockemer, LaMontagne and Scruggs (2011:74) define corruption as all private misdeeds, such as excessive patronage, nepotism, secret party funding, and overtly close ties between politics and business interests. It occurs whenever a public officeholder is induced by monetary or other rewards to take actions in favour of whoever provided the reward and thereby damage the public interest. Corrupt activities include graft, bribery, extortion, nepotism, or patronage. However, this definition is relativist since what is considered as abuse or misuse varies in different parts of the world. If this basic definition was to be used to define good governance it would dramatically increase problems of operationalisation and measurement among other challenges (Stockemer, LaMontagne & Scruggs, 2011:74).

A universally accepted normative standard definition of corruption or which behaviour is acceptable and appropriate is necessary to know and measure what counts as abuse when comparing various systems of governance. In the absence of such a universal definition as explained above, it is difficult to measure the various governance systems as good or bad. Furthermore, governance cannot be equated to the absence of corruption because in some societies some governance problems are not understood as corruption. In other words, as mentioned above, the definition of corruption is relativist. High levels of corruption are certainly an antithesis to good governance (Rothstein, 2012:146).

However, other such inappropriate and unacceptable behaviour that are not usually seen as corruption, such as clientelism, lack of respect for the rule of law and property rights, nepotism, cronyism, patronage, systemic discrimination, and capture of public administrative agencies by interest groups are equally antithesis to good governance. Goel and Mazhar (2015:144) argue that corruption is one type of crime that is hard to detect, as perpetrators (bribe takers and bribe givers) have little incentive to voluntarily reveal their actions. Furthermore, corruption measures generally fail to make important distinctions between petty and grand corruption. Different mechanisms are used to measure corruption, for example, the corruption perception index of Transparency International (TI) provides a good cross-sectional comparison about corruption perceptions in any given year (Goel & Mazhar, 2015:144).

The concern with the TI measure is that its time-series properties are questionable. The TI and the World Bank are survey-based corruption indices. An alternate corruption measure

that possesses better time-series comparison capabilities is the ICRG corruption index from the International Country Risk Guide (ICRG), which is based on expert ratings and thus provides a better, more comparable time-series comparison across nations. In addition, unlike the TI index, the ICRG seems to focus more on political corruption. Promoting access to information and increased transparency will ensure accountability and prevent corruption and thus improve good governance in a country. The Freedom of Information (FOI) legislation in Jamaica²² is a tenet of democracy that confers on the public the legal right to ask for and receive information held by public bodies (Kuunifaa, 2012:176).

For example, the Access to Information Act (ATIA) of 2002 in Jamaica seeks to reinforce and give effect to certain fundamental values of constitutional democracy. These fundamental principles include governmental accountability, transparency, and public participation in decision-making. The Act grants the public a general right of access to official documents held by public authorities. Access to information serves to hold government accountable for decisions made, and to help uncover corruption and inefficiencies in government. Corruption manifests itself in different forms including misappropriation, kickbacks, over-invoicing, bribery, embezzlement, tribalism, nepotism, money laundering, and outright looting of the treasury. Usually, corruption entails abuse of public office power for private gain by accepting, soliciting, or extorting a bribe. However, corruption can still occur even if bribery does not take place, for example, political corruption could be defined in the form of patronage, election rigging, and voters register manipulation, favouritism in the award of contract, procurement scam, tribalism and nepotism in recruitment and promotion, and unfair punishment/sanctions for public officials (Kuunifaa, 2012:176).

The effects of corruption can be devastating for a country's integrity. Ijewereme (2015:1) posits that corruption in Nigeria undermines and threatens the realisation of noble national goals despite the enormous natural and human resources of the country. Ijewereme (*ibid.*) attributes rampant corruption in the Nigerian Public Sector to societal pressure, tribalism, nepotism, and the low risk-high benefits of being involved in corruption, among others. As far as Nigeria is concerned, the negative consequences of corruption include the following: it deprives the country of an enabling environment for potential investors to invest; it distorts

²² Political developments and practices in different countries such as Jamaica, Nigeria and Botswana are used as examples to illustrate the challenges of corruption and other factors in maintaining good governance in government.

public expenditure; it increases the costs of running businesses and costs of governance; and it diverts resources from poor to rich nations. In Nigeria, corruption is responsible for such woes as election rigging, failed promises, abandoned projects, poor quality of implemented projects, dilapidated infrastructure, nepotism, instability in the Niger Delta, and impediment to flow of foreign direct investment. Furthermore, political corruption has undermined meaningful developmental goals, resulting in high levels of unemployment, lack of public trust in the state, and widespread crime (Ijewereme, 2015:1).

Based on the above definition, Ijewereme (2015:2) argues that corruption or political corruption implies any action that violates electoral rules/the formal duties of any public role, rules, or norms with regard to public trust. In Nigeria, the effects of corruption are outrageous and include underdevelopment, unemployment, lack of urban public services, poor infrastructure, financial mismanagement, severe poverty, poor leadership and management, deficient leadership outputs, inequality, and poor quality of education. The negative effects of corruption impact on a wide range of economic and political outcomes (Ijewereme, 2015:3).

Corruption also has a negative impact on democracies in that high corruption levels reduce voter turnout during democratic elections; that is, it impacts negatively on democratic participation (Stockemer, LaMontagne & Scruggs, 2011:74). Corruption is especially disruptive in democracies because it undermines the basic principles of a free state and contributes to the de-legitimation of the political and institutional systems within which it takes root.

An example of a country that is regarded as an exemplar for democracy and good governance in Africa is Botswana. It has held successive free multiparty general elections since 1965. However, it has been practicing a degree of corruption in conducting its elections in that the funding of political parties and use of state media and resources are reported to be unfairly used in favour of the ruling party, the Botswana Democratic Party (Mogalakwe, 2015:105). While the ruling party has over the years rejected calls for public funding of political parties, it has been receiving secret funding from De Beers, the multinational corporation that has been mining diamonds in Botswana since the 1970s. This illustrates the subtle nature of corruption, which may impact negatively on democracy and thus good governance. The Independent Electoral Commission (IEC), Botswana's electoral management body, is enjoined by the country's Constitution to ensure that elections are conducted efficiently,

properly, freely, and fairly. The IEC has come short of this constitutional responsibility because of its lack of authority and power to level the electoral playing field to ensure free and fair elections. Thus, good governance relies strongly on the existence of strong institutions of governance that are independent and transparent (Mogalakwe, 2015:106). Matlou (2015:3) attributes the weakness in institutions of democracy on the African continent to long periods of foreign interventions, which have a dependency on foreign aid for development, corruption, capitalism and globalisation. Democracy has numerous variants, but its fundamental defining principles include free and fair public elections, equality and protection of minority rights, and reasonable human development (Matlou, 2015:3).

3.7.2 Good governance, global governance and the rule of law

The rule of law is a key principle in the discussion of good governance and is placed high on the agenda of reforming developing and transition countries. However, the concept of rule of law is inherently ambiguous; for example, legal scholars dispute whether or not the concept should be given a purely procedural interpretation that bears no implications for the actual substance of the promulgated laws. Scholars who support the procedural view claim that the rule of law must be distinguished from the rule of good law. This position stems from the assertion that if such distinction is not made, even morally detested regimes such as Nazi Germany would be classified as abiding by the rule of law. Critics of the procedural view seek to inscribe into the rule of law various substantive moral values of liberal democracy (Rothstein, 2012:148). The procedural view ascribes to the values of fairness that requires the fair and impartial enforcement of legal frameworks, particularly the laws on human rights (Graham, Amos & Plumpre, 2003:3).

Yet Rothstein (2012:148) argues that ambiguity is still found in the narrowly defined procedural view in that proponents of this view pay more attention to the internal qualities of the law, such as the need for the law to be clear, understandable, general, internally consistent, prospective and stable, rather than to define the core principles that a political system must abide by in order to be in accordance with the law. Hendriks (2013:554) argues that good governance is about doing things in a sound institutional setup. This setup must have effective checks and balances and countervailing powers. Other actors such as private corporations may take advantage of a country where governance mechanisms are poor. A democratic deficit is significant when multinational corporations operate in locations where

national governance mechanisms are weak or even fail, where the rule of law is absent and there is a lack of democratic control (Scherer, Baumann-Pauly & Schneider, 2012:473).

This democratic deficit “emerges when private corporations engage in public policy, either by providing citizenship rights and global public goods (corporate citizenship) or by influencing the political system and lobbying for their economic interests (strategic corporate political activities)” (Scherer, Baumann-Pauly & Schneider, 2012:473) (see paragraph 1.1 in chapter 1 above for a discussion on state capture in South Africa). In the “post-Westphalian” world, that is, the period since the peace settlement negotiated at the end of the Thirty Years War in Münster and Osnabrück (Westphalia, Germany) in 1648, that is confronted with global economic exchange, governance gaps and weakly regulated businesses, business firms operate under conditions where human rights abuses, social misery, environmental disasters, and corruption prevail (Scherer, Baumann-Pauly & Schneider, 2012:473).

In the same vein of the increased need for democratic control, Pagnou (2013:563) posits that there is a greater movement of transformation aimed at strengthening democracy and the efficiency of public actions. Judicial review of local authorities’ actions is a control mechanism necessary for the success of the process of decentralisation as it allows conciliation of the principle of legality and the principle of free administration as elements of good governance. In Togo, decentralisation was introduced a few years ago to promote and strengthen good governance. However, this process cannot be realised in the absence of guarantees for respect of the law on decentralisation, particularly the new repartition of the competencies introduced by the law. These guarantees are granted by the control of legality, which is a process during which the representative of the state verifies the conformity of the acts carried out by the local authorities to the law (Pagnou, 2013:563).

In keeping with the demands by international organisations for improved governance many African countries adopted new constitutions in the 1990s. These changes to the constitution consisted of new principles such as decentralisation that were expected to regulate political power and secure better management of the country (Houngbo *et al.*, 2017:1) (see paragraph 3.1 above). Decentralisation was emphasised by international organisations. For example, in Togo, this principle is enshrined in the country’s constitution: “the Togolese Republic is organised into local authorities on the basis of the principle of decentralisation with respect for national unity”. Decentralisation is defined as a system in which the administrative

management of a territory is entrusted to elected local authorities granted a certain degree of autonomy, whose scope is determined by the law of the State. It is based on a transfer of powers from the State to the local authorities and on judicial review of the actions of these authorities (Pagnou, 2013:564).

Decentralisation brings about a transformation of the structures and functioning of the State by creation of new local governments and transfer of powers from the central government to these new sub-national governmental structures. Local governments are in turn required to subscribe to a performance-driven approach so as to achieve the major objective of decentralisation, which is the efficiency of public action. Decentralisation is an essential element of good governance in that it promotes respect for human rights, political openness, participation, tolerance, administrative capacity, and the efficiency of partnership-building to ensure decision-making. Furthermore, it facilitates broad consensus within society and consideration for the viewpoint of the poor (see paragraph 2.8 in chapter 2 above for a detailed discussion on decentralisation) (Pagnou, 2013:564; Spina, 2013:449; Inanga & Osei-Wusu, 2004:72; Dickovick, 2005).

However, despite these constitutional provisions, decentralisation is taking time to materialise in Togo; hence, the need to emphasise the need for legality of the actions of local authorities, which is the procedure by which the representative of the State checks the legal compliance of the actions taken by the local government authorities. Thus, institutional reforms are required to improve good governance in Togo and these entail the opening of the political framework and the reorganisation of the implementation framework of public action. The rule of law is a set of stable political rules and rights applied impartially to all citizens (Weingast, 1997 in Rothstein, 2012:148). Furthermore, the rule of law evinces the following important features: recording and promulgation of law by an appropriate authority (legislature) and fair application of the law by relevant state institutions (executive), including the judiciary (O'Donnell, 2004 in Rothstein, 2012:146).

According to O'Donnell (2004 in Rothstein, 2012:146), fair application of the law refers to consistent administrative application or judicial adjudication of legal rules across equivalent cases; fair and consistent application of the law regardless of class, status, or relative amounts of power held by the parties in such cases; and, application of procedures that are pre-established, knowable and allow a fair chance for the views and interests at stake in each case

to be properly voiced. On the basis of the above argument of fair application of the law, the rule of law thus embodies the principle of equality before the law and entails a crucial principle of fairness. However, the challenge with this definition is that good governance also applies to spheres of state action other than those directly governed by the law. Yet, the rule of law concept is not universal, that is, it does not cover the full spectrum of state action (Rothstein, 2012:146).

For example, when public policy is applied in human processing areas such as education, health care, welfare benefits and active labour market programmes, a wide spectrum of discretionary powers are transferred to lower level government officials and professional corps responsible for implementing policy. The challenge with this transfer of power to lower level officials is that they are guided by the standards issued by their organisations and therefore it becomes administratively impossible to enact precise rule of law type laws and regulations. In other words, good governance in lower level government spheres and professional corps is guided by professional standards rather than by the rule of law, thus rendering the concept not universally applicable. Written laws cannot be applied precisely in every situation since legislators are not able to define laws for all cases but for most cases, thus leaving a gap in the full application of the concept of the rule of law (Rothstein, 2012:148; Ahmed, 2015:9).

Rajkovic (2010:29) posits that there is an increase of liberal literature in both International Relations (IR) and International Law (IL) which emphasises the role of law as a structural constraint on state behavior. This view has elevated the concept of the rule of law to such significance that it is difficult for anyone to credibly and persuasively contest the imperative that domestic and international politics should be subject to the rule of law. The concept of the rule of law is often employed without much inquiry into the politics of its practical meaning. Liberal academic research on the rule of law claims a realignment of world governance from an international to a now more global regime. Further, liberal research advocates the emergence of a global judiciary and claims that judicial governance will marginalise state power and authority (Rajkovic, 2010:29).

This global view on the rule of law and governance is further emphasised by Tripathi (2011:355) who argues that globalisation has integrated the whole world into a unit by a vast range of regulatory regime and has led to the emergence of a global state through

international institutions. Governance mechanisms of the nation state have lost some of their regulatory powers as a result of globalisation. This loss is a result of the prevailing globalisation and global concerns on such matters as environment, corruption, labour standards and the lack of national government control mechanisms. This negative impact of globalisation is exacerbated by the observation that a significant part of the world's production is located in countries where there is no rule of law and insufficient or no democratic control over public policy issues, which is in sharp contrast with the largely held view of the state-centric world order resting on state sovereignty (Scherer, Baumann-Pauly & Schneider, 2012:473). International institutions regulate the social, economic and political life of states and thus the emergence of the concept of Global Governance. Subsequently, Global Governance has led to development of the concept of Global Administrative Law (GAL), which is based on the idea of understanding global governance as administration, which can be organised and shaped by principles of an administrative law character (Tripathi, 2011:355; Pegram & Acuto, 2014:585).

3.7.3 Good governance and democracy

Governance is a multifaceted concept with wide ramifications more so because of the fast-changing and interdependent global environment in which we have observed the third wave of democratisation in Africa and the South Asian region, a global political economy, aid from international donor agencies, and the rise of social capital. The wave of democratisation has not been as positive in Africa as it has been in other developing nations, such as Latin America and Eastern Europe. In fact, democratisation in Sub-Saharan Africa has been problematic and uneven, as reflected in the Freedom House index. This is an illustration of the prevailing vertical cleavages along ethnic, racial, or religious lines in these countries that render such democratic transition volatile. This has been the case in such countries as Burundi, Mali, and even Kenya. The liberal-democratic thesis termed “good” or “democratic” governance that dominated the global political agenda since the 1980s is based on two premises, namely, democracy and acceleration of national development, that is, regime transition and democratic consolidation (see paragraphs 2.4, 2.81 in chapter 2 and 3.1 above) (Hyden, 2016:171).

Governance denotes “how people are ruled, how the affairs of the state are administered and regulated as well as nation’s system of politics and how these function in relation to public

administration and law” (Khan & Islam, 2014:25). Globalisation has driven each and every polity, especially the developing ones, to rely on the international networks for getting aid based on governance performance. Good governance was introduced and fostered by international organisations, such as the United Nations (UN), the Organisation for Economic Cooperation and Development (OECD), the International Monetary Fund (IMF) and the World Bank. In the same vein, the concept of a shift from governance to good governance was introduced by the World Bank during the end of the 20th century to replace age old public sector-led development and industrialisation with private sector-led development in a democratic system (see paragraph 3.2 above). Good governance and democracy are intertwined in the present age of globalisation and deepening democratic practices in newly independent and developing countries (Khan & Islam, 2014:25).

Research and literature on good governance argues that democracies guarantee the rule of law and provide superior institutions, which considerably influence not only developing states’ overall development trajectories, but also multinational firms’ decisions on where to do business. Baird (2012:263) argues that these superior institutions, such as the rule of law and quality bureaucracy, are separate from the institutions of democracy and constitute the concept of governance infrastructure. Baird (2012:264) defines governance infrastructure as the core domestic institutions that facilitate government competency and economic efficiency. The key institutional determinants of developing states’ economic outcomes are the institutions that comprise governance infrastructure and not the institutions of democracy. In other words, it is good governance that leads to economic prosperity in developing countries, and not democracy (Baird, 2012:263).

Greatly improved economic outcomes such as growth, trade and investment are achieved when states provide guarantees for respect for the rule of law, controlling corruption and providing efficient bureaucracies to economic actors, such as investors, multinational corporations and international funding organisations. Baird (2012:264) refutes claims that democratic states provide these guarantees and quality domestic institutions and posits that these institutions exist to varying quality, regardless of regime type, that is, whether a regime is democratic or not. Domestic institutions are integral to determining states’ economic outcomes in that they control corruption; ensure the rule of law, regulatory quality and bureaucratic quality; and provide political stability to varying degrees. Good governance is expected to produce the cost-effective allocation of public resources, government regulation

to guide private sector development, and better service delivery by the public sector (Baird, 2012:264).

Chopra (1997 in Khan & Islam, 2014:26) defines good governance as a system of governance that is able to unambiguously identify the basic values of the society where values are economic, political and socio-cultural issues, including human rights, and pursue these values through an accountable and honest administration. The United Nations Development Program (UNDP) (2002) (Khan & Islam, 2014:26) defines good governance as the exercise of economic, political and administrative authority to manage a country's affairs at all levels and the means by which states promote social cohesion and integration, and ensure the well-being of their population. This is in line with the World Bank's (2000) definition, which defines governance as the manner in which power is exercised in the management of a country's economic and social resources (Ayhan & Ustuner, 2015:3). The eight characteristics of good governance are participation, rule of law, transparency, responsiveness, consensus orientation, equity, effectiveness and efficiency, and accountability (Islam, 2014:37; Olafsdottir, Allotey & Reidpath, 2013:199).

Accountability and responsiveness are two of the fundamental requirements of good governance because they ensure that decisions are made by the authorities who have the responsibility to respond to the needs of the population and to keep promises, often made through an election process. Furthermore, they place an obligation on governments to provide information regarding their decisions and actions and to justify them to the public. "This implies that decisions and consequent actions must be enforced transparently with easy access to understandable information and imposed in accordance with established and accepted rules and regulations" (Olafsdottir, Allotey & Reidpath, 2013:199). The indicators of governance used to measure the nature and extent of good governance in a country were developed by Kaufmann and Kraay (2002) and have received acceptance all over the world.

These indicators include voice and accountability, political stability and lack of violence, government effectiveness and regulatory quality, rule of law and control of corruption. Other principles of good governance include privatisation and deregulation in order to enhance the accountability of government and transparency in the actions of government (Islam, 2014:37). The literature on governance in public administration concentrated on privatisation and deregulation when it emerged in the 1990s. Such a discourse was the result of the

observation of new patterns of interaction between government and society in areas such as social welfare, environmental protection, education and physical planning that were aimed at discovering other ways of coping with new problems or of creating new possibilities for governing (Enroth, 2014:63).

Thus, accountability, transparency and participation constitute other key characteristics of good governance. Thus, these key requirements to achieve good governance make the process of consolidating democracy and strengthening good governance a daunting challenge to both democratising countries and donor countries attempting to assist them through the transition towards democracy. The relationship between democracy and governance is often conceptualised as democratic governance, that is, a system of governance which is based on the principles of democracy but includes all the elements of governance. Alternatively, democratic governance could be explained as the concept which blends democracy into governance (Khan & Islam, 2014:37).

Landman (2009 in Khan & Islam, 2014:37) defines democratic governance first from the political dimension as a system which consists of rule of law, government's accountability to the public through the legislature, government's legitimacy and competency, along with the existence of human rights in every sphere of life. Democracy and governance are intertwined and interdependent because democratic institutions strengthen the capacity of governance as these institutions hold the executive accountable and ensure that government processes are transparently carried out. Liberatore (2011 in Khan & Islam, 2014:27) holds an opposite view that democracy and governance are not interdependent and argues that there can be a non-democratic state, which has a transparent and accountable public sector to serve the citizen.

In other words, democracy is not a prerequisite for good governance in the same way that bad governance is possible under formal democratic structures (Khan & Islam, 2014:27; Rothstein, 2012:150). Another example is the patron-client relationship found in the Asian democratic system, which may usher in and install corruption in the public sector. As a consequence, rampant corruption then destroys the public trust and hampers the mechanisms of holding the public bureaucracy accountable for their actions. Another example to emphasise the argument above is that even though participation is an important pillar of good governance, in the policy process it is not conducive for representative democracy. Instead, it is deliberative democracy which facilitates participation to improve governance performance.

Khan and Islam (2014:37) argue that the complexity of democratic systems often creates confusion in governance networks and, in turn, produces unfair, top-down and authoritative decision-making. This implies that there is a conflict of interest in the democracy-good governance coexistence. The compatibility between democracy and good governance has been criticised for failed attempts to separate or demarcate politics and administration. This compatibility allows public administrators to become involved in the policymaking process; thus, creating a never-ending patron-client relationship with the elected representatives. This relationship eventually impedes the activity of institutions responsible for ensuring accountability. There is a contradiction between the different aspects of democracy and the pillars of good governance. Furthermore, there is some critical mismatch between good governance prescriptions and the indigenous political, cultural and economic setting of countries hosting those prescriptions, particularly in developing countries in Africa and Asia (Khan & Islam, 2014:37).

Democracy is a form of government and governance in which people assume power of the state, either directly or indirectly. The people take part in the system of governance through their representatives, or directly. In a representative democracy, people elect their representative by voting to make a legislative body, which formulates policies and runs the state on their behalf. Thus, the ultimate authority lies with the people, even though the representatives manage the affairs of the state. Key democratic freedoms and rights include tolerance, respect for civil liberties, and equality before the law. Democracy is also defined as a government in which everybody has a share and a mode of decision-making about collectively binding rules and policies over which people exercise control. Key characteristics of democracy include public offices open to all, selection for office by election, freedom of expression and media, access to official information, free associational life, channels of upward influence, direct vote on constitutional change, and rights enforced by independent judges (Khan & Islam, 2014:25).

Thus, a governance system is democratic only if it ensures people's participation. Khan and Islam (2014:25) argue that the key characteristics of good governance do have similarities with the core elements of democracy. Representative democracy has long been championed as an effective mechanism to address such governance and societal challenges as corruption and poverty. Representative democracy is perceived to promote accountability, which helps

to reduce the discretionary powers of public officials (Deininger & Mpuga, 2005 in Rothstein, 2012:149). This argument suggests that democracy and good governance could possibly conceptually overlap. However, Rothstein (2012:149) argues that a direct relationship between establishing an electoral representative democracy and many features of good governance cannot be found by empirical research. Instead, “democracy seems to be curvilinearly related to the level of corruption” (Rothstein, 2012:149). Corruption was rampant in newly democratised countries such as Peru²³ under its former president, Fujimori, and Jamaica since the mid-1970s (see paragraph 2.4 in chapter 2 above) (Rothstein, 2012:149; Neamțu, 2016:48).

Rothstein (2012:149) argues that the introduction of representative electoral democracy does not necessarily lead to democracy or an increase in the quality of government institutions responsible for implementing laws and policies. Despite the increase in the number of democratised countries, the scourge of bad governance has increased in many countries. This bad governance is characterised by corruption, patronage, favouritism, and abuse of power. Thus, the introduction of democracy in countries riddled by such bad governance cannot resolve this challenge because such democratic values or practices do not reach the deeper levels of the political culture in societies that are dominated by clientelism or endemic corruption (Neamțu, 2016:48; Rothstein, 2012:150).

By introducing democracy while neglecting good governance will not result in increased human wellbeing. Rothstein (2012:150) gives two examples of countries that are not democracies and yet made great progress in curbing corruption over the last few decades, namely, Singapore and Hong Kong. Rothstein (2012:150) argues that measures of good governance have a much greater impact on human wellbeing and perceptions of political legitimacy than measures of democracy. Thus, it may be concluded that good governance is different from, and should not conceptually be equated with, democracy. Good governance is more effective than democracy in improving human development. The relationship between good governance and democracy is illustrated by Khan (2014:59), who argues that aid has a different impact on recipient countries, depending on their levels of democracy. Aid leads to good governance in countries where political power is less centralised and thus less

²³ Reference to other countries in this section and throughout the study merely serves to provide examples to illustrate and substantiate the issues being addressed in the study and does not constitute a deviation from the topic of the study or a focus on these countries.

concentrated forms of aid allow intermediate-class political entrepreneurs, that is, the middle and lower-middle class to improve their access to resources and create opportunities for many of them to enter productive manufacturing activities (Khan, 2014:59; Sorens, 2016:25).

For example, the government of Bangladesh used aid from international development agencies to strengthen good governance through effective public participation in development projects (Waheduzzaman & Mpande, 2014:37). Participatory good governance in local government bodies in developing countries is necessary to maximise the outcomes from development programme implementations and this is a precondition for funding by international development agencies and donor countries to developing countries. An example of the negative impact of aid on governance is the case of Pakistan, which was highly centralised in the 1970s, and as a result top leadership ruled without sharing much power, thus slowing down the growth of a broad-based manufacturing sector (Waheduzzaman & Mpande, 2014:37; Aggad, 2008:29; Mathoho, 2007:9).

International development agencies have been at the forefront of the universal call for good governance, efficient service delivery, accountability, participation and sound public policy-making through empowering people and leveraging their potential in the process of governance (see paragraph 2.4 and 2.81 in chapter 2 above and 6.3.1 in chapter 6 below) (Musonerwa, 2010:1; Menocal & Eade, 2004:791; Canaleta, Arzoz & Garate, 2004:71; Sorens, 2016:25; Neamtu, 2016:48). However, these public policy-making processes and strategies need to be revisited in Pakistan in the wake of economic, social, political and governance problems triggered by the wave of terrorism, militancy and corruption in the country. Jabeen *et al.* (2016:17) propose a shift from the existing process and strategies of policy-making that are generic, linear and mainstream to a network governance perspective with a decentralised, bottom-up, realistic, context-specific, collaborative and participative approach for effective policy-making in Pakistan (see paragraph 3.3.1 above).

Jabeen *et al.* (2016:17) suggest context-specific network governance (see paragraph 3.3.1 above) over competing approaches that are generic and simplistic, which include an advocacy framework, a multiple stream framework, rational-choice analysis, a policy network approach and a policy transfer perspective (Jabeen *et al.*, 2016:17). Furthermore, the competing frameworks offer competing explanations and are largely concentrated on pluralist cultures and do not explain policy-making where “the decision making is done in dictatorial settings,

that is, in those countries which are politically independent but economically dependent on international financial institutions. The settings usually have elected governments but lack democratic governance, they are independent from colonial rule but are still well-entrenched in colonial traditions, and their elite are highly educated and but have captive mindset” (Jabeen *et al.*, 2016:17). In contrast, Bangladesh’s less-centralised organisation of political power and less-concentrated forms of aid allowed broad-based political participation in the manufacturing industries. However, a different view argues that existing structural, conceptual, and cultural gaps hinder the proper implementation and interpretation of the theory of participatory governance in rural Bangladesh (Waheduzzaman & Mpande, 2014:37).

Good governance through public participation ensures that citizens and state officials interact to express their interest, exercise their rights and obligations, work out their differences and cooperate to produce public goods and services. Thus, good governance ensures the effective use of aid funds and improves the attractiveness of a country to local and foreign investors, which consequently promotes economic growth and reduces poverty. Indicators of good governance to measure the impact of foreign aid in a country include increased Gross Domestic Product (GDP) per capita, increased employment, economic and political stability, a flourishing manufacturing sector, economic growth and improved social indicators, such as infant mortality. The literature on democracy is awash with debates about whether institutions promote democratic deepening, or is it a previously-organised civil society that accounts for such deepening. This debate is polarised between those who define democracy as a set of representative institutions and those who define democracy as a set of qualitative practices that approximate normative ideals of democratic opinion-and-will formation (Otero, 2015:32).

In an effort to understand the relationship between participatory practices and state institutions, Otero (2015:32) gives an example of participatory budgeting (PB) in Brazilian cities, which was first promoted and implemented by the Brazil’s Workers Party (PT) in the 1980s to promote a direct role for organised citizens in shaping the budgets of their towns and cities. Otero (2015:32) uses the concept of ‘bootstrapping democracy’ to explain the relationship between participatory practices and state institutions. This concept seeks to explain how civil society organisations become empowered to get invited into state institutions so as to help shape them while retaining their autonomy from the state, and how

these interactions of state and civil society effected changes in governance and local democracy. Bootstrapping democracy, seen as both the outcome and starting point of development, is the dialectical process by which organised collective agency promotes institutional reform, which in turn has a feedback effect of enhancing civil society organisations and empowerment. The PB process addresses the concerns of both institutionalists and associationalists by giving citizens a direct role, introducing rule-bound procedures, improving transparency, and incentivising social agency with tangible returns to grassroots participation (Otero, 2015:32).

Khan and Islam (2014) argue that democracy is the most desirable form of governance and that democratic governance has a long history in many developed countries of the world. However, in developing countries democratic governance needs vigilant scrutiny. For example, in Bangladesh the present governance system is weak, parliament is barely functional and bureaucracy is highly politicised. This weakness in democratic governance has serious implications for the morale and efficiency of public servants, as well as for the level, frequency and quality of service delivery. Another example of the consequences of a weak governance system is the limited press freedom in Bangladesh, despite judicial judgements to protect human rights. Bangladesh has struggled to institutionalise a functional democratic system since its emergence in 1971 (Khan and Islam, 2014).

In 1971, Bangladesh experienced a civil war followed by a war of independence (Khan, 2014:60) and then gained its independence on 16 December 1971, based on secular-socialist principles (Hasan, 2011:97). Mass civil unrest and upsurge against the rule of a dictator in 1990 led to a process of democratic transition in Bangladesh. Democratic consolidation is far from being realised in Bangladesh despite regular elections and transfer of powers to different regimes. Then, international donors and financial institutions introduced the concept of good governance. Successive rulers of Bangladesh sought to achieve the key elements of good governance within the framework of parliamentary democracy. However, these ideals were never achieved because several disorders in the process of the working of parliamentary democracy allowed the critics to attack the co-existence of democracy and good governance primarily because of the subversion of democratic rule in Bangladesh by the majoritarianism of the winning party and disruptive institutionalisation of democracy. These failures within the process of parliamentary democracy led to the erosion of state capacity to effectively and equitably serve the people. Bangladesh has suffered a series of failures affecting all the state

apparatus (that is, executive, judiciary and parliament), which are responsible for contributing towards a peaceful and prosperous society, notably the parliament which is an apparatus through which people can participate in the system of governance (Hasan, 2011:97).

In South Africa, the ANC has assumed the characteristics of a “dominant party” assured of successive election victories, which to some extent explains the arrogance and complacency of its leadership. Southall (2014:48) argues that the ANC now presides over a party-state whose accountability has declined, providing opportunity and scope for corrupt and predatory behaviour by significant elements of the party’s elite. It has become difficult to separate the party from the state; that is, the party and the state have merged, resulting in a situation that challenges constitutionalism and threatens the rule of law. Southall (2014:48) argues that the ANC’s respect for democratic principles will only be tested when its electoral hegemony is eroded.

Following the transition to a constitutional democracy in 1994, South Africa under the leadership of Nelson Mandela embarked on a democratic journey that was marked by a commitment to racial reconciliation and an era of relative post-apartheid goodwill and social harmony (Southall, 2014:48). Southall (2014:49) argues that thereafter, under the successive presidencies of Thabo Mbeki (1999-2008), Kgalema Motlanthe (2008-2009), and Jacob Zuma (2009-present), the predatory behaviour of the ANC elites at the national, provincial and local levels have come to dominate its structures and have rendered major organs of the state increasingly dysfunctional. The failure to meet the raised expectations of the ANC’s popular constituency has resulted in a surge of political and industrial protest from below, thus putting democracy at risk. These recent developments clearly go against the key requirements of democracy, that is, the structural conditions likely to determine the probability of democratic success, which include such factors as income distribution, economic inequality, ethno-linguistic diversity, religious divisions, rate of population growth, rate of urbanisation, and human development ranking (Southall, 2014:48).

3.7.4 Good governance and government efficiency

It is unthinkable to expect a government that is ineffective and inefficient to produce good governance. However, defining good governance in terms of efficiency and effectiveness is problematic for two reasons. First, the notion of “good” implies other things than just

economic efficiency, meaning that a government could carry out other things efficiently that are not necessarily “good”. Second, defining good governance in terms of administrative and regulative efficiency would border on establishing duplication. The good governance agenda largely emanated from the research studies that sought to understand why many developing countries were unable to increase growth (Rothstein, 2012:150). Local governments, being closer to their constituencies, have better knowledge of the local costs and benefits. Thus, they are in a better position to provide public goods more efficiently by responding more effectively to the particular preferences of their constituencies and finding innovative ways to provide these services (see paragraph 2.3.3 in chapter 2 above) (Craw, 2015:270).

Therefore, instead of focusing on efficiency as a measure of good governance, good governance studies seek to determine whether or not societies that are socially and economically efficient, that is, those that are able to produce the amount and type of public goods they need, have institutions that are qualitatively different in their operative principles than the opposite types of societies. At the lowest level of government, that is, local government level, government efficiency refers to the comparison between government costs and benefits, that is, cost-benefit analysis. Thus, local government efficiency refers to the comparison between financial investment and its effects on local government. Government efficiency reflects the relation between the process and the results of government performance (see paragraph 3.5 above for a discussion on different conceptions of governance as a structure, process, mechanism and strategy) (Rothstein, 2012:150; Levi-Faur, 2012:8).

Tang, Tang and Lee (2014:142) posit that highly efficient governments promote social justice and sustainable development through the provision of comprehensive legal systems, appropriate decision-making, excellent services, sound management, and advanced education for the development of enterprises and the economy. Explicit policy advocacy is required to advance social equity and to pressurise government over its obligation to foster social equity (Jos, 2014:2). More clandestine strategies are required to correct inequities resulting from power imbalances among political constituencies. The administrators’ abiding role in ensuring procedural fairness is offering new and more robust strategic opportunities to advance social equity in everyday administrative practice (Jos, 2014:2). These opportunities are often obscured as bureaucratic procedure and are associated with conformity, rigidity, and insulation from politics and from citizens. More recently, these opportunities emerged in

literature on social equity, street-level administration, collaborative governance, and stakeholder analysis (Jos, 2014:2). The state has a fundamental role to play in opening spaces of participatory governance. Participatory governance has a transformative effect on societal spaces and actors contributing to the mobilisation and democratisation of civil society. In turn, participatory governance promotes efficiency, transparency and legitimacy of the polity and the local institutions of representative democracy (see paragraph 2.4 in chapter 2 above) (Postigo, 2011:1945; Spina, 2013:448; Mohammed, Ashton & North, 2016:232; Quaranta, 2013:502).

Slovenia is a good example of a country that introduced strategic public administration efforts that sought to reorganise the country's local administration with the aim of increasing the level of democracy and participation and rationalising administrative structures. These developments and reforms took place in the initial period of state independence in the early 1990s. These reforms soon became counterproductive, resulting in a fragmented local authority with 212 municipalities and no regions, as well as a considerable degree of etatisation (fragmentation and competition among local governments) despite the country's small population of only two million. All public stakeholders, including citizens and businesses, local authorities and public-services providers, must work collaboratively in a harmonised system to achieve effective and good public administration (Kovac, 2014:117).

In Latin America, most countries introduced competitive elections and extended civil and political rights three decades ago; yet, societal demands in much of the region continue to be served through patronage networks. Democracy in Latin America was given new hope when participatory governance was introduced in the 1980s. One form of participatory governance that was celebrated was participatory budgeting schemes through which citizens prioritised municipal investments. Two schools of thought regarding participatory governance emerged in the literature. One school of thought views civil society as separate from the state, while at the same time views it as a source of democratisation for state institutions, that is, a civil society-centric view of participatory governance (see paragraph 4.4.1.1 in chapter 4 below) (Postigo, 2011:1946; Menocal & Eade, 2004:791; Souza, 2002:23). On the other hand, another set of literature emphasises the central role played by governments and political parties in the adoption and evolution of participatory schemes. Postigo (2011:1946) argues that most of the deliberative democracy literature has focused on how institutional design affects outcomes in participatory experiences, that is, seek to find 'best-practice' institutional

features that encourage participation and empowerment of marginalised groups within participatory settings. Nuanced conceptualisation of state and civil society actors could account for variability in the origin, evolution and outcomes of participatory budgeting cases. The civil society-centred perspective and social movement theory argue that increased citizen participation is only possible through the mobilisation of an active civil society making demands on the state (Postigo, 2011:1946).

Government-led initiatives, that is, the fundamental role that governments and political parties play in opening spaces of participatory governance could contribute to the mobilisation and democratisation of civil society. State-civil society synergies have the potential to transform the institutions of the state and representative democracy, that is, could improve participatory governance. The expansion of liberal democracy around the world has had unintended consequences of abuse of participation and representation. For example, in Latin America the implementation of procedural forms of democracy has barely altered entrenched power structures. Instead, electoral competition has nurtured populist and clientalist practices and undermined normative concepts of equality in the distribution of public goods (Postigo, 2011:1946; Mohammed, Ashton & North, 2016:232).

However, in Porto Alegre (Brazil) the emergence of innovative modalities of governance, such as participatory budgeting schemes, has been able to address some deficits of representative democracy. Postigo (2011:1946) argues that in the neo-liberal context, participation is merely consultation pursued for instrumental reasons, such as improved efficiency or lower public expenditure. In the context of a radical democratic tradition, participation refers instead to the empowerment of excluded groups through their involvement in the formulation and monitoring of implementation of policies that affect them. In the wake of democratisation in Eastern Europe during the 1980s and 1990s participatory initiatives emerged spontaneously within civil society in response to historical events. Civil society is thus conceptualised as a homogeneous entity separated from the state and encompassing all benign elements in public life. The main concern within this civil society-centred perspective is how to organise and self-sustain these spurs of civic activism, while maintaining its autonomy from the state (Postigo, 2011:1946; Lues, 2014:789; Chowdhury & Aktaruzzaman, 2016:120).

This concern regarding the civil society-centred perspective in the context of Latin America is addressed by the participatory publics theory, which argues that civic associations that originated during Latin America's democratic transition acted as repositories of democratic values, practices and strategies that were later transferred to political society and contributed to the democratisation of state institutions. Under this liberal perspective, the role of the state is often reduced to its willingness to incorporate and institutionalise these participatory avenues (Postigo, 2011:1947). The polity-centred perspective of participatory governance challenges the civil society-centred perspective by emphasising the role of the institutions of the state in the opening and consolidation of participatory avenues. Participatory budgeting spaces provide for continuous interaction among a wide range of political and societal actors with different interests and levels of power and thus provide possibilities for the mutual and synergistic transformation of civil society and state (Postigo, 2011:1946).

Participation in social settings is often conceptualised in spatial terms. Neo-liberal and deliberative democracy scholars conceptualise civil society as a space autonomous from the state and the source of democratic innovations. Heath (2009:895) provides a similar conceptualisation of civil society by referring to a "decentred" society in which autonomous, self-regulating subsystems had become independent of any central steering mechanism, and thus had become governed by their own internal logic and code. Postigo (2011:1948) makes reference to Habermas' view regarding a civil society, which describes a public sphere as a space separated from the state and the market where citizens engage in non-strategic deliberations about public issues that are later taken by the state. Civil society and political society are described as a whole and mutually dependent and interacting spheres engaged in hegemonic struggles (Postigo, 2011:1946; Heath, 2009:895).

The latter view recognises that ruling by the state is not just an exercise of coercion, but also of acquiring consent, and thus allows for contingent interactions and potentially mutual transformations between civil society and the institutions of the state. This is in contrast to the widely quoted view of Lysander Spooner that "Government is in reality established by the few; and these few assume the consent of all the rest, without any such consent being actually given" (Spooner, 1870). In India, economic growth and growing urbanisation pose complex governance challenges. Resolving these challenges could help harness economic opportunities associated with urbanisation. One such challenge is decentralised urban governance where citizens need to have a stake in deciding on how cities should be managed.

Singh (2013:191) argues that in the view of growing urbanisation in India, the structures of citizen participation provided under the 74th Constitutional Amendment Act are failing in insuring effective citizen participation. “Governance and Citizenship are two fundamental pillars of a democracy that enable the democratic system to function with better capability and efficiency. Governance is a process to achieve public goals through mutual and systematic interaction of government and citizens” (Singh, 2013:191).

The interaction of citizens with the government fulfils two important requirements of a successful democracy, namely, to put a system of checks and balances on the government, which ensures that the government avoids practices that annihilate the virtue of the democracy, and, to fulfil an imperative requirement of a political system to be deemed a democracy, that is, people’s participation, also known as public participation. Involvement of citizens and communities in the delivery of core collective goods is one of the significant ways to increase state effectiveness as it promotes the transparency and accountability of governance. The value of public participation in the process of governance depends on two factors, namely, the space provided to citizens by the state in the process of the governance, which is initiated from the top, and, how the process of public participation is facilitated by the government (Singh, 2013:192).

The government is expected to facilitate public participation in the governance process by facilitating people-centric bureaucracies and accessible administrative processes. Furthermore, the government should facilitate public participation and build public trust in public institutions, that is, democratic legitimacy. Even though the Constitution of India makes provision for the structures of public participation, the government failed to facilitate this process. This failure is attributed to two reasons, namely, the existing structure is not conducive to attract citizens to participate in governance, and, there is public apathy towards the malfunctioning of urban local governance, which prevents citizens from participating. The challenge of the ‘crisis of the governability’ in India is further aggravated by increasing instances of corruption, dysfunctionality of public institutions, and increasing economic inequalities and under-representation of the majority in the process of governance. Existing patterns of citizen participation in the process of governance, which can ensure transparency and accountability, need to be reviewed to address this challenge (Singh, 2013:192).

3.8 CONCLUSION

Good governance is the exercise of legitimate power by private and public institutions to manage the resources of their constituencies effectively and efficiently for the benefit of all in that population. It has become a worldwide standard of management and leadership in economic, political and social systems, particularly driven by international organisations such as the World Bank and the UN. The aim is to achieve sustainable development and economic growth by accountable, transparent and responsive administrations that promote the democratic principles of public participation and legitimacy. A number of indicators are used to measure the level of governance in institutions. These include participation, rule of law, transparency, responsiveness, consensus orientation, equity, effectiveness and efficiency, and accountability.

Many good governance indicators have been developed into various frameworks and indices, including Transparency International's Corruption Perceptions Index (CPI), Freedom House's 'Freedom in the World', the World Bank's Country Policy and Institutions Assessments (CPIAs), the International Country Risk Guide (ICRG) and the World Bank Institute's 'KKZ' indicators. The good governance agenda has seen a shift of responsibility for public policy implementation from government to a plurality of nongovernmental actors, that is, network governance. This reform is argued to be a shift from a hierarchical form of governance characterised by command and control approaches to a horizontal form characterised by an enabling environment that enhances the potential for self-organisation (see paragraph 3.3 above).

In developing countries, it has been difficult to implement and improve good governance as it entails transfer of power to SNGs and NGOs. However, innovative options for public sector reform to achieve good governance include partnerships with the public sector and civil society and the delegation of authority to an independent agency that is jointly managed by professionals from the public sector, the private sector and civil society. This model of partnership and delegation is expected to reduce corruption and political interference in public enterprises and agencies. Many good governance frameworks are an extension of the NPM concept and consist of procedural values, such as integrity, transparency, equality, lawfulness, honesty, leadership, governance, and performance management as its key elements.

NPM advocates for the adoption of businesslike approaches in the public sector, such as budgeting techniques, market analysis, and performance management to drive efficiency and economy. Good governance requirements have seen governments across the world working more with civil society in collaborative actions to achieve development goals and address societal policy problems. Politicians, public managers and planners are forming collaborative networks to contribute to enhanced and effective governance, and sustainable planning. This shift towards collaborative networks among states, local governments and NGOs are on the rise in the US and Europe.

These collaborative networks have led to the emergence of democratic innovations that promote public participation such as citizens' juries, deliberative forums, multisector partnerships and co-production. These democratic innovations of direct public participation promote citizen or public participation in government and confer authority on their inputs to the policy process; thus, achieving democratic values of trust in governance and satisfaction with state services and the overall image of the bureaucratic and democratic system, that is, democratic legitimacy of state or public institutions (see paragraphs 3.2 & 3.4 above). The shift in governance from the public administration and public policy perspective has brought about changes in boundaries between public, private and voluntary sectors and the role of the state. Subsequently, the informal authority of networks of non-state sectors are supplementing and replacing the formal authority of government.

This entails a change in the pattern and exercise of state authority from government to governance; that is, from a hierarchic or bureaucratic state to governance in and by networks. The states' declining ability to govern effectively in the course of the 1970s and 1980s led to the emergence of good governance approaches whereby conventional forms of governing by state hierarchy gave way to market and quasi-market solutions to deliver public services. Due to the dynamic nature of public policy interactions among the public and nongovernmental sectors, three waves of governance in literature emerged, namely, network governance, meta-governance and interpretive governance. Network governance is about the changing nature of the state following the public-sector reforms of the 1980s and entails informal or semi-formal coordination rather than coordination by hierarchical structures and formal contractual relationships. In this form of governance, operative policies are produced and implemented in horizontal and reciprocal patterns.

Meta-governance is premised on the criticism of network governance by arguing that the state is 'hollowing out'; that is, its capacity to deliver public services is diminishing and weakening as a result of the proliferation of new decentralised forms of governance. Meta-governance refers to the state's capacity to steer networks by influencing the context within which they function to ensure that its outcomes correspond with its broader interests and development goals, particularly in relation to the legitimacy of its policies. Meta-governance promotes participation in policy formulation and implementation by non-state actors and permits them to self-govern, while public authorities govern at a distance, that is, oversee and regulate the activities of decentred governance networks. Interpretive governance is based on the recognition that the actions and beliefs, that is, governance practices of actors or agents are informed by their traditions and beliefs, that is, interpretations, which in turn constantly change the boundaries of interaction between the state and civil society.

"Government is in reality established by the few; and these few assume the consent of all the rest, without any such consent being actually given" – Lysander Spooner

CHAPTER 4: FEDERALISM IN THE INTERNATIONAL CONTEXT

“This is not a dispute about whether planning is to be done or not. It is a dispute as to whether planning should be done centrally, by one authority for the whole economic system, or is to be divided among many individuals” – F.A. Hayek

4.1 INTRODUCTION

Chapter four explores the forms of government in the international context of federal countries, including Nigeria, Ethiopia, the US, Brazil, India, China, Switzerland and Germany. The discussion focuses more on countries that have adopted a similar form of government to South Africa, or are in the process of transforming their administrations to a similar model of federalism²⁴. Moreover, the selection of countries for discussion on the international perspective of federalism is such that all continents of the world are covered in the discussion to draw lessons and insights from a variety of perspectives, practices and experiences. This approach makes it possible to make analytical comparisons between South Africa and these countries, as well as draw lessons which could be used to strengthen the model of governance in South Africa.

More importantly, the chapter highlights areas of exceptional performance regarding structural, economic and political reforms and the process of transition to new economic and political systems in light of globalisation and the integration of world economies and advocacy for good governance by international financial institutions. Stumbling blocks in the way of reforms and the drive to improve and promote governance, democracy and free market systems are also discussed, including their root causes given the diversity in history, political systems, economic models, and the ethnic and cultural diversity of the countries under discussion.

²⁴The focus of the study is on provincial governance specifically and as South Africa is a decentralised unitary state or a quasi-federal state, the provinces have some degree of autonomy with respect to legislative authority and functional discretion. These are the characteristics of a federal state that entail devolution of some powers and functions to SNGs. Thus, the study focusses on federalism as a form of government that corresponds to the form of government in South Africa, and not unitarianism. Nonetheless, paragraph 1.2.3 in chapter 1 above provides a brief overview of unitary states.

Further, the study discusses and explores decentralisation and devolution in the countries under consideration to determine the advantages and disadvantages of these concepts and their impact on good governance with respect to socio-economic and political stability in a country. In most of the developing countries and countries in transition, the process of democratisation was accompanied by decentralisation, which saw a significant transfer of authority, resources and autonomy to democratically elected SNGs (see paragraphs 2.4 and 2.8.1 in chapter 2 above). The chapter begins with a brief discussion on the American federalism, the world's oldest and most advanced federation.

4.2 FEDERALISM IN THE UNITED STATES OF AMERICA

The US is the oldest and one of the most advanced and developed democracies in the world that have successfully embraced and implemented federalism as a form of state. This section on federalism in the US discusses the trajectory of American federalism in terms of possible developments that are likely to occur in American federalism based on the past and current political patterns and developments. The section also discusses centralisation and decentralisation in the USA.

4.2.1 Decentralisation and the trajectory of American federalism

Bowman (2002:3) argues that American federalism went through many changes in the 20th century. He (*ibid.*) then examines current patterns and takes a prospective look at the possible trajectory that American federalism would take in the first decade of the 21st century. Some of the issues discussed in this assessment include challenges facing the intergovernmental system and the balance of power between the states and the federal government. Bowman (2002:3) refers to federalism as a cause and effect process, in that it is both a structure and a system (see paragraph 3.5 in chapter 3 above for a discussion on governance as a structure, process, mechanism and strategy). The structure and system attribute determine outcomes, such as governmental policies and behaviours. On the other hand, the effect attribute means that it is influenced and molded by societal conditions, economic trends and political events (Bowman, 2002:3; Krislov, 2001).

The costs and benefits of federalism are derived from decentralisation and are in fact benefits of ownership rights in constitutional powers (Breton, 2000:1). Breton (2002:1) argues that

some unitary states are decentralised and therefore enjoy the costs and benefits attributed to decentralisation. However, federalism is superior to confederalism and unitarianism in that the ownership rights peculiar to that system of government ensure perdurance of competition when one or more competitors are unsuccessful. The ability to ensure perdurance of competition emanates from the fact that in federalism powers cannot be repossessed unitarily (Breton, 2002:1). There is however tension between the ideals that federalism seeks to achieve, which is between the need to unite for a common purpose and to maintain distinctiveness of its constituent units (Moore, Jacoby & Gunlicks, 2008:393).

The goal of federalism of seeking to accommodate two opposing objectives of unity and distinctiveness is explained by Mengie (2015:462), who defined federalism as an instrument to serve diverse and common interests in a given nation by establishing a union to discharge common functions and regional governments to accommodate diverse interests. Thus, the preconditions for federal political systems are the existence of two spheres of government, which are independent of each other in their constitutionally defined and guaranteed spheres, and, a constitutional vertical division of power. However, since federations are meant to serve and reflect the prevailing social, political and economic contexts of the respective federations they adopt different forms of federalism to manage their own unique internal problems (Mengie, 2015:462).

In the US, the federal government played a limited role in the affairs of the states; hence, the US federalism is referred to as a dual-sovereignty or layered-cake model in that the powers and functions of each sphere of government are independent as enumerated in the country's Constitution. This division of roles and separation of powers emphasises the notion that the states are not subordinate to the federal government. Despite this division of functions and separation of powers, the Constitution does empower the federal government to play a role in the affairs of the states, such as in appropriation of funds for legitimate state public purposes and in regulating interstate commerce. The federal government's role in the states increased during and after the World War Two (WW II) and the Great Depression resulting in the formation of cooperative federalism, also known as a marble-cake model of federalism, which replaced the layered-cake model (see paragraph 2.6.2 in chapter 2 above) (Lazar & Leuprecht, 2009:286).

Cooperative federalism promoted the increased role of the federal government and the concept of intergovernmental relations between the federal and state governments (Lazar & Leuprecht, 2009:286). Cooperative federalism dictates that both the federal and state governments are jointly responsible for addressing public policy. In this system, the federal government sets policy priorities and provides financial aid in the form of grants-in-aid to the states and local governments. These SNGs are then required to implement these policies (Lazar & Leuprecht, 2009:286). The term cooperative or interlocking federalism emanates from the notion that the various actors at various spheres of government are required to cooperate with each other, as found in the German system of government, which is characterised by the immensely complex interweaving of political competencies and financial dependencies to function (Green, Hough, Miskimmon & Timmins, 2008:62).

Wilk and Lamb (2011:392) provide a good example of cooperative governance; that is, the housing (Fair Housing Act of 1968) and school desegregation policies in the US, which deal with desegregation in housing and schools. The state and local governments in the US were expected to enact and enforce fair housing laws, yet their willingness to do so have long been in question, especially since the 1960s, when the issue of school desegregation loomed large in national politics. “State and local governments have nevertheless played an increasing role in implementing national policies since the 1960s” (Wilk & Lamb, 2011:392). The benefit of transferring or delegating authority and policy implementation responsibility to lower spheres of government is illustrated by the state and local agencies. The relationship between states and the federal government in the US, that is, cooperative governments, can also manifest itself in the form of interstate compacts, which are mechanisms largely emanating from the response by states to federal intrusion into the state policy arena. Interstate compacts are increasingly becoming important tools that allow the states to tackle regional and national issues (see paragraph 2.3.1 in chapter 2 above) (Wilk & Lamb, 2011:392; Dikshit, 1971:105).

Woods and Bowman (2011:859) argue that federal activism in economic policy increases state participation and interstate compacts. However, state participation in these compacts varies across policy domains. In other policy areas, states are more likely to enter into compacts during periods of relative federal inactivity. Nonetheless, Woods and Bowman (2011:859) strongly argue that states may sometimes use interstate compacts as a mechanism to resist federal incursion. The US has throughout history battled with drawing the line between the authority of the federal government and that of the states. Nonetheless, the

pattern of power relations has been one of increasing centralisation, marked by sporadic diversions in a decentralising direction. This trend was more profound during the post-war period when the central government adopted policies and enacted programmes that have increased its power vis-à-vis the states (Woods & Bowman, 2011:859).

An empirical examination of the public law and executive orders with intergovernmental relevance between 1947 and 1998 shows that the actions of the Congress and the president served to increase federal dominion over policy-making. Even though the shift of power to the federal government was not constant and was challenged, the net effect has been an empowered central government in policy-making. However, the trend towards increased centralisation and federal encroachment onto state policy turf fluctuates somewhat across policy areas. For example, in comparing three policy areas, economic policy, natural resources policy, and composite health, education and welfare (HEW), HEW experienced the greatest degree of centralisation among the three, followed by natural resources and economic policy (Woods & Bowman, 2011:862).

4.2.2 American federalism: centralisation versus decentralisation

Smith (2000:71) presents an analysis of American federalism based on opposing perspectives about how the system of government should work and which objectives it should pursue. The analysis centred around the powers and functions assigned to both the states and the federal government (see paragraph 1.2.7 in chapter 1 above). Smith's (2000:71) analysis was based on the views among both Democrats and Republicans, particularly the presidential candidates, George W. Bush and Albert Gore, during the 2000 elections. Bush's preference was for a free market system where states possessed more powers to pursue their own economic policy objectives. Gore, on the other hand, preferred significant authority to reside with the federal government to determine policy objectives and where states were required to cooperate to achieve those objectives, that is, whereby states would implement centrally formulated policies (Smith, 2000:71).

In other words, Albert Gore preferred a relatively centralised and unitary form of government where the states would be subordinate to the federal government in policy matters. That is, the federal government would be responsible for policy formulation and direction, whereas the states would merely implement federal policies. The view that the US government is

highly centralised is further emphasised by Lazar and Leuprecht's (2009:286) assertion that state and local governments respond to countless federal regulations and grants, rather than formulating their own policies. Treisman (2004:22) defines a centralised state as one where one government completely exercises its powers over the entire national territory as its jurisdiction. In this form of government all other lower sphere jurisdictions are administratively subordinate to the central government whereby the central authority appoints officials to implement its policies in these jurisdictions (Treisman, 2004:22).

Centralised political systems concentrate and control the decision-making process and the allocation of financial resources and their utilisation in the central government without any power sharing with the SNGs. Countries that have a centralised system of government are unitary states such as the UK, France and Bangladesh. In a centralised form of government, the authority has the power to decide on policies in all jurisdictions of the territory (country). Officials appointed at lower sphere jurisdictions have no right to overrule or appeal the instructions of the central government (Abbasi & Mussarrat, 2015:893). Jurisdictions where appointed officials have no policy powers are called administrative spheres and regimes where a centralised government has policy powers over the entire territory, while appointing officials to implement these policies at lower sphere jurisdictions, are referred to as administratively decentralised governments (Treisman, 2004:3; Abbasi & Mussarrat, 2015:893).

The oldest ideal of federalism is to pursue both unity and diversity in a political organisation. Stated differently, federalism seeks to achieve two incompatible ends for its subunits of not being independent, on the one hand, and not joining a large unitary country, on the other (Smith, 2000:71; Rubin, 2001). Federalism was developed to promote and reconcile both the marketplace and a commonwealth. The marketplace ideal is characterised by individualism and competition, whereas a commonwealth doctrine pursues a common vision, community and cooperation. Federalism reconciles the marketplace and commonwealth ideals by authorising the state governments to promote the marketplace, and the federal government to promote the commonwealth (Smith, 2000:72).

Smith (2000:72) argues that the division of responsibility between the federal and state governments deteriorated in the 20th century. Smith (2000:72) attributes this deterioration first to the US Supreme Court's test of the commerce clause, which allowed the marketplace

to disrupt the commonwealths. Secondly, the federal government's efforts to promote equality led to an emphasis of individual liberties in matters of privacy, while limiting individual rights to property and association. Smith (2001:72) further highlights the political tension inherent in American federalism as a question of whether Americans want a nation of one or many communities. This is the political tension mentioned earlier between unity and diversity. Historically Americans preferred a nation of many diverse small communities (Smith, 2000:72; Rubin, 2001).

However, this trend changed in the 20th century and America became one powerful community that promoted equality and individualism, public policies of efficiency and expertise, and controlled challenges of national economy. Localism declined as a result of the US Supreme Court's preference of individual rights over communal values and differences. This promotion of individual rights, which favoured nationalism, was only partly successful since localism was deeply entrenched in the American society. This partial success of the two opposing values led to fragmentation in policy matters, with the result that neither centralisation nor decentralisation prevailed. Progressives argued in favour of unity, that is, a nation of one single community for various reasons, including, a strong national government is better positioned to mitigate the power of interest groups, protecting the environment, and countering the power of business and globalisation. According to Smith (2000:73), "Localities suffer from parochialism, and majority and minority tyranny, which undermine individual rights and values of tolerance and pluralism".

Other scholars (Thomas Jefferson, Alexis de Tocqueville, and John Dewey), contrarily, argued in favour of diversity in that local self-government promoted democracy. Secondly, advocates of local government argued that localities were more flexible and responsive to the needs of citizens and international developments than national governments (Smith, 2000:73; Jochimsen, 2008:541; Asfaw, Frohberg, James & Jütting, 2007:18; Biela, Hennl & Kaiser, 2011:449; Prohl & Schneider, 2009:641). Lazar and Leuprecht (2009:286) argued that American politics placed a high regard on localism; thus, favouring the principle of subsidiarity, which demands decision-making to be made at the sphere of government closest to the people.

Cooperative governance in the US is not functioning well. This was illustrated by the New Orleans Katrina hurricane and the floods of 2005, where coordination among the three

spheres of government in responding to an emergency of such a scale was lacking (see paragraph 2.6.2 in chapter 2 and 3.6 in chapter 3 above) (Lazar & Leuprecht, 2009:286).

The converse of localism or subsidiarity is the representation of subnational units in decision-making at the national government sphere. Gress (1994:409) argues that in the US the states have no representation as constitutionally protected jurisdictions in national decision-making. The opposite situation is found in the Federal Republic of Germany (FRG) where the *Länder* have an enshrined place in the national institutional structure and process of decision-making (Gress, 1994:409). A change in American federalism to achieve state building resulted in the shifting of local or state responsibilities upward to the congressional or federal arena in the 19th century. This upward shift in responsibilities occurred in the infrastructure development sector, particularly in rail construction. Local governments or states that were not able to build rail roads turned to the federal government for assistance, which eventually shifted much of the policy responsibility from the states to the federal government. According to Callen (2012:294), “Through the 19th and 20th centuries, the federal government gained responsibility over a range of new policy areas, each of which greatly expanded the national state’s power to control its territory”.

4.3 FEDERALISM IN EUROPE

This section focuses on federalism and decentralisation in two of Europe’s leading federations, namely, Germany and Switzerland. The formation of the Swiss confederation took one of the two possible routes, whereby different linguistic and ethnic communities joined together to form a new entity while maintaining and recognising their ethnic and cultural identity and differences. Other countries that followed this route include the US and Australia. The second possible route for formation of a federation involves federalisation of a unitary state by according autonomy to subnational units while maintaining a common federal government (Fessha, 2008:73). The decision to federalise is usually to grant autonomy to ethnically and culturally diverse communities in ethnically plural societies. Examples of countries that were formed in this fashion include Canada, Belgium, India and Spain (Fessha, 2008:73).

The discussion on Germany focuses on fiscal federalism, fiscal federal structures, joint policy-making and the 2006 Constitutional reform. Germany is the most economically

powerful “semi-hegemonic” state in Europe and the EU’s uniquely high level of political integration depends on its engagement and support (Webber, 2014:341). Webber (2014:349) illustrates the importance of Germany in the EU by arguing that the EU may be regarded as a “species” of federal state. The strength and economic power of Germany is emphasised by Auer (2012 in Outhwaite, 2014:327), who argues that “the attempt to weaken German influence in Europe by integrating it more firmly into a radically transformed EU has significantly increased economic and political imbalances, unwittingly empowering Germany vis-a-vis its European partners”.

As pointed out earlier (see paragraph 4.4.2.3 on page 256 below), most federations fail (Christin & Hug, 2012:93), and mainly multinational federations like the EU are more prone to failure than others. However, Webber (2014:349) argues that the EU is robust and built to last because of its strong judicial safeguards. However, the other two safeguards against the collapse of federal systems, namely, partisan (party-political) and socio-cultural safeguards, are weaker in the EU. Outhwaite (2014:326) supports Webber’s (2014) view above and argues that the EU will survive, that the Euro will survive, and that the existing member states will remain democratic enough to satisfy the Copenhagen criteria. This argument might not hold given Brexit, whereby the populace of the UK voted in favour of the UK exiting the EU, which was likely influenced by the EU’s continued bailing out of Greece (<http://www.bbc.com/news/uk-politics-39431428> viewed on 31 March 2017).

On the other hand, the discussion on Switzerland focuses on recent developments of Swiss federalism, diversity, fiscal federalism, and competitive fiscal federalism. Sacchi and Salotti (2014:144) state the following:

The existing political, legal, and fiscal institutions are currently undergoing significant changes in many developed countries. Countries such as Belgium, Italy, and Spain have recently undertaken policy decentralisation reforms to increase the autonomy of sub central governments and to reduce the inefficiencies of centralised fiscal policy.

Developed countries move towards greater fiscal decentralisation in order to achieve more efficient use of public resources by assigning policy control and power to the local sphere, with additional positive results for economic development within a country. Political decentralisation (that is, political autonomy granted usually by the constitution) is different from fiscal decentralisation (that is, economic) in that the latter refers to the outputs

associated with the demands for public services made by the residents of various jurisdictions. Fiscal decentralisation refers to the nature of the outcomes, while political decentralisation is the structure within which these outcomes are determined. Fiscal decentralisation is synonymous with fiscal federalism, fiscal autonomy and fiscal reform and refers to the transfer of fiscal authority from central governments to SNGs (Wang & Ma, 2014:306). This includes the authority to raise tax revenues and take decisions on spending on their own initiative within a legal framework (Hasanov *et al.*, 2016:88).

Subnational and local governments are more effective and efficient than the central government in making policy decisions concerning local citizen demands due to their close proximity to local citizens; thus, the increased advocacy for fiscal decentralisation. The benefits of fiscal decentralisation include improved resource allocation, public service delivery, equity, macroeconomic stability, and ultimately a positive impact on economic development. The rationale and benefits of fiscal decentralisation vary from country to country. In developing countries, decentralisation is mostly aimed at deepening democracy, while in transitional economies it is seen as the solution in shifting from a command-based economy to a market-based economy (Gaynor, 2014:203; Hasanov *et al.*, 2016:88). Positive policy implementation is another benefit of decentralisation, as Franceschet and Piscopoy (2013:129) posit that decentralisation allows party system fragmentation that makes SNG authority more responsive to local concerns, especially when SNGs vary in their principled opposition to or support for policy. In contrast, in unitary states, party systems are centralised and thus partisan allegiances better predict patterns of policy compliance and defiance. Thus, federalism improves the understanding of patterns in the SNG variation of policy outcomes (Franceschet & Piscopoy, 2013:129).

A good example of these benefits is Indonesia where decentralisation led to the improved overall fiscal health of provinces, including regular surpluses, after decentralisation reforms in the country since 1999 following the overthrow of President Suharto. However, revenue and expenditure varied strongly across years; provinces performed poorly in implementing planned budgets and relied on the central government for more than half of their revenue. Great fiscal disparities were found across provinces (Seifert, 2015:108). Ostwald, Tajima and Samphantharak (2016:139) argue that “this devolution has created a new class of regional political elites and has shifted significant power back to sub-national levels in Indonesia’s centuries’ long history of centre-local tensions”. Disparities in expected improvements in

service delivery and downstream economic growth were observed across provinces where efficiency gains in some regions were offset by the widespread emergence of clientelistic practices and fiscal inefficiencies (Ostwald, Tajima & Samphantharak, 2016:139).

4.3.1 Fiscal federalism in Germany

The task of determining the number of layers of government and allocation of functions to the layers for maximum welfare is challenging. Jochimsen (2008:541) seeks to address this challenge from an economic point of view by focusing on the design of fiscal relations in German federalism. Jochimsen (2008:541) identifies two extreme positions regarding allocation of fiscal tasks, namely, complete decentralisation, or complete centralisation of fiscal affairs. Reasons for favouring decentralisation include participation possibility, the subsidiarity principle, and Oates' decentralisation theorem that advocates for efficient provision of Pareto-efficient levels of output of public goods by local governments than central government (Jochimsen, 2008:541; Garzarelli, 2006:238; Prohl & Schneider, 2009:641). Local government institutions are crucial in engaging effective grassroots citizen participation in the decision-making, planning and implementation of projects in pursuit of sustainable community-based development (Nair, 2014:398).

The decentralisation theorem and the concept of provision of Pareto-efficient levels of consumption imply that the provision of public services is more efficient if done by the SNGs than when the central government maintains a uniform level of consumption or provision across all jurisdictions (Abbasi & Mussarrat, 2015:893; Garzarelli, 2006:238). Jochimsen (2008:541) argues further that local governments are better suited than central government to meet heterogeneous preferences. Another reason in favour of decentralisation is the change in taxation rules between local governments as a result of the diverging provision of public goods in response to migration among jurisdictions (Jochimsen, 2008:541). This argument is based on the view that regional tax competition encourages people to migrate to jurisdictions where municipal services are higher in relation to the amount of local tax levied (Edwards, 2005:630).

On the other hand, compelling arguments in favour of centralisation include the ability of centralisation to internalise local or regional spillovers; the advantages of economies of scale resulting from the provision of services by the central government; and, the provision of

distributive services by central government has the effect of preventing wealthy people from leaving jurisdictions with high distributive preferences. Germany has chosen a hybrid of decentralisation and centralisation in its fiscal reform process. In addition to the hybrid model, Germany violates the principle of institutional symmetry by having different layers of government involved in joint decision-making, joint revenue-raising and revenue-sharing. The institutional symmetry principle requires the taxpayer, decision-maker and beneficiary to be identical in order to reach the Pareto-optimal results. This system minimises the number of free riders who receive goods without paying for them (Jochimsen, 2008:541).

Public deficits have increased in recent years as a result of institutional asymmetry. *Länder* politicians are inclined to debt finance their public expenditure because of an almost guarantee of a bailout. Jochimsen (2008:542) argues that a reform of fiscal relations policy is necessary since existing rules are not effective in preventing over-indebtedness by both *Bund* (central) and *Länd* (state) governments (Jochimsen, 2008:542).

4.3.2 Fiscal federal structures in Germany

German fiscal federalism is a typical example of institutional asymmetry in that tax revenue is shared between the *Bund*, *Länder* and sometimes the *Gemeinden*. Federal government is not restricted in setting its taxes, whereas the SNGs have little power in this regard (Jochimsen, 2008:542). The *Länder* have no tax setting autonomy, whereas the *Gemeinden* can raise some tax and can determine the tax rate for real estate tax and business tax. The *Länder*, however, participate in the tax legislation process by voting in the *Bundesrat*. The distribution of tax revenue from joint taxes is negotiated by the *Bund* and the *Länder*. Citizens cannot hold any of the two spheres of government responsible for their tax burdens because of this joint decision-making in tax revenue distribution and therefore cannot control their governments in this policy area. This lack of accountability for tax revenue distribution might incentivise politicians to set taxes at a sub-optimal level (Jochimsen, 2008:543).

Bund and *Länd* governments are unrestricted in incurring debts, despite a requirement in Article 115 of the Basic Law called the golden rule that governments' net borrowing should not exceed their planned investment expenditure (Jochimsen, 2008:543). This rule is less strict because it is linked to, or dependent on, economic conditions. Politicians are motivated by various reasons to raise their debts to sub-optimum levels, which include opportunistic or

partisan behaviour and divided governments. The golden rule was therefore not successful in limiting indebtedness in Germany.

The fiscal equalisations (*Finanzausgleich* or FA) system obliges financially strong states to provide equalisation payments to financially weak states. FA is intended to create equal living conditions for the entire population of Germany and as a result more decentralisation and competition, which might lead to diverging provision of public goods among *Länder*, is discouraged. The goal of achieving equal living conditions through fiscal equalisation throughout Germany is entrenched in Article 72 of the Basic Law. The *Länder* are linked to each other through a horizontal fiscal equalisation scheme (*Länder finanzausgleich*) whose aim is to deliver equal levels of per capita income across them, in accordance with Article 72 of the Basic Law (page 335, paragraph 5.4.4 in chapter 5 below) (Green *et al.*, 2008:61).

In addition, the federal government provides vertical equalisation payments to poorer *Länder* to supplement the horizontal equalisation scheme. The majority of beneficiaries of these fiscal equalisation schemes are those *Länder* in the territory of the former German Democratic Republic (GDR), which amounted to €14.6 billion in 2005, as shown in Table 4.1 below (Green *et al.*, 2008:61).

Table 4.1: Diversity among the 16 Länder of Germany, 2005

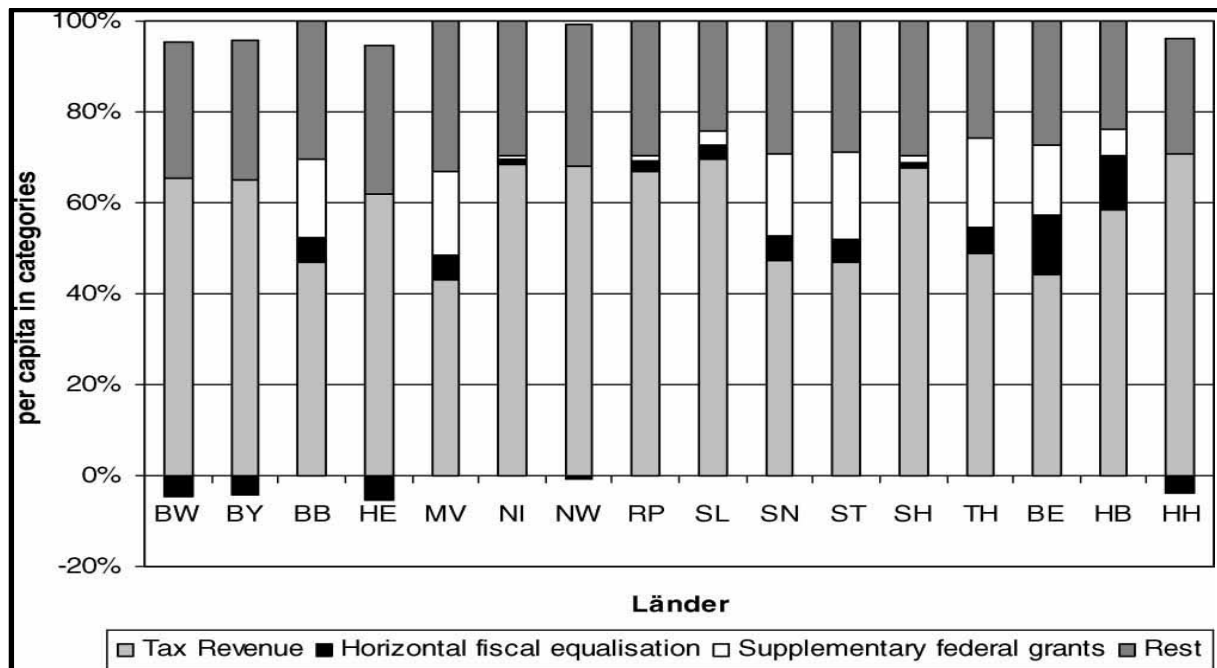
<i>Land</i>	<i>Population (millions)</i>	<i>GDP/capita (€a)</i>	<i>Unemployment rate (%)</i>	<i>Public debt/ capita (€)</i>	<i>Horizontal equalisation transfers (€ billion)</i>	<i>Votes in Bundesrat</i>	<i>Composition of government (July 2007)</i>
Baden- Württemberg	10.7	30,793	7.0	4,335	-2.2	6	CDU-FDP
Bavaria	12.5	32,378	7.8	3,133	-2.2	6	CSU
Berlin	3.4	23,433	19.0	15,907	+2.4	4	SPD-Left Party
Brandenburg	2.6	18,799	18.3	7,091	+0.6	4	SPD-CDU
Bremen	0.7	36,903	16.8	17,013	+0.4	3	SPD-Greens
Hamburg	1.7	45,866	11.3	11,721	-0.4	3	CDU
Hesse	6.1	32,451	9.7	6,093	-1.6	5	CDU
Lower Saxony	8.0	23,563	11.6	6,832	+0.4	6	CDU-FDP
Mecklenburg- Western Pomerania	1.7	18,327	20.3	7,149	+0.4	3	SPD-CDU
North Rhine- Westphalia	18.1	27,082	12.0	7,244	-0.5	6	CDU-FDP
Rhineland- Palatinate	4.1	24,015	8.8	6,894	+0.3	4	SPD
Saarland	1.1	26,162	10.7	7,804	+0.1	3	CDU
Saxony	4.3	17,729	18.3	4,043	+1.0	4	CDU-SPD
Saxony-Anhalt	2.5	19,454	20.3	8,522	+0.5	4	CDU-SPD
Schleswig-Holstein	2.8	24,356	11.6	7,792	+0.1	4	CDU-SPD
Thuringia	2.3	19,128	17.1	7,190	+0.6	4	CDU

Source: *Statistisches Bundesamt*; GDP/capita data taken from Schmidt, 2007 (in Green *et al.*, 2008:68)

The FA assumes equal financial requirements per inhabitant, but a special provision for increased financial requirements per inhabitant is made for city states, which include Berlin, Bremen and Hamburg (Jochimsen, 2008:543; Green *et al.*, 2008:59). City states are both *Länder* and *Gemeinden* and have to carry out both *Länder* and *Gemeinden* tasks; hence, their higher financial requirements per inhabitant. Populations of city states are increased by 35 per cent in financing formulas to make up for their higher financial requirements. Other *Länder* which have higher financial requirements, albeit lower than those of the city states, are the three sparsely populated *Länder* in Eastern Germany, namely, Brandenburg, Mecklenburg-Western Pomerania and Saxony-Anhalt, which need to maintain a certain level of infrastructure even if it is not used to capacity. As with the city states, the population of these *Länder* is also slightly increased (Jochimsen, 2008:543).

Financially weak states benefit from supplementary federal grants to help them meet their financial requirements. These grants make up a significant percentage of the annual budgets of receiving states. It is for this reason that politicians in poorer *Länder* oppose the idea of transferring more powers to the *Länder* in fear that more legislative and fiscal powers for the *Länder* would put them at a disadvantage (Moore, Jacoby & Gunlicks, 2008:393). The composition of overall annual revenues for different states in Germany is shown in Table 4.2 below.

Figure 3.3: Per capita revenue in the Länder in 2005



BW: Baden-Württemberg; BY: Bavaria; BB: Brandenburg; HE: Hesse; MV: Mecklenburg-Western Pomerania; NI: Lower-Saxony; NW: North Rhine Westphalia; RP: Rhineland-Palatinate; SL: Saarland; SN: Saxony; ST: Saxony-Anhalt; SH: Schleswig-Holstein; TH: Thuringia; BE: Berlin; HB: Bremen; HH: Hamburg.

Source: Jochimsen, 2008:544

Taking Berlin as an example, horizontal transfers in this state account for 13 per cent of its annual revenue, whereas vertical transfers, that is, federal grants, account for more than 15 per cent. In Berlin, only 44 per cent of overall revenue comes from tax collection. The dire financial situation in the eastern *Länder* is expected to continue for years to come, as asserted by Petersen, Scheller and Wintermann (2008:562), by highlighting the fact that these *Länder*'s revenue-raising capacity is severely limited as it accounts for only one-third of the average of all *Länder*. In contrast, in richer states such as Lower Saxony, own tax revenue accounts for the greater part (70 per cent) of overall revenue, while a smaller fraction (less than 2 per cent) comes from horizontal and vertical transfers together. Co-financing of mandates is common in Germany and as a result there is no clear division of political and financial responsibilities between the different layers of government. A division of political and financial responsibilities would increase accountability and efficiency (Petersen, Scheller, & Wintermann, 2008:562).

4.3.3 Germany's Double *Politikverflechtung*: implications of federal reform on *Bund-Länder* relations in Europe

Reforms (2002) of German federalism, which began with the establishment of a reform task force (reform 1), were aimed at unlocking interlocking federalism in Germany and to ease constraints of a joint decision-making trap (Moore, Jacoby & Gunlicks, 2008:394; Moore & Eppler, 2008:488). The ability of the German government to deliver real policy change (structural and institutional) is constrained by the complex multi-actor negotiations arenas, which have developed within the German federal polity. German political commentators perceive the *Länder* to have excessive influence on federal policy and decision-making through their representation in the powerful *Bundersrat*, a phenomenon referred to as blockade politics, which increases the difficulty of passing legislation and reforms (Moore, Jacoby, Gunlicks, 2008:394; Baile, Heenl & Kaiser, 2011:450-451).

Green *et al.* (2008:58-59) identify federalism, that is, separation of powers as the key source of tension and reform blockage in German politics, resulting in what they term “incremental policy change”. The notion of reform blockage is attributable to the *Bundesrat*, which wields a veto power in over one-third of legislation, including tax reform bills. However, the *Bundestag* may overrule any opposition from the *Bundesrat* in the passage of two-thirds of the laws. The *Bundersrat* remains a veto point in German politics despite reduction of its veto power from over 60 per cent of the legislation following the 2006 federalism reform (Green *et al.*, 2008:61).

This decision-making trap is more evident in policy matters pertaining to EU context. Decision-making at the EU level provides a further framework, which adds to the complexity of decision-making, which could hamper domestic policy development and internal reform agendas (Moore & Eppler, 2008:488). The complex decision-making trap found in domestic German federal policy-making has replicated itself in the policy-making arena pertaining to EU matters. The replication and expansion of joint policy-making (*Politikverflechtung*) (Moore, Jacoby & Gunlicks, 2008:393) to the EU policy areas has created a system referred to as *doppelte Politikverflechtung* (a multiple framework of joint decisions) (Moore & Eppler, 2008:488).

Ratification of EU treaties has led to forced incremental reforms and reconfiguration of German domestic decision-making processes. These reforms sought to accommodate demands posed by the ratification of EU treaties, but failed to restructure fundamentally the nature of German domestic policy coordination on the EU. A joint Federal Reform Commission of members of the *Bundestag* and the *Bundesrat* was established in 2003 to draft measures to modernise German federalism and to unravel complex procedures (Moore, Jacoby & Gunlicks, 2008:393; Moore & Eppler, 2008:488).

By 2003, the issue of domestic processes of intergovernmental cooperation on European policy formulation had risen up the political agenda for various reasons, including increasing policy challenges. In addition, the issue in question rose in political significance because the EU appeared to prioritise issues which were in conflict with fundamental *Länder* priorities, such as further enlargement, Turkish membership, and the draft Constitutional Treaty. Furthermore, Germany's elites regarded federalism as the biggest stumbling block against reform efforts and the current framework of intergovernmental negotiations on European policy as holding back Germany's full engagement with its European partners. The issues of domestic policy coordination needed to be addressed urgently for Germany to secure its national interest in the EU. Both stakeholders to the Reform Commission, that is, the federal and *Länder* governments agreed in 2003 that European policy-making in Germany needed to be restructured. However, when talks broke down in December 2004, no firm conclusions had been reached on this policy issue. Subsequent reforms implemented under the grand coalition government in 2006 were minimal and limited in fundamentally reforming this complex policy-making process, which has been criticised by all stakeholders for constraining Germany's engagement with its European partners (Petersen, Scheller & Wintermann, 2008:562; Moore & Eppler, 2008:489).

These limited amendments to the existing policy coordination system as enacted and enshrined in Article 23 (the *Europaartikel*) of the Basic Law was as follows: *Länder* ministers appointed by the *Bundesrat* could lead negotiations in Brussels on behalf of the federation on a defined set of policy areas, that is, school level education, culture and broadcasting. Before this amendment, the negotiation lead would have to be agreed upon by the federal government and the *Länder*, based on analysis of the policy content. In these defined policy areas the *Länder* would be required to have a negotiation mandate, whereas prior to the amendment the Basic Law suggested that the *Länder* should have this negotiation

right as a requirement to negotiate on behalf of the federal government (Moore & Eppler, 2008:489).

4.3.4 Analysis of the consequences of Germany's 2006 constitutional reform

The German federal reforms of 2006 sought to enhance efficiency and accountability by untangling the complex intergovernmental relations system and by reducing the veto rights of the *Bundesrat*, Germany's strong second chamber of parliament (the *Bundestag* being the first chamber/ federal council). Burkhart, Manow and Ziblatt's (2008:522) analysis of the reform is in agreement with that of Moore and Eppler (2008:489), which conclude that a huge gap exists between the ambitious goals of the reform process and the reality of the actual reform outcome. On the other hand, Petersen, Scheller and Wintermann (2008:561) point out that the Federal Commission II that was tasked to oversee the 2006 reform was tasked with the mandate to modernise the country's fiscal relations between the *Bund* and the *Länder*. This mandate was expected to develop mechanisms to align federal-Länder funding structures with the latest economic growth and labour relations policy developments in and outside Germany (Petersen, Scheller & Wintermann, 2008:561).

Burkhart, Manow and Ziblatt (2008:522) assess the degree to which reform goals have been fulfilled by asking if the reform will accelerate the legislative decision-making process, expand the freedom of political action of the federal government, and disentangle the competencies between the intertwined spheres of German government. Germany's complex federal system of intergovernmental relations has been criticised throughout the 1990s as the biggest obstacle in effectively addressing the social and economic challenges of its unification, globalisation and Europeanisation (Burkhart, Manow & Ziblatt, 2008:522; Moore & Eppler, 2008:489; Petersen, Scheller & Wintermann, 2008:561; Jeffrey, 2008:587-598).

The December 2006 Constitutional reform, which was aimed at streamlining the entrenched federal system, is regarded as a major step towards reforming the German Constitution since its adoption in 1949. The threat posed by the *Bundesrat*'s oppositional veto has for many years been considered as a major obstacle to effective governance in Germany. This threat of oppositional veto powers has been a reality for more than 30 years because of the opposition party's dominance of the *Bundesrat* (Burkhart, Manow & Ziblatt, 2008:522; Moore, Jacoby & Gunlicks, 2008:394; Jeffrey, 2008:587-598).

Party political conflicts between the government and the opposition were carried over into the *Bundesrat*, thereby diminishing the government's ability to implement its political agenda. The result of these party-political conflicts was non-transparent policy decision-making within the *Bundesrat* and *Bundestag* conference committee. This process of non-transparent policy decision-making led to opaque compromises between the government, opposition, and the *Länder* and was criticised for being time-consuming, inefficient and incoherent. As a result, the first objective of the Constitutional Reform was to reduce the veto rights of the *Bundesrat* in order to make the legislative process more efficient and more accountable (Burkhart, Manow & Ziblatt, 2008:522; Moore & Eppler, 2008:489).

The second objective of the Constitutional Reform was to disentangle the system of joint decision-making (*Politikverflechtung*). Prior to the reform, joint decision-making referred to an elaborate system of jointly planned and financed programmes (*Gemeinschaftsaufgaben* and *Finanzhilfen*) in politically prominent policy areas, such as regional economic policy, higher education, research, social housing and urban renewal. Burkhart, Manow and Ziblatt (2008:522) argue that even though federal grants to states or provinces are common in federal systems, in Germany the situation is much more complex. As far back as the 1970s the *Länder* obtained constitutional guarantees ensuring that federal grants to *Länder* could not simply be based on bilateral agreements between the federal government and individual *Länder*.

Instead, such transfer had to be based on general legislation requiring agreement of the *Bundesrat* or various contractual arrangements with the consent of all *Länd* governments. These complex requirements have been criticised as barriers to effective policy-making and have generated a tendency towards political stalemates despite general consensus on policy problems facing Germany. Burkhart, Manow and Ziblatt (2008:522) argue that since the unification of Germany, the country's federalism has been characterised by zero-sum policy debates, policy-making biased towards the status quo, and a stalled political system unable to confront serious challenges.

4.3.5 Recent developments of Swiss federalism

The revised Swiss Constitution was introduced on 1 January 2000 with most changes focusing on issues of federalism (Fleiner, 2002:97; Pacillo, 2010:617). Fleiner (2002:97) argues that globalisation has and will continue to have centralising effects on the country's political and economic system. On the other hand, localisation will trigger emotional and nationalistic reactions within the different ethnic communities of Switzerland (Fleiner, 2002:97). The constitution of Switzerland provides for ethnic diversity, which continues to be a challenge due to the growing mobility of people and a significant percentage (20 percent) of foreigners living in the country. Switzerland is a small country of seven million inhabitants surrounded by Germany, France, Italy, Austria and the principality of Liechtenstein. The country was constituted out of 25 sovereign cantons, including six half-cantons, with its first Federal Constitution of 1848.

The twenty-sixth canton (Jura) was constituted by separation from the Canton of Berne at the end of the 1970s. German is the most spoken language in Switzerland, followed by French, Italian and Romansh. The Swiss Constitution was revised and adopted in 1878 and remained in force until 1999. During this period 140 amendments to the Constitution were effected (Fleiner, 2002:97-98). Fleiner (2002:98) argues that the 2000 Federal Constitution did not radically change the political system but brought important new federal developments in Switzerland. Three challenges facing the country currently are globalisation and European integration, privatisation and growing public debts, and migration. Switzerland has the highest percentage of foreigners per capita and the highest percentage of asylum seekers compared to all other European countries (Fleiner, 2002:98).

4.3.6 Diversity in Switzerland

Swiss federalism developed from the integration of several different, independent and very diverse communities, which had been structured as rural corporations, small democracies or aristocratic or economic oligarchies. These small corporations severed their ties and eventually seceded from their big neighbouring kingdoms, empires or nations. Thus, they were not part of the nation-building process of integrating Europe in the eighteenth and nineteenth centuries. These small corporations instead formed their own governmental system and constituted a state composed of different sovereign cantons of diverse political

units, different language communities, and different religions (Fessha, 2008:84; Fleiner, 2002:99).

The main purpose of forming the alliance (*Bund*), which later developed into a federal state, was to rule the political affairs of the cantons and of the alliance independently and according to their own values of democracy. A short civil war (*Sonderbundskrieg*) took place in 1847, leading to the transformation of the alliance into a federal state (Swiss Confederation) with a Federal Constitution in 1848 (Fessha, 2008:84; Hadley, Morass & Nick, 1989:83). The legitimacy of the Swiss Confederation is based on two key defining features of a federation, namely, constitutional autonomy of the cantons (self-rule), and on their constitution-making power at the federal sphere (shared-rule) (Fessha, 2008:84; Fleiner, 2002:150).

Constitutional autonomy of the cantons enables each cantonal democratic community to live and develop according to its own culture, history, language and religion. Each canton acknowledged the legal culture of its neighbours but established its own perception of the state, law, democracy, state-church relations, nationhood and state legitimacy (Fessha, 2008:84; Pacillo, 2010:618). In addition, each cantonal community maintained its cantonal and municipal citizenship with the result that every Swiss has a three-fold citizenship, that is, municipal, cantonal and federal, as enshrined in the Federal Constitution (Art. 37, par. 1). Massettie and Schakel (2009:3) argue that the probability of finding more radical regionalist parties is higher in decentralised contexts than in weakly decentralised ones. Canada, Switzerland and Germany are examples of countries where regions enjoy a strong degree of self-government and thus are more prone to increased demands for secession. Therefore, it could be argued that such strong autonomy of SNGs as seen in Switzerland increase the risk or threat for demands of secession or independence by some ethnic or religious regional group (Massettie & Schakel, 2009:3).

The Swiss Confederation maintained its independence from its big neighbours in order to protect their own interests and to build up a joint nationhood. Nevertheless, cantons, especially those at the borders of Switzerland, maintained their cultural relationship towards their big neighbours. As a result, Swiss citizens still have a double loyalty to Switzerland and their big neighbours. They have political loyalty to Switzerland and cultural loyalty to their relevant big neighbouring nation. In the 19th century, causes of conflict in the Swiss confederation were more religious than cultural. The population of Switzerland is composed

of 55 percent Protestants and 44 percent Catholics. Religion is no longer a source of conflict in the 21st century, but instead language has become an issue. Results of a national referendum show different opinions on foreign policy, European integration, social security and environmental matters among different linguistic communities (Fleiner, 2002:99-100).

The Swiss Constitution (Article 4) declares all four languages, namely, German (63.7%), French (19.2%), Italian (7.6%), and Romansh (0.6%) as official languages of the country (Ogun, 2011:76; Fleiner, 2002:100). The three main languages (German, French, Italian) are on equal footing, whereas Romansh is partly protected by the Swiss Constitution (Article 70), which provides only the guarantee for the Romansh-speaking citizen to be served in their own language by the federal administration (Fleiner, 2002:100).

Language as an aspect of a social structure forms the basis of theorising about the direction of federal institutional change in federations of the industrialised West (Australia, Austria, Belgium, Canada, Germany, Spain, Switzerland, and the US). Institutions change in order to reach a better fit with the underlying linguistic structure. Hence, Erk and Koning (2010:353) argue that language is increasingly becoming an important provider of democratic space. Institutional change in federal systems with territorially based linguistic heterogeneity leads to decentralisation, while in homogenous ones it leads to centralisation. This implies that “in federations with linguistically homogeneous populations, language creates a common public space for all citizens regardless of internal subunit boundaries. In heterogeneous federations, on the other hand, language divisions divide the democratic space along linguistic lines” (Erk & Koning, 2010:355).

Tillin (2015:626) argues that the territorial composition of federal systems creates constellations of internal borders that are underpinned by and reproduce patterns of power. Furthermore, institutional choices during the founding of Constitutions of federal systems shape subsequent possibilities. The design of federal systems is aimed at recognising demands by previously marginalised ethnic groups without introducing or reifying new patterns of exclusion.

Territorial structures of federal systems seek among other objectives to accommodate multi-ethnic settings. Beyond accommodating different ethnic groups, the number and relative size of federal sub-units has a bearing on the quality of democracy, especially on the extent of

malapportionment in legislatures; on inter-regional redistribution; and on administrative efficiencies of scale. Furthermore, internal borders are also significant in relation to potential changes to international borders, that is, they have tenacity beyond the confines of their original setting. For example, “Since 1945, all states that have emerged from the break-up of existing states – such as the former Soviet Union and Yugoslavia – have adopted former internal borders as their new international borders” (Tillin, 2015:627).

Federal institutions of the industrialised West federations have changed over the past four decades. “Some, like Austria for example, have gradually become more centralised, whereas others, like Belgium, have followed the decentralist path” (Erk & Koning, 2010:354). Increasing centralisation in Austria for example has been attributed to the increasing pressures modern liberal-democratic capitalist societies face to be effective and efficient. Hence, federalism due to its division of responsibilities creates a barrier to nationwide solutions and creates a degree of diversity in public policies that are unacceptable to Austrian citizens. In contrast, the same pressures presented by modern liberal-democratic capitalism mentioned above are attributed to the increasing decentralisation in Belgium whereby post-industrial democracy increasingly calls for bringing democracy closer to the citizens and empowering lower spheres of government, that is, in favour of decentralisation.

Belgium’s increasing decentralisation renders the federation prone to threats of secession of Flanders; one of the three regions, the other two being Brussels and Wallonia. The federation of Belgium experienced six reforms of the state between 1970 and 2013; progressively increasing the autonomy of Belgian regions and communities (the three communities are the Flemish Community, the German-speaking Community, and the French-speaking Community) and making Belgium a federation characterised by evolution and endless and repeated demands for autonomy and self-determination by regions. These processes involve different strategies across regions with more offensive strategies in the north and conservative approaches in the south (Gérard, 2014:257).

4.3.7 Fiscal federalism in Switzerland

Switzerland is one of the most non-centralised countries in the world. The economic effects of tax competition among 26 Swiss cantons, in what is referred to as competitive federalism, are not known. Carbonnier (2013:392) argues that increased decentralisation leads to low

local corporate tax rates. This cost of decentralisation is balanced by the efficiency gains of improved governance (Carbonnier, 2013:392). Adamovich and Hosp (2003:1) in their study on fiscal federalism in Switzerland seek to uncover these effects from the lessons learnt from their study. Adamovich and Hosp (2003:1) argue that most countries prefer to follow the principles of coordinated, rather than competitive federalism, despite the success of Swiss competitive federalism. Certain institutional preconditions must be in place to achieve a well-functioning competitive federalism (Adamovich & Hosp, 2003:1).

Developing countries throughout the world, particularly those in Latin America, have shown an increased interest in fiscal federalism and decentralisation as tools to free these countries from the grip of centralised planning, which has failed to bring about self-sustaining growth in these countries. Adamovich and Hosp (2003:1) sought to develop the best model for the distribution of public functions to the different spheres of government. There is however no consensus regarding the optimal level of decentralisation in government. The Swiss confederation consists of three spheres of government: the federal government, 26 cantons and nearly 3000 municipalities. The smallest canton has 15 000 inhabitants. The Swiss Constitution endows cantons and municipalities with considerable fiscal (tax collection and expenditure) competencies (Adamovich & Hosp, 2003:1). Nearly 75 percent of total income tax goes to the coffers of both the cantons and municipalities. In addition, municipalities can levy a surcharge on cantonal direct taxes and raise their own property taxes. Great variation in personal income tax is found across and within cantons. The federal government derives most of its revenue from indirect (proportional) taxes, specific consumption taxes, general sales tax, and a small proportion from income taxes. Federal, inter-cantonal, and intra-cantonal grants and transfers are used to level out differences in revenue collection among jurisdictions. A criterion for such allocations is based on the fiscal capacity of each canton (see paragraph 4.3.2 for a discussion on vertical and horizontal revenue transfers in Germany) (Adamovich & Hosp, 2003:1; Carbonnier, 2013:392).

4.3.8 The theoretical background of fiscal federalism

Some of the attributes of fiscal federalism cited by proponents of this concept include arguments that tax competition corresponds with the concept of fiscal equivalence, gives local politicians more responsibility, and forces politicians to manage their budgets more efficiently and according to the preferences of their constituencies. On the other hand,

sceptics believe that tax competition promotes inefficiency in the provision of public goods. Adamovich and Hosp (2003:3) define federalism from an economic point of view as a system where jurisdictions within a nation-state have a considerable amount of tax and spending autonomy. Biela, Hennl and Kaiser (2011:448) define federalism as a system of government where territorially defined spheres of government or jurisdictions have constitutionally guaranteed division of competencies. In other words, in a federal state, the competencies (powers and functions) of all subnational jurisdictions may not be arbitrarily repossessed by the central government. On the other hand, they define decentralisation as the autonomy of SNGs to allocate resources within their jurisdiction (Biela, Hennl & Kaiser, 2011:448).

Sorens (2010:207) posits that the difference in federal and centralised systems emanates from the degree to which they enjoy policy autonomy, political independence from the central government, and taxation powers. Further, Sorens (2010:208) makes reference to theories of fiscal federalism as postulated by Riker (1964:11), Weingast (1995:4) and Rodden (2004) to identify the four key elements of fiscal federalism as follows: SNGs enjoy programmatic autonomy to decide on economic policy of their jurisdictions; SNGs are subject to hard-budget constraints where their spending is largely funded by their autonomous revenues, and may not have access to unlimited credit; and SNGs operate in a common market where free mobility of capital, goods and labour across borders is guaranteed, and the system is institutionalised such that the central government may not alter it at will (Sorens, 2010:208).

Sorens (2014:1) posits that federalism is a conflict-prevention mechanism, that is, it deters secession (see paragraph 4.4.2.1 and 4.4.2.5 above) but also creates market incentives for economic growth. However, most developing countries have ignored these principles for the proper design of federal and decentralised institutions, particularly with respect to hardening of the budget constraint and the enforcement of an open, common market. “Hard budget constraint” limits the ability of SNGs to take on debt, but to instead raise their own revenue. Many ethno-regionally diverse developing democracies such as India, South Africa and Indonesia and other developing countries, such as Mexico, Brazil, Argentina, Pakistan and Malaysia, have adopted federal or decentralised systems of government, but have failed to adopt a competitive system of fiscal federalism. On the contrary, ethnic diversity has helped to create and preserve relatively robust forms of fiscal federalism in Western democracies, such as Switzerland, Canada and Spain (Sorens, 2014:1).

The traditional economic theory of fiscal federalism holds that the various spheres of government should provide public services for their jurisdictions and be assigned proper fiscal instruments to perform these functions (Adamovich & Hosp, 2003:3). Decentralisation enables SNGs to develop a better understanding of the preferences of the people because they work closely and directly with them. In turn, people are closer to SNGs and thus can influence and control activities of subnational politicians and bureaucrats. This practice supports the principle of subsidiarity that declares that basic public services should be the responsibility of local government, as it is closer to the people and hence better positioned to respond adequately to their needs (Jochimsen, 2008:541; Garzarelli, 2006:238; Carbonnier, 2013:392).

The principle of subsidiarity and decentralisation to bring local government closer to the people is supported by Fitzgerald and Wolak (2014:130), who posit that people have greater trust in local than in central government because of the increased opportunities for voice in the former. People feel most politically effective and that they have the greatest understanding of political issues in local politics, rather than national politics. Local governments afford accessible opportunities for locals to participate in politics in a number of platforms and forums and first-hand experience, such as neighbourhood councils and school board meetings. The proximity of local government to the people increases their likelihood to interact with local government officials or representatives, for example, they might know a member of the council, attend a community meeting, or rely on local government services related to education or law enforcement that are provided to them directly by the local government, thus improving their trust in the local government (Fitzgerald & Wolak, 2014:130).

A properly functioning inter-jurisdictional competition is a necessary requirement to realise the positive effects of fiscal federalism. This competitive federalism entails a federally organised system where citizens and capital can move from one jurisdiction to others that offer better packages of taxes and public services. Consequently, SNGs are forced to compete for taxes and revenue from citizens and capital by providing better packages of taxes and public services. High levels of inter-jurisdictional tax competition in federally organised states force politicians to develop innovative solutions for both the citizens and capital. Innovations driven by constituency demands, also known as “bottom-up” approaches, are cheaper and more successful than those imposed in a “top-down” fashion. Adamovich and

Hosp (2003:4) argue that in a federally organised system with greater decentralisation of taxes and expenditures, the overall size of the public sector should be smaller (Adamovich & Hosp, 2003:4).

The hypothesis of a dampening effect of decentralisation of taxes and expenditures on government size is similarly expressed by Prohl and Schneider (2009:639-640). They argue further that democracy also has a dampening effect on government size. Other scholars disagree with these views and cite Latin America as an example of where decentralised governments tend to be larger. Others argue that decentralisation increases the chances of tax collusion, which has the potential to weaken the effect of reducing government size (Prohl & Schneider, 2009:639).

A study by the World Bank shows that fiscal federalism improves the quality of political governance. Sceptics of fiscal federalism cite three main arguments against the concept. They argue that citizens and capital will move to places with lower taxes due to the low cost of mobility between jurisdictions of a federal state. Governments will thus be forced to reduce their taxes and services in an attempt to keep and attract citizens and capital - a phenomenon referred to as a "race to the bottom", until revenue collected is not adequate to finance public spending. This situation will lead to a complete breakdown of public services. Adamovich and Hosp (2003:4) argue further that this scenario impedes redistribution as people with higher income tend to avoid taxes by moving to other jurisdictions with lower taxes (Adamovich & Hosp, 2003:4).

Sceptics argue that fiscal federalism compromises the unity of the federal polity and increases claims for more unity since federalism promotes the ethnic and geographical division of societies. Opponents of fiscal federalism argue that it is inefficient and dangerous as it perpetuates and creates new minority problems. Another argument advanced by sceptics of fiscal federalism is that economies of scale are not possible in smaller jurisdictions, making it difficult for these jurisdictions to survive economically (Adamovich & Hosp, 2003:6; Biela, Hennl & Kaiser, 2011:449). However, Adamovich and Hosp (2003:6) point out that empirical evidence supporting arguments advanced by sceptics of fiscal federalism is not available.

4.3.9 Competitive versus coordinated federalism

One approach of evaluating different forms of federalism is in terms of their impact on economic efficiency, distribution of income, political participation, and protection of individual rights and liberties. In their study, Adamovich and Hosp (2003:6) contrast competitive with coordinated federalism (see paragraph 2.7.1 in chapter 2 above). Competitive federalism is characterised by the autonomy of SNGs over taxes and public services and the effect of hard-budget constraints (see paragraph 2.7.2 in chapter 2 and 4.3.8 above) (Adamovich & Hosp, 2003:6; Sorens, 2010:208; Volden, 2003:352; Drew & Dollery, 2015:165).

Hard-budget constraints are an element of market-preserving federalism and refer to a situation whereby the SNG is unable to create and to borrow money unlimitedly. Furthermore, the national government is unwilling to bail out troubled SNGs. The competitive fiscal environment is such that SNGs that underperform in comparison to other jurisdictions are punished. Punishment takes the form of mobile production factors, such as capital and human capital exiting to more competitive jurisdictions, thereby negatively affecting the underperforming jurisdiction's tax collection and spending capacity. Competitive federalism contains an aspect of mobile production factors, that is, citizens and capital that will exit to jurisdictions which provide better tax regimes and public services. Another aspect of competitive federalism is competition, which constrains political actors from using their fiscal resources inefficiently or irresponsibly. Other benefits of competitive federalism include the reduction of waste, fraud and abuse by the SNG (Volden, 2003:352; Drew & Dollery, 2015:165).

Inter-jurisdictional competition increases the degree of hard-budget constraints within jurisdictions, that is, it promotes fiscal discipline and increases efficiency in the provision of public services (see paragraph 2.8.1 in chapter 2 above) (Volden, 2003:352; Biela, Hennl & Kaiser, 2011:447-448; Sorens, 2016:25). However, competition among neighbouring jurisdictions may lead to a reduction in welfare benefits provision as states reduce their benefits in response to their neighbours' cuts to avoid becoming "welfare magnets", which would attract potential recipients from neighbouring states because of higher benefits. This phenomenon is referred to as the "race to the bottom" where competition among states leads to a reduction in the supply of welfare benefits (Volden, 2003:352; Adamovich & Hosp,

2003:9). The existence of competitive federalism depends on the inability of the national government to centralise taxes and public services (Adamovich & Hosp, 2003:6).

If the national government possessed these competencies, it would gradually seize these powers from the lower jurisdictions. It therefore means that centralisation is only possible if SNGs unanimously decide to concede their powers to tax to the federal government. As a result of the unwillingness by SNGs to concede taxing powers to the federal government, cartelisation to avoid competition becomes very difficult and is an indication of commitment by SNGs to preserve federalism. Coordinated federalism, also known as cooperative federalism, on the other hand, seeks to level out differences among jurisdictions and is characterised by high levels of harmonisation within the federation. The driving principles of competitive federalism are coordinating and bargaining. SNGs in a competitive federal system will prevent others from free-riding or persuade them to enforce agreements within their jurisdictions (Volden, 2003:352; Biela, Henzl & Kaiser, 2011:447-448).

If they fail to do so, they will try to push competencies to the federal government. This process of coordinating and bargaining among SNGs is perceived as an attempt to build up a cartel on tax rates, which will be of benefit to all SNGs. Adamovich and Hosp (2003:6) argue that intergovernmental tax-sharing rules are signs of such cartels and lead to soft-budget constraints. The federal government has a duty to help troubled SNGs because SNGs rely largely on federal funding and therefore are not entirely responsible for their financial situation. It therefore follows that coordinated federalism is not a suitable arrangement as it cannot prevent underperforming SNGs from seeking assistance from the federal government, at the expense of other jurisdictions. The main differences between competitive and coordinated federalism is that the latter has comparatively higher levels of harmonisation of tax bases and rates and public services, and a higher tendency for centralisation. In addition, SNGs in coordinated federalism are subject to relatively softer budget constraints compared to those in competitive federalism (Adamovich & Hosp, 2003:7; Sorens, 2016:25).

4.3.10 Competitive fiscal federalism in Switzerland

Tax competition among SNGs in Switzerland has overall positive effects. Krane, Ebdon and Bartle (2004:517) allude to Tiebout's theory²⁵ of competitive federalism to emphasise that citizens "shop" for a favourable combination of taxes and public services among local governments or SNGs just as they would shop for goods and services in the private sector (see paragraph 2.7.2 in chapter 2 above). Therefore, jurisdictions which levy favourable taxes while maintaining high levels of public services are likely to attract citizens and hence increase their tax base. The theory of fiscal federalism, however, holds that specific institutional preconditions are necessary for such effects and these include state and local tax assignment, direct democratic elections, intergovernmental grants, revenue sharing and informal institutions. Internal markets in Switzerland allow the free movement of capital, labour, goods and services despite the country's marked federal structure (Krane, Ebdon & Bartle, 2004:517; Monro 2001:54; Tiebout, 1956:424).

In addition, the country provides important conditions for functioning markets, such as common civil and criminal laws, a common currency and a universal infrastructure (Adamovich & Hosp, 2003:8). Mobility costs between jurisdictions are minor due to relatively small geographical distances. However, cultural barriers given three language and culturally based regions in Switzerland may hinder the mobility of labour. Konrad (1995:166) argues that although the free movement of production factors reduces the scope for a redistribution policy, it could lead to the erosion of existing safety nets, such as old age pension system. In general, the country possesses significant potential for inter-jurisdictional competition. Competition among cities serves as an effective check on the technical efficiency of governments, thereby fostering a culture of efficiency in the public service (Konrad, 1995:166).

Further, competition generates information and incentives for politicians to produce public goods in accordance with the preferences of the voters and in a more efficient manner. Efficient public service could be a contributing factor to Switzerland having the smallest government in Europe (38.5 percent general government expenditure of GDP) after Ireland

²⁵ Tiebout's (1956:424) theory states that citizens will move to jurisdictions whose service delivery levels are favourable and expenditure-revenue patterns are fixed and known to voters, thereby compelling SNGs to become more responsive to their interest.

(31.5 percent), despite strong growth in government expenditure during the 1990s. Rodden (2003:695) weighs in on the view that where SNGs have wide-ranging autonomy to set the tax base and rate, especially of movables assets, that is, capital, goods and labour, government expenditure is reduced, thus increasing efficiency and reducing the size of the SNG (Roden, 2003:695; Prohl & Schneider, 2009:641).

The opposite outcome is witnessed where SNGs do not have tax autonomy and instead depend largely on federal or intergovernmental transfers for their expenditure and service delivery. Such governments, on the contrary, are less efficient and tend to be bigger in size (Rodden, 2003:695). The Swiss fiscal system corresponds largely to the guidelines proposed by Richard M. Musgrave, which outline optimal distribution of taxation among the three spheres of government. Adamovich and Hosp (2003:8) cite Musgrave who advocates for absolute or maximum decentralisation of public services and centralisation of redistribution policies in the federal government. In agreement with the aforementioned assertion, redistributive policy should be the responsibility of the central government because a decentralised redistribution of income will encourage migration of low-income people to jurisdictions with a higher redistributive income programme (Prohl & Schneider, 2009:641; Adamovich & Hosp (2003:8).

According to Adamovich and Hosp (2003:8), Musgrave further proposes that the federal government should rely on highly progressive income tax for redistribution reasons and on consumption tax if SNGs are small. If SNGs are large enough, they should levy income, consumption and natural resource taxes. Municipalities should in addition levy property tax. Adamovich and Hosp (2003:8) argue that the Swiss fiscal system differs from Musgrave's model in minor aspects of income and corporate taxes. However, such difference is conducive or necessary for inter-jurisdictional competition. The Swiss fiscal system is not an outcome of design but rather of evolution in horizontal and vertical competition between different jurisdictions. Table 4.2 below outlines a comparison in tax assignment between the Musgrave model and the Swiss fiscal system.

Table 4.2: Comparison in tax assignment between the Musgrave model and the Swiss fiscal system

	Guidelines by Musgrave	Swiss Fiscal System
Federal authorities	Progressive income tax and consumption tax (if lower jurisdictions are small)	Progressive income tax, consumption tax (lower jurisdictions are small), and corporate income tax
States/Cantons	Residents' income tax	Personal and corporate income tax, inheritance tax, and wealth tax
Local governments	Property taxes and payroll taxes	Personal and corporate taxes, income tax, surcharge and property tax

Source: Adamovich and Hosp, 2003:9

Adamovich and Hosp (2003:9) argue that the Swiss experience is a contradiction of the expected negative effects of fiscal federalism. The first argument is that the race-to-the-bottom (see paragraphs 4.3.8 and 4.3.9 above) hypothesis is not valid for Switzerland, but that tax competition is effective in producing hard-budget constraints for politicians. The second argument that federalism has disintegrating consequences is also not true for Switzerland, where four different cultures have co-existed peacefully for more than 150 years, since the constitution of 1848. The Swiss fiscal federalism system draws strength from the intense competition between cantons that have the same language and culture (Adamovich & Hosp, 2003:9; Papadopoulos, 2002:47).

The third argument advanced by Adamovich and Hosp (2003:10) is that small cantons in Switzerland have achieved enormous success, thereby contradicting the notion that small units cannot survive economically. The view that small subunits are not economically viable is only valid if jurisdictions do not have the incentives to cooperate on collective or common issues. Such incentives depend mainly on the economic openness and fiscal autonomy of jurisdictions. Therefore, Swiss fiscal or competitive federalism provides empirical evidence that intense inter-jurisdictional (tax) competition does not necessarily lead to the collapse of the welfare state or to failure of the state to provide basic public services (Adamovich & Hosp, 2003:11).

4.4 FEDERALISM IN DEVELOPING COUNTRIES

“Devolution has created a new class of regional political elites and has shifted significant power back to sub-national levels” - Ostwald, Tajima and Samphantharak (2016:139)

This paragraph discusses federalism in developing countries in Latin America, Africa and Asia. It focuses on Brazil, Argentina, Nigeria, Ethiopia, India and China as examples of federations in developing countries. As in the preceding paragraphs, the discussion on federalism in these developing countries focuses on fiscal federalism, fiscal federal structures, intergovernmental relations, and decentralisation²⁶. Many transition countries in the former Soviet Union and Eastern Europe and those in Latin America and Africa experienced a wave of re-democratisation and political and financial decentralisation in the 1990s that led to the transfer of authority and autonomy to democratically-elected SNGs (see paragraphs 2.8.1, 2.8.3 and 2.3.4 in chapter 2 above) (Lindaman & Thurmaier, 2002:915; Souza, 2002:23; Bardhan, 2002:185; Erk, 2006:116).

However, these developments had different results and experiences in all the countries. Decentralisation is an important component of the development strategy in many countries and is spurred in part by a worldwide trend towards democratically-elected central and local governments (Lindaman & Thurmaier, 2002:915; Souza, 2002:23). Bardhan (2002:185) argues that centralised states throughout the world have lost their legitimacy and decentralisation is favoured to bring benefits of good governance, political stability, conflict resolution and economic efficiency. Decentralisation is aimed at reducing the role of the central government by fragmenting central authority and introducing more intergovernmental competition and checks and balances. Many countries moved from authoritarian rule to re-democratisation through constitutional frameworks that redistribute and restrict political power. These countries on a path of re-democratisation follow different paths but share a common agenda for the economy, democracy and political institutions. The process of rebuilding democratic institutions in these countries involves an economic paradigm of tight fiscal control and market-oriented policies (Bardhan, 2002:185; Erk, 2006:116).

²⁶ These factors are key in strengthening and guaranteeing the autonomy of SNGs with respect to specific institutional preconditions for effective federalism, particularly fiscal federalism, namely, state and local tax assignment, direct democratic elections, intergovernmental grants, revenue sharing and informal institutions.

4.4.1 FEDERALISM IN LATIN AMERICA

This section on federalism in Latin America focuses exclusively on federalism, decentralisation and re-democratisation in Brazil, the most decentralised country in Latin America. Re-democratisation and reform processes in this country began in the 1980s and since then the country has undergone major economic and political restructuring, including change from military to democratic rule and the increased devolution of political and fiscal autonomy to SNGs.

4.4.1.1 Identity politics, citizenship, and democratisation in Ethiopia

Two dominant and competing political views found in Ethiopia are pan-Ethiopian conception and ethnic federalism. Main issues driving these views include the varying opinions about the definition of “Ethiopianness” and the control of key economic sectors and land by both government and the private sector. These issues together with the question of whether state-society relations should be reconfigured on the basis of ethnic federalism dominated the elections of 1995, 2000 and 2005. Aaron’s (2005:55) study uses the 15 May 2005 elections in Ethiopia as a unit of analysis to examine the evolution and practice of multi-party politics and the contending views of democracy and citizenship (Aaron, 2005:55; Gebrewold, 2009:79).

Federalism is the key feature of the reconstruction of the Ethiopian state following the 2005 elections, which has created more challenges in state-society relations. These challenges are represented on the one hand by the ruling party, the Ethiopian People’s Revolutionary Democratic Front (EPRDF). The EPRDF, which is a coalition of regional/ethnic forces, came into power in 1991 by overthrowing the left-leaning military regime (Aaron, 2005:55; Gebrewold, 2009:79, Adem, 2004:611). The other side of the state-society divide is represented by newly formed opposition political parties, including the Council for Unity and Democracy (CUD) and the United Ethiopian Democratic Forces (Aaron, 2005:55; Abdullahi, 2007:556).

4.4.1.2 Federalism in Brazil

The 1988 Constitution of Brazil vests significant powers and competencies in state governments. However, the union (federal government) is largely dominant over the state

governments despite the country's political structure being a federal state since 1891. The Brazilian Supreme Court (*Supremo Tribunal Federal*: STF) frequently adjudicates conflicts of powers and jurisdiction between the federal and state governments. Arlota and Garoupa (2014:137) argue in these disputes there is some degree of alignment between judicial behaviour and presidential appointments in the Brazilian Supreme Court, suggesting that justices often are in favour of the federal government in such conflicts (Arlota & Garoupa, 2014:137).

Brazil experienced challenges in its democratic consolidation process, but has also experienced several free and fair elections, including drawing-up a new constitution in 1988. As Menocal and Eade (2004:791) posit, in the 1980s, a wave of democratisation swept across many countries in Africa, Latin America and South Asia, and along with it was a process of neo-liberal economic restructuring, which embraced decentralisation as a way of reducing government size and reach. Souza (2002:23) says that Brazil as a federation is perceived as the most decentralised country in the developing world. Bardhan (2002:185) argues that decentralisation has been regarded as a major institutional framework for outstanding industrial and economic growth in developing countries, such as China and India. Moreover, international development organisations, such as the World Bank, have touted decentralisation as a major governance reform tool (see paragraph 2.4 and 2.8.1 in chapter 2 and 3.6 in chapter 3 above) (Bardhan, 2002:185; Neamțu, 2016:48; Sorens, 2016:25).

Benefits attributed to decentralisation include the reduced role of the state, increased intergovernmental competition and checks and balances, improved government efficiency and responsiveness, diffusing social and political tensions in ethnic conflicts, and ensuring local cultural and political autonomy (see paragraph 2.7.2 in chapter 2 above) (Bardhan, 2002:185; Inman & Rubinfeld, 1997; Monro, 2001:54; Bagchi, 2000:3026). Federalism in Brazil is a long dynamic continuum of centre-state-local relations in the transformation of the political regime. Changes resulting from re-democratisation and decentralisation in Brazil have had uneven development and imbalances among regions, which have led to contradictions and tensions in the Brazilian federalism. Brazilian federalism has always been used as a means to accommodate and mitigate deep-rooted regional disparities. Political and fiscal mechanisms used to offset regional disparities have been developed since the 1930s (Bardhan, 2002:185).

However, such mechanisms have been insufficient to counteract the dire social consequences of prolonged regional disparities. Decentralisation and economic reform policies have led to SNGs becoming the main providers of social services, despite the inequitable distribution of resources across regions. Regional inequalities mean that SNGs have uneven capabilities to respond to service delivery and economic reform demands. Tensions of uneven resource allocation in regions are not the result of federalism, but rather of old and unresolved political conflicts. Thus, addressing political conflicts within the national economic and political institutional framework is necessary to tackle regional inequalities and tensions, not restructuring federalism itself. Decentralisation is implicitly assumed to promote fiscal efficiency and subsequently good governance and improved delivery of public services (Lindaman & Thurmaier, 2002:915).

This view is advanced by Stepan (2000:145), who terms this phenomenon a “New Washington Consensus” and argues that the benefits of decentralisation for a democratising country include improved economic and political stability because it brings government closer to the people (see paragraph 3.6.1 in chapter 3 above and 5.4.4 in chapter 5 below) (Rothstein, 2012:144; Stepan, 2000:145; Ngqulunga, 2009:72; Bardill, 2000:106). Montero (2001:149) explored the relationship between democratisation and decentralisation by making a comparative analysis between Spain and Brazil. The coherence of the central state is a key determining factor in the governance of democratisation and decentralisation. A reverse path-dependent logic of democratisation studies posit that the coherence of the central state is dependent on an array of factors present in a political society, that is, the domain of political parties and parliamentary alliances (Montero, 2001:149).

Montero (2001:149) argues that decentralisation and democratisation reinforce each other when the political society is stronger, which then improves the coherence of the central authority. In Spain, a well-developed political society strengthened national authority by controlling the content and pace of state reform and regime change. In contrast, these political society factors were either weak or missing in Brazil, thereby weakening the state in a manner that allowed decentralisation to endanger democracy. Studies of democratisation emphasise static factors of political society; however, the factors cannot explain the dynamic nature of democratisation and decentralisation (Montero, 2001:149).

The relationship between democratisation and decentralisation in both Spain and Brazil was characterised and shaped by intergovernmental conflicts that were never fully under the control of either the central government or the political society. These conflicts undermined and challenged the institutional arrangements of political society that studies of democratisation credit with enhancing state cohesion. Conflicts in both countries were resolved by means of ad hoc and transitory measures, which were not imposed by a coherent national state. These challenges limited the Spanish central government's ability to govern regional authorities, whose powers were growing significantly, thus exacerbating growing divisions with the ruling Socialist Party (*Partido Socialista Obrero Espanol*, PSOE). In Brazil, the Fernando Henrique Cardoso's administration (1995-2002) introduced partial re-equilibration of authority and resources in the central state, which restricted uncontrolled spending by the states (Montero, 2001:150; Samuels, 2003:545; Plekhanov & Singh, 2006:426; Treisman, 2004:400; Stepan, 2000:145; Armijo, Faucher & Dembinska, 2006:761).

The bargaining process among spheres of government is key in explaining the dynamics involved in democratisation and decentralisation. This bargaining process is influenced by two factors, namely, the open-endedness of institutions governing the distribution of intergovernmental authorities and resources and the political leverage wielded by central government and SNGs. SNGs in open-ended institutions are more likely to assert their autonomy from the central government and employ fiscal resources for objectives they are authorised to define. SNGs exercise such fiscal autonomy despite the presence of coherent parliamentary coalitions and partisan strengths. SNGs continue to develop locally tailored policies to local problems, even though these policies challenge the agenda of strong national parties, including those to which they are aligned (Montero, 2001:150).

Similar to Brazil, decentralisation in Spain enabled SNGs to exercise significant freedom and autonomy of fiscal and resource authority. Montero (2001:150) cautions that even when institutions governing the distribution of intergovernmental authority are open-ended, shifts in bargaining power may favour the re-equilibration of these subnational fiscal and resource powers back to the central government. Subnational policy autonomy may be constrained by institutional constraints, such as changes in macroeconomic policy, economic performance, the assertion of international constraints, and the reform and regeneration of central

regulatory bodies. The costs of violating these rules may increase, further constraining subnational autonomy (Montero, 2001:150).

Brazilian states and cities enjoyed unprecedented policymaking and resource authority during the 1980s and the early 1990s. However, president Cardoso introduced emergency reform legislation that forced states to enact fiscal reforms individually. His leverage was further strengthened and enhanced by his anti-inflationary Real Plan in mid-1994, which significantly raised the costs for states unwilling to enact cost-cutting measures and reschedule their debt with the federal government (Montero, 2001:150; Samuels, 2003:545; Plekhanov & Singh, 2006:426; Treisman, 2004:400; Stepan, 2000:145).

The political coordination of the states weakened and the bargaining leverage shifted to the president as a result of several factors, including introduction of more aggressive financial regulation by the country's central bank and the National Monetary Council and unwillingness by portfolio investors to invest in states abstaining from the reform process. Samuels (2003:545) argues that the Real Plan represented one of President Cardoso's fiscal policy success stories. The Plan curbed inflation, established economic stability and enabled the central government to rein in states' uncontrolled spending, which had been the key source of the country's macroeconomic instability (Samuels, 2003:545; Stepan, 2000:145; De Onis, 2000:110).

On the other hand, Samuels (2003:545) argues that Cardoso's fiscal policies created obstacles for future administrations, which included a dramatic increase in the country's internal debt. Several factors contributed to Brazil's macroeconomic difficulties prior to 1995, particularly uncontrolled state spending. The Real Plan provided the Cardoso administration with leverage to constrain state spending (Samuel, 2003:545). Samuels (2003:545) attributes Brazil's current "fiscal straightjacket" to Cardoso's fiscal policies. Another positive outcome of the Real Plan was the growth of the tax revenue that outpaced GDP and generated budget surpluses in excess of three percent of GDP since 1999. However, political and economic consequences of past uncontrolled state spending continue to haunt the Brazilian government. The Real Plan transferred the worst aspects of Brazil's fiscal crisis from the subnational to the central sphere, thereby making the problem manageable and preventing its recurrence at the subnational sphere. Brazil's economy gained stability and credibility because the central

government established controls over subnational debt and expenditure and centralised subnational debt (Samuels, 2003:545).

4.4.1.3 Re-equilibration and intergovernmental authority in Brazil

Escobar-Lemmon (2001:23) argues that fiscal decentralisation transfers financial independence to subnational governments and ultimately determines their success and power. High regional economic disparities call for lower fiscal decentralisation as a result of a bargaining process driven by the relative strength and different incentives of rich and poor regions (Sacchi and Salotti, 2014:144). In addition, the degree of fiscal decentralisation is dependent on the extent to which responsibility and decision-making powers are really left to SNGs. Federalism is a significant predictor of the level of decentralisation, but other factors such as presidential power, structural adjustments, level of poverty and country size also determine the level of fiscal decentralisation (Escobar-Lemmon, 2001:23).

Political decentralisation in Brazil was an outcome of two processes; firstly, as a result of the redistribution of power during transition to democracy and, secondly, as an offshoot of the democratisation process (Montero, 2001:160; De Castro & De Carvalho, 2003:471). Decentralisation was advanced following neoliberal economic reforms with the expectation that it would improve efficiency in public service delivery and increase citizen participation (Siguyama, 2008:194). Andrews and De Vries (2007:425) support this view by positing that aid-providing organisations, such the World Bank, promote decentralisation in countries they fund with the hope that it would promote civic empowerment, diminish corruption, enhance efficiency, and improve public service delivery.

Montero (2001:160) argues that these processes are not mutually reinforcing. Political decentralisation in Brazil occurred faster before the democratically-elected executive and a national constitutional system could be constructed. As a result, local politicians and their clientelistic political machines had an unfair advantage to influence democratic institutions and national policies. The first civilian government of President Jose Sarney (1985-1990) was forced to make alliances with subnational politicians in order to strengthen its political position and subsequently to form a coalition government, thereby further fragmenting central political authority (Pereira & Mueller, 2004:782; Montero, 2001:160).

The process of decentralisation was initiated by the military government that ironically had embraced authoritarian centralism. The military government introduced tax reforms during 1966 to 1967 by decentralising fiscal resources and devolved control of tax on the circulation of goods (*Imposto sobre Circulacao de Mercadoria*) to the states. The military government then passed the Passos Porto Amendment in 1983, which expanded intergovernmental revenue sharing. However, subnational elites only gained authority to control these intergovernmental revenues at the dawn of democracy in Brazil. In the 1982 direct elections of governors, opposition parties defeated the pro-military party, the Social Democratic Party, and took over control of the economically developed states of Sao Paulo, Rio de Janeiro, Minas Gerais, Espirito Santo and Parana. Following these elections, the subnational elites became prominent nationally and were considered to be the standard custodian of the transition process before the direct election of the president (Montero, 2001:160; De Castro & De Carvalho, 2003:471).

Ben-Meir (2008:59) argues further that decentralisation of economic power creates local stability and reduces the contest over resources, such as federal transfers, at the state level. National governments become stronger when they decentralise control and decision-making authority to local communities over matters relating to their own development. This assertion is contrary to conventional belief that national autonomy is stronger when power is concentrated at the national sphere. However, while the military government was still in power it controlled fiscal resources and allocation to the states, thereby severely limiting the autonomy of the democratically-elected SNGs (governors and mayors). Subnational politicians sought to expand their state's control over the tax on the circulation of goods to ease the mounting fiscal constraints (Ben-Meir, 2008:59).

The opposition leaders at municipal, state and federal sphere mobilised support through broad subnational clientelistic networks to gain control over taxes on the circulation of goods. Regional interests dominated the Brazilian political society when the constituent assembly convened to draft a new constitution in 1987. Discussions around subcommittees reviewing taxation and revenue sharing were the main subnational issues being discussed at the constituent assembly. These subcommittees of the constituent assembly (*bancadas subnacionais*) adopted constitutional rules that decentralised fiscal resources. The constitution was adopted in 1988 and expanded fiscal decentralisation in the Brazilian federalism, shifting significant fiscal authority to SNGs, especially municipalities (Montero

2001:160; Armijo, Faucher & Dembinska, 2006:761; De Castro & De Carvalho, 2003:471-472).

The federal government's share of national tax revenue fell from 70.4 percent in 1985 to 66.2 percent in 1990, while states' share increased from 27 to 29.1 percent and that of municipalities from 2.6 to 4.7 percent during the same period. Following the adoption of the constitution in 1988, states spending exceeded their tax revenue while the federal government continued to spend less than tax revenue. States' increased spending was a result of the delegation of functions to them, which were not in the jurisdiction of the federal government. Open-ended devolution meant that 90 percent of intergovernmental transfers was not earmarked by the federal government (Brasilia) and therefore gave the state governments freedom to spend on their development needs. States exercised greater discretion on the application of transfers that were earmarked for specific functions, such as health and education (Montero, 2001:160).

Subnational fiscal autonomy as one of the alternative outcomes of decentralisation measures the power relationship between the central governments and SNGs. Key outcomes of subnational fiscal autonomy include access to revenues, expenditure assignments, and contractual authority, that is, the ability to borrow, as shown in Table 4.3 below:

Table 4.3: Typological measures: Fiscal autonomy of Subnational governments (SNG)

Type of autonomy	Measurement
Revenue autonomy	<ul style="list-style-type: none"> • SNG receive guaranteed transfers from center? • SNG have taxation authority and capacity?
Expenditure autonomy	<ul style="list-style-type: none"> • SNG operate under spending mandates? • SNG set independent budgets? • SNG spending is monitored by national ministries?
Contractual autonomy	<ul style="list-style-type: none"> • SNG can contract debt in capital markets? • SNG can negotiate labour costs with civil service?

Source: American Political Science Association, Dickovick (2003:2)

Increasing federal debt and a stagnant economy in the 1980s and 1990s eroded the role of the federal government in social and economic policy-making. The role of SNGs in health, education and industrial policy increased as that of the federal government declined. Montero

(2001:161) argues that decentralisation strengthened subnational policymaking capacity and weakened the country's fiscal system. "State capacity" is the presence of state functionaries and agencies, that is, legal public administrative structures and institutions charged with the responsibility to perform and delivery public services (Acemoglu, García-Jimeno & Robinson, 2015:2365). State capacity is strongly related to institutional capacity in that municipalities where mayors have held office for three or more consecutive terms exhibit stronger institutional capacity and efficiency than those localities where electoral turnover is the norm. Thus, electoral competition, that is, competition by an incumbent subnational authority to retain power after elections has the potential both to improve and to undermine administrative capacity (Pribble, 2015:100).

Governors controlled state banks and some development banks placing them in direct competition against the national monetary authority, the central bank and the National Monetary Council (*Conselho Monetario Nacional*, CMN). Governors were authorised by the 1966/1967 tax reform to finance their deficits through state banks. However, in the 1980s such financing threatened the liquidity of state banks and challenged the ability of the central bank and the CMN to regulate the financial system. Governors and their economic secretaries put political pressure on national politicians to bail out the states annually when the fiscal condition of state governments worsened. State governments accumulated large state bank debt, which exceeded \$96 billion in 1998. In the 1990s, state governments used their access to state banks finance together with the 1988 Constitution, which authorised them to offer incentives on circulation of goods tax to compete for and attract investments, especially from automotive firms. These strategies of overspending and indebtedness by SNGs are referred to by many scholars as "predatory federalism" (Sands Jr, 2008:93; Souza, 2002:28).

Montero (2001:161) argues that the fiscal crisis in Brazil would have been worse had the bargaining power over subnational spending not shifted back to the central government due to a combination of factors. The first factor cited by Montero (2001:161) is the inauguration of the Real Plan in 1994 that enabled president Cardoso to deviate from the emergency agenda of macroeconomic stabilisation and raised the costs on the states that failed to enact fiscal reforms (Montero, 2001:161; Samuels, 2003:545; Sands Jr, 2008:93; De Onis, 2000:110). However, these reforms failed to eradicate the fundamental elements of Brazilian federalism including "a constitutionally mandated resource base for subnational governments

(without clear state responsibilities), powerful state governors, and domination by traditional political elites with parochial political concerns” (Armijo, Faucher & Dembinska, 2006:761).

De Castro and De Carvalho (2003:471) argue that the main elements of the reform processes, which led to a change in the institutional environment in Brazil, were the direct elections of governors in the 1982 gubernatorial elections, adoption of the new constitution in 1988, away from the 1967 authoritarian constitution, hyperinflation which thwarted economic populism and promoted economic pragmatism, and an increase of a wide-ranging variety of interest groups. The Real Plan pressured the states to enact fiscal reforms by increasing interest rates on debt accumulated and eliminating inflation as a means to reduce civil service salaries. States and their banks could no longer maintain their financial stability as a result of growing civil service payrolls, which reached 70 percent of net revenues. This situation gave president Cardoso an opportunity to press the governors to privatise their banks and utility companies and enact civil service reforms (De Castro & De Carvalho, 2003:471).

This action led to the privatisation of nine out of 34 state banks, including financial institutions in four largest debtor states, Sao Paulo, Rio de Janeiro, Minas Gerais, and Rio Grande do Sul, whose collective debt accounted for 90 percent of the total subnational debt. In addition to the banks, state utilities, public works, and transport companies were privatised, generating over \$23.5 billion. State banks that remained public are now subjected to stringent judicial and regulatory controls imposed by the CMN and the central banks. These measures of privatisation and centralised restrictions as imposed by the central government have made it costly for governors to use state banks for subnational clientelism (Montero, 2001:161).

The federal government introduced legislation to coerce and persuade SNGs to reduce their overstuffed state and municipal payrolls, further strengthening president Cardoso’s position of pressing ahead with subnational fiscal reforms and centralised restrictions on subnational spending. The social emergency fund, which was later renamed the fiscal stabilisation fund, was one of the most important pieces of legislation passed by the federal government during the constitutional reform of 1993-1994. The budget subcommittee of the congress engaged in a prolonged congressional inquiry into corruption, which severely weakened its position to oppose the passage of the fiscal stabilisation fund (Armijo, Faucher & Dembinska, 2006:761).

This fund was part of Minas Gerais governor Itamar Franco's government efforts to reduce public deficit, which empowered the president to retain control of 20 percent of fiscal transfers constitutionally earmarked for the states and cities. The federal executive's control over subnational spending was strengthened and expanded further by the passage of new legislation, such as the 1995 Camata Law and the 1996 Kandir Law. The Camata Law limited state expenditure on payroll to 60 percent of net revenue or they faced losing their federal transfer funds. The Kandir Law exempted exports from tax on the circulation of goods, a move which effectively reduced state revenues. However, the federal government introduced compensation incentives for the states for keeping their payments on rescheduled debt to Brasilia up-to-date and continuing to implement fiscal adjustments. In 1995, the CMN approved the Programme to Support Restructuring and Fiscal Adjustments of the States, which enabled the federal government to issue loans to accelerate the privatisation of state enterprises and the reduction of the civil service (Armijo, Faucher & Dembinska, 2006:761).

President Cardoso induced states to support reform initiatives by rescheduling state debts with favourable terms, including low interest rates and lengthy repayment periods of up to 30 years. The central government managed to reschedule the debt of 24 of 27 state governments by mid-1999. The central government took a stake in state firms, equivalent to 20 percent of total state debt in exchange for debt rescheduling. This process gave the federal government a mechanism to move forward with the privatisation of state firms. States committing to debt rescheduling agreements were prohibited from taking new debt. The remaining state debt continued to incur interest. Although these fiscal reforms did not create budget constraints necessary to guarantee good fiscal management among the states, they marked a crucial turn against the uncontrolled state spending of the 1980s. Positive outcomes of the reform efforts included a decrease in subnational deficits in the late 1990s and a decline of states' and cities' nominal deficits from 19.3% of GDP in December 1994 to 2.3 percent of GDP in February 1999. The positive outcome of these policy reforms led to improved macroeconomic performance and social indicators, as compared to other Latin American countries (see Table 4.4 below) (Armijo, Faucher & Dembinska, 2006:761).

Table 4.4: Macroeconomic outcomes, Latin America

	GDP Growth 1992-2001 (% Annual Average)	GDP Growth per Capita 1992-2001 (% Annual Average)	Gross Fixed Capital Formation 1992-2001 (% GDP, Annual Average)	Inflation, CPI 1999-2001 (% Annual Average)	Urban Unemployment 1999-2001 (% Annual Average)
Argentina	2.6	1.3	15.5	-1.3	15.6
Brazil	2.7	1.3	18.1	5.5	7.0
Chile	5.5	4.0	22.1	3.1	9.4
Colombia	2.5	0.5	15.0	8.5	18.3
Mexico	3.0	1.3	21.7	8.6	2.4
Peru	3.8	2.0	18.1	2.2	10.1
Venezuela	1.6	-0.5	16.3	15.3	9.8
Regional average	2.8	1.2	18.5	8.3	8.6

Source: Economic Commission on Latin America and the Caribbean (ECLAC, 2002) in Armijo, Faucher, and Dembinska (2006:761).

In fact, among developing countries, Brazil was second only to China as a destination for foreign investment from 1995 to 2000, as shown in Table 4.5 below (Armijo, Faucher & Dembinska, 2006:761).

Table 4.5: Implementation of market-friendly reforms, Latin America

	1985	1990	1995	1999
Argentina	.338	.468	.595	.616
Brazil	.259	.430	.515	.610
Chile	.488	.570	.577	.606
Colombia	.291	.425	.524	.562
Mexico	.290	.424	.531	.511
Peru	.279	.335	.598	.659
Venezuela	.284	.343	.477	.514
Regional average	.341	.436	.539	.583

*r*²

Source: Lora (2001 in Armijo, Faucher & Dembinska, 2006:761).

Note: .00 indicates a perfectly unreformed regulatory framework; 1.00 suggests a perfectly market-friendly regulatory framework.

The Russian financial debacle of August 1998 triggered a decline in capital investments in Brazil, which led to currency devaluation in January 1999. In the midst of this prolonged capital flight the new governor of Minas Gerais, Itamar Franco, declared a 90 day moratorium on the state's debt payment to the federal government. Franco's action contravened the Kandir Law and the fiscal stabilisation fund and forced the central bank to float the Real Plan (Montero, 2001:164; De Onis, 2000:110-111).

President Cardoso responded swiftly to this fiscal revolt by Franco by freezing federal transfers to Minas Gerais and Rio Grande do Sul, another state that experimented with the fiscal revolt. In addition, president Cardoso tapped escrow monies belonging to the states to pay off past bills and convinced foreign portfolio investors to stay away from these recalcitrant states. President Cardoso disrupted cross-state coordination by the six opposition governors by individualising their costs and using Minas Gerais as an example to other states. The serious collective problems faced by all states led to meetings that sought to organise all governors, first at Granja do Torto (Brasilia) in February 1999, and then in Aracaju (Sergipe) in July 1999. At these meetings, all governors articulated common complaints about the fiscal stabilisation fund and the Kandir Law (De Onis, 2000:110-111). There was however disagreement among governors about how to approach president Cardoso. Few governors were willing to follow Franco's fiscal revolt and others were in favour of the president's fiscal reforms. Disagreements among governors on related issues such as the use of

competing fiscal incentives to attract investors impeded the united subnational front. Extensive legislative apparatus and a divided opposition gave president Cardoso leverage over the states. However, the president's efforts to limit subnational spending were hampered by constitutional constraints. The 1998 Constitution strengthened the states' ability to defend their authority and resources with legislation in the senate. Lasting reforms of the tax and pension system and the civil service are difficult to achieve because they require a constitutional amendment, which requires two three-fifths votes in both houses of the congress (Montero, 2001:164).

Another factor in favour of the states was that the senate was obligated to the *bancada subnacional* to protect the states' constitutional entitlements, particularly the right to roll over debt. The norm of universalism binds all senators to allow the states the right to roll over debt. According to this norm of universalism, any senator that decides to support reforms risks exposing their state to opposition of the collective. Montero (2001:164) argues that the states have not been able to convert their "strong collective interests in preserving constitutional entitlements within the institutions of the senate into a means to coordinate their actions in the broader partisan arena of party politics and intergovernmental relations". A pattern of uniform subnational policymaking has emerged in areas where the president has exerted leverage over the states, that is, privatisation, subnational debt and state banks. However, state spending entitlement in areas such as civil service reform, pensions and tax authority has been preserved by entrenched constitutional constraints (Montero, 2001:164).

4.4.1.4 Regulation of subnational borrowing

The discussion on regulation of subnational borrowing is particularly important for the case study on Brazilian fiscal decentralisation and the Real Plan of the Cardoso administration. During the term of the Cardoso administration (1995-2002), uncontrolled state spending plunged the country into a fiscal crisis, which exacerbated macroeconomic policy challenges including high unemployment rates and increased SNG debt (Plekhanov & Singh, 2006:426; Treisman, 2004:400).

Plekhanov and Singh (2006:426) provide panel data analysis to determine the most effective borrowing constraints for containing local fiscal deficits. The appropriateness of specific arrangements in containing local fiscal deficits depends on other institutional characteristics

such as the degree of vertical fiscal imbalance, the existence of any bailout precedent, and the quality of fiscal reporting. Decentralisation of fiscal revenue and spending responsibilities to SNGs has increased in countries throughout the world over the past few decades. The role played by subnational economic policies in ensuring macroeconomic stability has become increasingly important as a result. National governments have adopted different institutional mechanisms to address challenges relating to decentralised decision-making (Plekhanov & Singh, 2006:426).

The most important challenges of decentralised decision-making include the need to improve policy coordination across spheres of government and to contain subnational borrowing (Plekhanov & Singh, 2006:426). Rattso (2004:240) argues that although decentralisation transfers or delegates important public-sector responsibilities to SNGs, it poses challenges of fiscal discipline and the struggle to control spending and deficit by these governments. Ben-Meir (2008:59), on the other hand, highlights the benefits of decentralisation, which include enhancement of national sovereignty, increased loyalty among all groups because they feel they are pursuing their own priorities, and having others' priorities imposed on them. Ben-Meir (2008:59) argues further that decentralisation of economic power creates local stability and reduces the contest over resources among SNGs (Ben-Meir, 2008:59).

Intergovernmental transfers have costs attached to them, but SNGs may be more inclined towards fiscal indiscipline by overspending, under taxing, and borrowing excessively than national governments due to various reasons. Sources of fiscal indiscipline include the common pool problem, soft budget constraints, interregional competition, unfunded federal mandates, and short electoral cycles. Latin America suffers from significant imbalances in fiscal decentralisation that constraints local development. Increased decentralisation in the region led to a 10% increase in spending by SNGs as a percentage of total government expenditure grew from 1985 to 2010. Yet, during this period SNGs failed to increase their own revenue collection, which remained at 10 percent of the national total (Plekhanov & Singh, 2006:427).

High vertical fiscal imbalances, that is, high SNG spending versus low own revenue collection in most Latin American economies is responsible for the heavy dependence of local governments on revenue transfers from national governments. Nearly two-thirds of subnational revenue is transferred from national governments making their finances more

vulnerable and less predictable. Greater fiscal responsibility, that is, improved revenue collection capacity at the subnational sphere is important for three reasons, namely, it grants SNG authorities greater fiscal policy autonomy; it reduces dependence on central government transfers; and it increases the efficiency and transparency of spending as taxpayers that pay taxes tend to demand more accountability from their public representatives (Bonet & Cibils, 2013:64).

4.4.2 FEDERALISM IN AFRICA

The two countries under discussion in this section are Nigeria and Ethiopia. Like many other countries in Africa these countries transitioned from military authoritarian rule to democratic rule. Such transition, especially in ethnically and culturally diverse countries, embraced federalism rather than unitarism as a preferred system of government to quell discontent and conflict among different ethnic and cultural groups and to grant autonomy (self-rule) to such groups while being a part of a unified central government (shared-rule).

Further, federalism is accompanied by decentralisation of both economic and political power to SNGs and promotion of improved intergovernmental relations between the various spheres of government and across jurisdictions. Decentralisation is touted by such international organisations as the World Bank as the means to achieve efficient public service delivery, accountability, increased competition, reduced government size and state role, experimentation and innovation in government, and sensitivity and responsiveness to subnational regional needs.

4.4.2.1 Federalism and economic growth in Nigeria

Okpanachi (2010:311) examines the public finance reforms of the Nigerian federation in the context of its transition from military to democratic rule in 1999. Further, this investigation takes cognisance of the challenges posed to these reforms by the financial health of the subnational units to the outcomes of these public financial reforms. Okpanachi (2010:311) carried out his study by assessing the policies and performance of the Nigerian federal system before and after the public finance reforms. He highlights the progress made in reforming public finance and discusses the political, institutional and social constraints that rendered the reforms difficult and inefficient. Federalism is generally touted as a viable institutional

framework to stimulate progress, prosperity, development, improved standard of living and sustainable economic growth (Okpanachi, 2010:311).

Federalism is especially favoured for its ability to create a credible and consistent line of authority between the central government and subnational units in financial matters. Furthermore, federalism ensures the efficient allocation of energy and resources required to promote economic prosperity (Okpanachi, 2010:311; Baskaran & Feld, 2012:422). Federalism was used as a means to promote sustainable development in Nigeria, but also as a conflict prevention mechanism given the ethno-plurality of the country (Festus, 2015:263; Kendhammer, 2014:396).

In 2014, Nigeria celebrated the centenary of the 1914 Amalgamation, the British unification of two distinct colonial north and south regions. A hundred years later sectarian sentiments still dominate political discourse in Nigeria, such as ethnic minority rebels in the oil-rich southern Niger Delta, a violent Islamic insurgency in the northeast (Boko Haram), Igbo secessionists in the east, and a revival of Yoruba nationalism in the southwest. This discourse either strengthens the conventional case for disintegration or weakens the contemporary discourse of unity. LeVan (2015:370) argues that Nigeria shows important signs of convergence towards modalities of representation that promote integration given the compelling centripetal tendencies that have historically held Nigeria together. A point in case is the historic victory of Muhammadu Buhari over Jonathan in 2015, where unlike in the past distinct partisan differences did not correspond with north and south and the geographic cleavages showed signs of fragmenting. Nigeria experimented with many other mechanisms of ethnic conflict management, including tenure limit, geo-political zoning and rotation of power, constitutionally prescribed party systems and electoral systems, which have all been effective in mitigating and preventing ethnic conflict (Festus, 2015:263).

Aiyede (2009:250) posits that the key reason for the formation of a federal government is to create a common market to facilitate the movement of goods, expand subnational autonomy, and limit the state's role in SNG matters. Advantages accruing from such a system include efficient service delivery, accountability, increased competition, experimentation and innovation in government, and sensitivity and responsiveness to subnational regional needs (Aiyede, 2009:250; Christin & Hug, 2012:93). Oulasvirta and Turala (2009:312) emphasise the benefits of decentralisation as advanced in public finance and fiscal federalism theory by

positing that the devolution of political, fiscal and administrative powers to SNGs increases their effectiveness and responsiveness. These advantages occur due to the close proximity of SNGs to local communities and their better understanding of the needs of these communities (Oulasvirta & Turala, 2009:312).

Subnational autonomy promotes the idea of “laboratory federalism”, as advanced by Tiebout, which allows experimentation and innovation at subnational sphere from which other SNGs may learn and imitate (Aiyede, 2009:250; Garzarelli, 2006:235; Baskaran & Feld, 2012:422). Another advantage of subnational experimentation or trial-and-error learning, as referred to by Garzarelli (2006:235), is to prevent large-scale national policy failure, which would occur if such experimentation was unsuccessfully done in one “experiment” at a federal government sphere (Aiyede, 2009:250; Garzarelli, 2006:235-236).

Aiyede (2009:249) notes that federalism in Africa is seen as an institutional design to address the challenges of unity and diversity and a means to achieve political stability through political inclusiveness and accommodation. Federalism and regional autonomy are touted as remedies for societal conflict as they grant disgruntled minorities at the national government sphere autonomy at a regional government sphere. However, diversity among groups in a country increases the chances of conflict, particularly in countries where federalism is based on ethnicity, that is, ethnofederalism (Christin & Hug, 2012:93). Okpanachi (2010:311) notes that the outcomes of federalism have not been the same for all countries, citing sustained growth in the US and economic stagnation, poverty and recession in Nigeria as examples of such varied outcomes (Okpanachi, 2010:311).

Okpanachi (2010:311) identifies the factors that determine the success or failure of federal systems, thus resulting in variation of economic fortunes. Okpanachi (*ibid.*) uses the public finance profile of subnational units in Nigeria as a unit of analysis to establish the factors responsible for variation in the economic fortunes of federal systems. Robust economic growth in Nigeria is hindered primarily by social, institutional and political factors within subnational units of the federal system. Oulasvirta and Turala (2009:312) state that fiscal federalism and fiscal autonomy is limited in developing countries where SNGs rely almost entirely on the central government for their revenue, for example, through intergovernmental transfers, grants, and tax sharing with the central government. Further, the operationalisation of fiscal autonomy, for example, determining the optimum level of fiscal decentralisation is

another factor that limits the fiscal autonomy of SNGs in developing countries, given the different levels of socioeconomic development and political maturity in these countries (Oulasvirta & Turala, 2009:312).

Two key factors determine the degree of fiscal decentralisation in a country, namely, the relative importance of different functions and revenues assigned to SNGs and the extent to which government functions are performed by the private sector, and the decision-making powers of SNGs regarding the assigned functions and revenue sources (Oulasvirta & Turala, 2009:312). Both federal and non-federal challenges and liabilities hinder economic progress of the federal system. Federal issues include the practical nature of the federal system; federalism and fiscal assignment and responsibility; federalism and the management of oil and gas resources; lack of federal ethics; and lack of credible federal sphere commitments. On the other hand, non-federal issues hindering reforms include ineffective legislative oversight; democratic deficits in the party system; and leadership crisis and poor governance (Okpanachi, 2010:311; Aiyede, 2009:249). Aiyede (2009:249) argues that key issues pertaining to the politics of federalism, such as state-society relations and governance practices, are missing in economic discourses in Nigeria. According to Aiyede (2009:249), economic development should be at the centre of any discourse on federalism in Africa, particularly in multiethnic societies like Nigeria (Aiyede, 2009:249).

4.4.2.2 Federalism and economic growth in Nigeria pre-1999

The Nigerian federation consists of a federal government, 36 states, a Federal Capacity Territory (FCT) and 774 local governments. Formation of the Nigerian federation sought to bring together diverse nationalities and groups that were forcibly and arbitrarily incorporated into a unitary colonial state under British colonialism. The Nigerian federation was imposed on nationalities and groups and therefore lacks integrative identities and values of civic reciprocity and mutual respect characteristic of a federal union formed by voluntary incorporation (Okpanachi, 2010:313; Agbiboa, 2012:4). Pressures of disintegration and secession have characterised the Nigerian federation since its inception due to the nature of its formation. These pressures continue to haunt the Nigerian federation as it strives to strike a viable compromise between the promotion of national unity and the accommodation and protection of ethnic and regional interests (Okpanachi, 2010:313; Agbiboa, 2012:4; Deiwiks, Cederman & Gleditsch, 2012:289).

Some of the successes of these compromises include reduction of sectional identities, prevention of recurrence of secessionist warfare, promotion of commitment to Nigerian unity, prevention of state collapse and large-scale internal insurgency, and dampening ethno-separatist pressures. However, the country's economic growth has not reached a comparable success rate (Okpanachi, 2010:313). Poverty in Nigeria has increased as a result of slow economic growth and the rapid increase in population growth. Impressively high revenues from oil exports since the mid-1970s have dampened the impact of unrelenting economic distress resulting from macro-economic instability, fiscal deficits, high inflation, unstable exchange rates, low levels of external reserves, and poor management of oil revenues. Okpanachi (2010:313) identifies some of the challenges contributing to Nigeria's economic distress as the misappropriation of oil revenues (Ciepley, 2013:137) by the country's rulers estimated at 400 million USD between 1960 and 1999, and external debt of 33 million USD, which far exceeded the country's GNP of 29.2 million USD in 1999 (Okpanachi, 2010:313).

In addition, in 1999 more than 70 percent of the population lived on less than one dollar a day, life expectancy was below 52 years, and unemployment rate among young men between the ages of 20 and 24 years was 44 percent. Agbiboa (2012:24) identifies several possible solutions to address ethno-religious and socio-economic challenges facing Nigeria, which include decentralisation, fair and equitable recognition of all ethnic and religious groups within the national framework, cultivation of a political culture that promotes accommodation between different ethnic and cultural groups and supports peaceful approaches to conflict resolution, addressing national fragmentation by means of consociational democracy, establishment of a committee of community leaders, and a nationwide programme of political and social reorientation of the entire Nigerian citizenry. Power-sharing in government is crucial for political and socio-economic stability, integration and security in Nigeria, and this is etched in the country's Constitution, which requires candidates for president and governors to secure a wide electoral base and for the members of government to reflect the diversity of the country (De Villiers, 2013:7; Ciepley, 2013:154).

4.4.2.3 Federalism in Ethiopia

The study of federalism in Ethiopia centres primarily on ethnic identity because of widespread ethnic diversity among Ethiopians. Many scholars (Mennasemay, 2008:8; Hamer,

2007; Smith, 2007; Keely & Scoones, 2000; Aaron, 2005) explain Ethiopian federalism in the context of economic, social and political struggle for power in relation to ethnic identity and recognition. These socio-economic and political factors have a significant impact on democratic processes in a country, especially in the context of diverse political visions and views among different ethnic groups. Federalism along with regional autonomy is often touted as a useful institution to address regional demands in civil conflict situations. This stance is based on the view that federalism and regional autonomy grant disgruntled minorities at the national sphere autonomy to run their affairs at the regional sphere (Mennasemay, 2008:8; Hamer, 2007; Smith, 2007; Keely & Scoones, 2000; Aaron, 2005).

This view is reiterated by Van der Beken (2015:150), who notes that federalism is largely touted as a means to guarantee minority rights and safeguard the harmony and integrity of the polity and state in multi-ethnic countries. In the Ethiopian Federation, all nine regions are ethnically heterogeneous, albeit at different degrees. The regional governments establish ethnic-based local governments as a means to accommodate ethnic minorities. However, such arrangements are delicate and diversity in the groups present in a country is also associated with a higher tendency for conflict and as a result many federal systems have collapsed. Christin and Hug (2012:93) argue that federal countries with strong ethno-federal arrangements are more prone to conflict. It is therefore necessary to establish what types of federal arrangements are more conflict-prone, and what characteristics make them more stable (Christin & Hug, 2012:93).

The main thrust of such a debate would be to determine whether ethno-federalism, that is, a federal system where regional borders follow as closely as possible the settlement patterns of minorities, is advisable or not. Conflict-proneness increases with larger shares of minority-controlled subunits, but decreases when this share approximates one. In other words, conflict proneness increases with increasing levels of ethno-federalism. The general ethnic makeup of the country is likely to influence the presence or absence of federalism and the type of federalism chosen. An example to illustrate this contention is the US where new states were admitted to the Union after 1789 only once WASPs (white Anglo-Saxon Protestants) formed a clear majority. Large territories and/or populations or diverse populations make the adoption of a federal system more likely (Christin & Hug, 2012:93).

In addition, Gebrewold (2009:79) illustrates that nationalism in Ethiopia played a key role in transcending social, economic and political challenges facing the country. Ethiopia harnessed national cohesion to fight external and internal threats, including to mobilise citizens and to suppress internal dissent. Even though territory and economic issues played a key role in the conflict between Ethiopia and Eritrea, nationalism played an even more important role (Gebrewold, 2009:79).

4.4.2.5 Ethiopian nationalism

Different external and internal historical experiences gave rise to the emergence of nationalism in Ethiopia. Gebrewold (2009:79) identifies external factors as external threats from regional and global powers such as Egypt, Turkey and Western powers, which had an interest in the country during the colonial scramble for Africa, multiple conflicts with Sudan and Somalia, the Independence of Eritrea, and the war against Eritrea between 1998 and 2000. Internal factors posing challenges to Ethiopian national cohesion included recurring famine and the subsequent dependence on foreign humanitarian aid, and ethnic distrust (Gebrewold, 2009:79; Mennasemay, 2008:4-16; Levine, 2008:103).

Ethiopian political elites used nationalism to construct a sense of Ethiopianness, which was expected to serve as a tool to transcend ethnic differences, to mobilise the population against external aggression, and to sacrifice economic priorities for national unity and identity. These efforts of national cohesion suffered a serious setback in 1991 when the country gained independence. In this year the Tigray-led EPRDF assumed power and introduced ethnic federalism, which was in direct contrast to the efforts of building national cohesion (Mengie, 2015:463; Gebrewold, 2009:80; Habtu, 2004:92; Samatar, 2004:1131; Mennasemay, 2008:3; Donovan & Assefa, 2003:511; Abdullahi, 2007:556-557).

Yared (2014:2) argues that Ethiopia's federalist project, that is, its adoption of a federal and decentralised form of government was a radical departure from the previously highly centralised state structure and it represented the culmination of a century old nation-building project. The uniqueness of the new federal system of governance in Ethiopia was the prominence it gave to ethnicity and the notion of self-determination in the affairs of the state. In 1991, the EPRDF emerged victorious after the civil war and the fall of the Derg regime. The EPRDF utilised federalism as an instrument of truce, as a mechanism of a negotiated

settlement and a state building process to accommodate the grievances of the many ethno-nationalist groups that sought ethnic autonomy and self-determination (Yared, 2014:2).

The federal government in Ethiopia goes against the general trend in many African countries of discouraging the formation of political parties along ethnic lines. This government champions an ethnic-pluralism based federation and goes as far as granting some of its constituents a succession option (Habtu, 2004:92; Samatar, 2004:1131). This arrangement by the Ethiopian government of recognising ethnic pluralism as an organising principle of the federation is a result of historical developments in the country's politics in the 1970s and 1980s where ethnicity was used as a vehicle of political mobilisation. This approach gained momentum in the aftermath of the demise of the military regime in 1991, resulting in the formation of a federation consisting of ethnic-based territorial units and providing for an option of ethnic secession. These values which recognised ethnic pluralism were formalised in the country's constitution that was adopted in 1995 (Samatar, 2004:1131; Adem, 2004:611). The Constitution of Ethiopia was ratified in December 1994 and openly declares Ethiopia as a federal state and officially designates the state a "federal republic", thus guaranteeing a right to self-determination and secession to all ethno-linguistic groups of the country (Bihonegn, 2015:395).

Samatar (2004:1131) argues that the redivision of Ethiopia into ethnic regions was aimed to effect two changes, namely, to abolish ethnic domination of the state, and to enable various ethnic communities to govern their local affairs. Samatar (2004:1131) uses the Somali region, also known as region 5, to evaluate whether ethnic-based regional authorities have sufficient autonomy from the centre to be accountable to local populations. This new arrangement enabled local peoples to elect their leaders, which is a critical requirement to undo ethnic injustices of the past. Further, this new arrangement significantly empowered local people by affording them a political voice and democratic participation (Samatar, 2004:1131; Adem, 2004:611; Abdullahi, 2007:556). However, the federal government still dominates and controls the political affairs of local authorities (Hagmann, 2005:449; Samatar, 2004:1131).

Hagmann (2005) argues that major impediments militating against the drive to establish effective local government in the Somali Region have been recognised since the region was granted its autonomous administration in 1993. Since 1993, devolution of power and resources to the 51 *wereda* (districts) of the Somali region has been limited. The performance

of Somali public institutions, such as schools, medical facilities, the police force, and telecommunications services, have been largely inefficient as a result of this limited devolution of power and resources to local authorities (Hagmann, 2005:449). Samatar (2004:1131) attributes this domination of local political authorities by the federal government to the incompetence of local political authorities. International and national pressure to effect institutional and financial reforms in Ethiopia's regional states forced region 5 to embark on a decentralisation process, which was preceded by the region's first ever district council elections. Zonal level administration was abolished or curtailed since 2002 as part of the decentralisation process. This process involved reforms allocation of block grants directly to the *wereda* councils and transfer of civil servants from federal and regional offices to the districts (Hagmann, 2005:449).

The ultimate goal of these reforms was to afford districts autonomy in controlling, allocating and managing block grants. However, Hagmann (2005:450) perceives these reforms as merely an expansion of state administration into the rural areas and argues that decentralisation has not in reality been effective. Hagmann (*ibid.*) attributed challenges in implementing decentralisation in region 5 to political conditions, especially in insecure parts of the region. These political factors include control of areas in the outskirts of the towns by the Ogaden National Liberation Front (ONLF) and the towns by the Ethiopian national army, thus rendering the civilian administration in these towns ineffective (Hagmann, 2005:450; Abdullahi, 2007:556).

Hagmann (2005:450) argues that the parliament of the Somali Region, known as the State Council, shows little interest in legislating, but rather functions as an organ that elects and impeaches regional presidents. As an example of its legislative incompetence, the regional parliament has neither been able to harmonise state law with the widely practiced Somali customary law, nor has it formulated a framework for pastoral resource management. The only noteworthy legislative effort by this parliament was in 2002 when it hastily produced and adopted a revised version of the regional constitution. Changes to the original constitution were minor and in all it represents an almost identical replica of the federal constitution. The government set up courts in all districts over the ten-year period since the introduction of reforms. However, these courts were inadequately staffed because the majority of qualified personnel prefer to work in more convenient and comfortable urban areas such as Jijiga, the regional capital, where a government management institute was

established (Hagmann, 2005:450). The majority of the region's 5000 civil servants have moved and settled in Jijiga since transfer of the region's capital from Gode.

Cameron and Falleti (2005:245) define federalism as a constitutional arrangement of government consisting of the executive, legislative and judicial branches of government in its constituent units. Using Cameron and Falleti's (2005:245) definition of federalism, it can be argued that Ethiopia is far from attaining the status of a fully-fledged federation due to the challenges it faces in fully capacitating the branches of government to perform their functions effectively, as explained above. Reforms and decentralisation efforts to transfer financial control from Jijiga to the districts have been hampered by a number of factors. First, the regional administration generates very low revenue and therefore depends heavily on federal subsidies, including external loans and grants. In 2002/ 2003 the budget of the Somali region consisted of 7% regional revenue and 93% federal contribution. Second, the country's long history of centralised administration subsequently meant that budget allocation and management has always been highly centralised and implemented through a top-down process (Hagmann, 2005:450; Oulasvirta & Turala, 2009:312).

This top-down relationship is evident in intergovernmental relations (IGR) between the federal government and regional SNGs. Afesha (2015:341) argues that the Ethiopian federal system of government lacks an independent institution in charge of consolidating IGR, and this in turn has led to gaps in the regularity, continuity and effectiveness of the interactions. The Ethiopian Constitution makes some provision for a non-hierarchical relationship between the federal and regional states, but the Ethiopian federation is generally characterised by a top-down relationship, which can erode the spirit of partnership. Afesha (2015:341) proposes the establishment of an appropriate legal framework to optimise the role of IGR in the Ethiopian federal system. Such a framework will make provision for the creation of intergovernmental forums to facilitate negotiation, non-hierarchical exchange of information, and cooperation between the institutions of the two spheres of government.

The banking industry and system in Ethiopia is not adequately developed to support decentralised public finance. The Commercial Bank of Ethiopia has a presence in only four towns, namely, Jijiga, Degehabur, Qabridahar, and Gode (Hagmann, 2005:450).

4.4.3 DECENTRALISATION IN ASIA

“Neoliberal reforms in the twenty-first century have led to the marketization of the state — the ascendance of the ideology, tropes and practices of markets becoming the principles governing the state”
- Dolly Daftary

This section discusses decentralisation in Asia’s two biggest countries and largest economies in the developing world, namely, China and India. China transitioned in the 1970s from a planned command economy and transformed to open its economy to the free market. This transformation was accompanied by the decentralisation of decision-making powers to SNGs and resulted in major improvements in standards of living, economic growth, streamlining and downsizing the state, strengthening bureaucratic capacity, reducing the state’s role in some economic functions, establishing independent regulators, and improving corporate governance of state-owned enterprises. According to Wang and Ma (2014:306), “China’s overall transformation over the past three decades has been characterised by the transfer of formal power from the central government to local governments, enterprises, and societal sectors”.

Fiscal decentralisation is one of the key components of these reforms, including policies that led to a free market system in China. The architecture of the Chinese public finance system has many features of fiscal federalism, including tax policy reform, tax administration reform and intergovernmental fiscal reform, although China is not a federal country in nature. However, China experimented with centralisation in the 1990s by centralising regulatory bureaucracies at provincial government sphere, which was purely aimed at increasing central government capacity in taxing and fiscal control (Wang & Ma, 2014:306).

India, on the other hand, is a centralised federation in that residual powers reside with the parliament. The country’s Constitution makes no reference to federalism, thus emphasising the power wielded by the central government in political and economic matters. However, it was inevitable for India to adopt a federal system of government to accommodate its culturally and religiously diverse population. Thus, a total of 66 constitutionally vested government powers and functions have been devolved to the country’s 28 states. Despite

India being a centralised federation, the reforms of the 1990s which decentralised and devolved economic power to SNGs, that is, fiscal federalism, led to exceptional economic growth in the country. The discussion on India will focus on the country's centralised parliamentary federalism, decentralisation, and fiscal federalism (Wang & Ma, 2014:306).

4.4.3.1 China's soft centralisation

Mertha (2005:791) refers to China's recent attempts to counter local protectionism and establish standardisation in policy implementation and enforcement by centralising its regulatory bureaucracies up to the provincial sphere as soft centralisation. China's move towards fiscal centralisation was aimed at enhancing Beijing's (the national government) diminishing taxing and fiscal capacity (Sinha, 2005:343). Beijing's experiment with soft centralisation has been successful to some extent, but remains imperfect and incomplete. Institutional fragmentation that often leads to corruption and other undesirable practices of the state have shifted from horizontal geographical lines to vertical functional ones. However, provinces instead of Beijing have benefited from this shift to centralised management as the institutional powers and budgetary resource allocations are centralised at the provincial sphere (Mertha, 2005:791; Cai & Treisman, 2006:507).

Placing regulatory responsibilities, state-owned enterprises (SOEs), economic, and financial powers under control of China's 31 provincial governments makes it a de facto federation (Poncet & Barthelemy, 2008:897-898). Policy coordination between the central government and SNGs is necessary to ensure the synchronisation of provincial business cycles, which also leads to GDP convergence and economic cohesion (Poncet & Barthelemy, 2008:897-898). Mertha (2005:791) argues that this transfer of power from local governments to provinces has curbed localism to some extent and strengthened the provinces to play a key role in an emerging perverse federalism. China transformed its command economy in the past quarter of a century and opened it to the free market system, mainly through decentralisation. Integrating and opening its economy to the world market has led to a drastic improvement in the standard of living in China (Mertha, 2005:791; Chen & Wu, 2008:119; Park, Li & Tse, 2006:127; Pearson, 2007:718).

These reforms to support China's market economy included streamlining and downsizing the state, strengthening bureaucratic capacity, reducing the state's role in some economic

functions, establishing independent regulators, and improving the corporate governance of SOEs (Pearson, 2007:718). However, Pearson (2007:718) casts doubt over these reforms in light of the Communist Party's strong influence over economic governance and inadequate empowerment of regulatory institutions with sufficient authority to carry out their mandates. Mertha (2005:791) identifies two radically different structural approaches that China has experimented with to manage its economy. The first approach marked the reform process since 1978 and involves the decentralisation of political and economic decision-making power to local governments in order to create favourable conditions for markets to grow (Mertha, 2005:791; Chen & Wu, 2008:119).

The second and more recent approach is almost the opposite of the first one and involves partial centralisation of key bureaucracies in order to regulate and discipline local governments with regards to economic management and policy implementation. The result of this centralised management (*chui zhi guan li*) is that individual offices in these centralised bureaucracies are no longer beholden to local government authorities (*kuai*), but they are instead directly controlled by their functional administrative authorities (*tiao*). Under this new centralised format, these bureaucracies have only a consultative relationship with their local government authorities. Mertha (2005:791) argues that this centralisation is a permanent measure, unlike macroeconomic adjustments and retrenchments undertaken to cool off the economy. Centralisation entrenches itself by creating incentives that guide officials' behaviour. Further, centralisation creates long-lasting institutional arrangements (Mertha, 2005:791).

4.4.3.2 Implications of China's soft centralisation

Blanchard and Shleifer (2001:171) compare the impact of centralisation on economic growth, particularly the growth of firms in China and Russia. They argue that political centralisation in China enabled local governments to drive economic growth. In contrast, in Russia, local government actions such as taxation, regulation and corruption hindered local economic growth (Blanchard & Shleifer, 2001:171). Blanchard and Shleifer (2001:171) argue that political centralisation provides the central government with the strength and discipline to induce local governments to drive economic growth. China's highest GDP growth in the world over the past decade is attributed to the growth of the new private sector. In contrast,

Russia experienced the lowest GDP growth due to stagnation of its private sector (Blanchard & Shleifer, 2001:171).

Blanchard and Shleifer (2001:171) cite two main hypotheses to explain the attitudes of local governments in Russia. First, in the “capture” hypothesis, local governments have been captured by initial rent holders, such as the old firms that dominated the Russian economy before the transition to the free market system. According to this view, local governments generated profits for these old firms, thereby protecting them from competition by new firms. Second, in the “competition for rents” hypothesis, administrative disorganisation produced unintended behaviour by local governments of extracting rent from new private firms, thereby making it unprofitable to run a private business legally (Blanchard & Shleifer, 2001:171).

Again, Blanchard and Shleifer (2001:172) cite two hypotheses why economic development in China was different from Russia despite both countries adopting capitalistic economic systems. First, the potential for “capture” was more limited in China than in Russia. China started its transition to a free market system from a much lower level of economic development than Russia. In contrast, when Russia began the transition process its economy was fully industrialised and dominated by large state firms and collective farms. Therefore, the economic conditions in Russia were more conducive for capture, whereby these large firms forced local governments to pay them rent. Second, the strong central government in China was in a strong position to either reward or punish local administrations. As a result, the risk of capture and the scope for competition for rent was reduced (Blanchard & Shleifer, 2001:171).

In contrast, in Russia a similar level of strength in the central government was absent due to the emergence of strong democratic values during the transition to the free market system. As a result, the central government was not strong enough to impose its views, nor was it strong enough to set clear rules on sharing the proceeds of growth. Local governments were thus less inclined to resist capture or to rein in competition for rents. On the other hand, Parente and Rios-Rull (2005:23-24) attribute the difference in economic performance of the two countries under capitalism to the difference in the arrangement governing the determination of prices and work practices that evolved during each country’s transition (Parente & Rios-Rull, 2005:23-24).

In Russia, the arrangement that evolved conferred monopoly rights to industry groups left over from socialism, and subsequently prevented the adoption of better technology. In China, the arrangement was competitive and contained no such monopoly elements, and thus better technology was adopted and operated efficiently. Blanchard and Shleifer (2001:172) support the view that was first expressed by Riker in 1964 that political centralisation is an important requirement for federalism to achieve economic growth in a country. Even though federalism played a crucial role in promoting economic growth in China, it relied strongly on the centralising role of the ruling Communist party. A strong centralising role comports with the World Bank's acknowledgement that strong state leadership is crucial for effective development (Pearson, 2007:718; Parente & Rios-Rull, 2005:23; Blanchard & Shleifer, 2001:172).

4.4.3.3 Fiscal decentralisation and economic growth in China

Economic reforms in China commenced in 1978 and since then the Chinese economy has grown at a record rate of ten percent annually (Lin & Liu, 2000:1, Cai & Treisman, 2006:508). Factors that contributed to this economic growth include rural reforms which placed households at the centre of agricultural production, enterprise reforms that introduced material incentives for enterprise development, price reforms, the importation of technology, the opening up of market to international trade and foreign investment, and the flourishing non-state sector. China's move from central planning of the economy to decentralisation reforms in the 1970s allowed for a variety of market reform initiatives to develop in the provinces. These reforms led to experimentation with the de-collectivisation of land, the emergence of market-oriented but collectively owned towns and villages, fully private firms, and spatially circumscribed special economic zones. As a result, China's economy has become increasingly differentiated and the state is taking a similarly experimental, gradualist and decentralised approach to reform of the system of labour relations (Friedman & Kuruvilla, 2015:182).

Cheap labour played a significant role in the economic growth of China during its transition to the free market economy and decades after that (Li, Li, Wu & Xiong, 2012:57). Fiscal reform was an important aspect of this multifaceted reform and was initiated in the 1980s (Lin & Liu, 2000:1; Yuhai, 2006:2206, Vatikiotis, 2003:66; Dayal-Gulati & Husain,

2002:365; Poncet & Barthelemy, 2008:897; Mertha, 2005:791; Chen and Wu, 2008:119). ” According to Poncet and Barthelemy (2008:898), “... while fiscal and economic decentralisation promoted economic growth, it also brought many unintended problems, including rising local government deficits, weakening macroeconomic management, and increasing regional disparities”.

Two indicators of fiscal decentralisation used to measure its impact on citizen welfare are revenue collection and fiscal expenditure. Gao, Meng and Zhang (2014:1177) posit that greater revenue decentralisation increased the social welfare of the citizens in China. Yuhai (2006:2206) argues that China’s reforms began much earlier in the 1970s as a result of developments and shifts in the world, which included the impending victory of Vietnam in the Sino-Vietnamese war, the visit to Beijing in 1972 by the American president Richard Nixon, and its breaking away from the New Crescent Containment. The New Crescent Containment was composed of the South-East Asian Treaty, the Baghdad Treaty, and the Japan-US Security Accord, which restricted China from Baghdad in the West to Japan and South Korea in the East. Perhaps the most significant driver of reforms in China was the 1975 Four Modernisations, which drove China away from the Soviet model of focussing entirely on heavy industry towards coordination of the agricultural, industrial, defence, and science and technology economic sectors, with agriculture as the key priority sector (Yuhai, 2006:2206).

Fiscal decentralisation entails the central government transferring its fiscal controls to SNGs. Lin and Liu (2000:1) argue that such transfer of fiscal power and responsibility to SNGs increases economic efficiency in that these governments have informational advantages over the central government concerning resource allocation (Lin & Liu, 2000:1; Baskaran & Feld, 2012:422). Baskaran and Feld (2012:422) argue that subsequent to the efficient allocation of resources, fiscal decentralisation drives economic growth. This trend has been corroborated empirically by Carrion-i-Silvestre, Espassa and Mora (2008:196), who argue that absolute fiscal autonomy of SNGs has a positive effect on local economic growth. SNGs are better positioned to provide public services that closely meet the needs of the local population (Carrion-i-Silvestre, Espassa & Mora, 2008:196).

Furthermore, economic efficiency increases when local governments are responsible for providing public services because they are closely monitored and assessed by their

constituencies and as result are pressured to exercise their fiscal responsibilities effectively and efficiently in the best interest of the general public. In China, most of the public (state-owned) enterprises are controlled by local governments. Fiscal decentralisation may harden budgetary constraints of local enterprises and as result improve their efficiency and lead to higher and more sustainable economic growth (Lin & Liu, 2000:2).

However, views by some scholars challenging the suggested benefits of fiscal decentralisation have emerged. Firstly, these scholars argue that the central government can assign representatives at local offices to gain sufficient knowledge about local needs and preferences and thus position the central government to better allocate resources and provide services efficiently and effectively in the interests of the general public, under a centralised fiscal system. Secondly, the central government can assign its representatives in the SNG sphere decision-making powers. Thirdly, these scholars question the notion that SNG officials are better informed about local population needs and preferences considering that these officials are not democratically elected in most developing countries and that they may not necessarily act in the best interest of the general population. Further arguments advanced against fiscal decentralisation include the view that local governments in China may set up trade barriers to protect SOEs, thus fragmenting markets, causing rent-seeking and other efficiency losses (Lin & Liu, 2000:3; Cai & Treisman, 2006:505).

During the 1980s the Chinese fiscal system transformed from a unitary system in which the central government had absolute control over revenue collection and budget appropriation, to a relatively decentralised system in which revenues were shared by the central and provincial governments (Lin & Liu, 2000:3; Yuhai, 2006:2206, Vatikiotis, 2003:66; Dayal-Gulati & Husain, 2002:365; Poncet & Barthelemy, 2008:897; Mertha, 2005:791; Chen & Wu, 2008:119). However, under this new arrangement some provincial governments were required to remit a portion of their budget revenue to the central government. In cases where the provincial revenues could not cover specified provincial expenditures, central government would provide subsidies to these provinces. Similar arrangements were made between the provincial and local governments. Lin and Liu (2000:3) point out that the views of scholars differ about the impact of fiscal decentralisation on economic growth. Lin and Liu (2000:3) used a production-function based regression analysis framework to examine the effect of fiscal decentralisation on economic growth in China. They found that fiscal decentralisation had a positive impact on economic growth. In addition, they found that rural reform, the non-

state sector, and capital accumulation along with fiscal reforms were key drivers of China's impressive growth between 1970 and 1993 (Lin & Liu, 2000:3).

4.4.3.4 Fiscal decentralisation in the 1980s

The Chinese fiscal system was highly centralised before the reforms (Lin & Liu, 2000:3; Cai & Treisman, 2006:508). Fiscal centralisation is illustrated by the financial relationship between the central government and provincial governments, which is called *tongshou tongzhi* (unified revenue collection and budgetary appropriation). Subnational budgets did not have their own budgets, but instead the central government collected all revenues and prepared a consolidated budget for all SNGs. SOEs were not spared from this centralised financial planning and were required to remit all their profits or financial surpluses to the central government, which then covered all their expenditure by fiscal appropriation (Lin & Liu, 2000:3-4).

Three driving forces behind the changes in China's fiscal system can be identified. The first driving force is that the dominance of SOEs was undermined by the remarkable growth of non-state-owned enterprises, township and village enterprises, joint ventures and private firms. The state fiscal system suffered due to the increase of loss-making SOEs, forcing the central government to turn to alternative revenue sources. Second, fiscal reforms shifted the balance of political power toward local autonomy, which subsequently forced SNGs to demand more fiscal and decision-making autonomy. Third, economic pressures forced decentralisation of the fiscal system. These included the need to empower SNGs to increase revenue collection and to promote economic growth. Fiscal decentralisation was first experimented with in 1977 in the province of Jiangsu. However, under this arrangement the province was required to remit a share of its revenue to the central government annually. The share to be transferred to the central government was determined according to the historical records of local revenues and expenditures of the province (Lin & Liu, 2000:3-4).

4.4.3.5 Challenges to India's centralised parliamentary federalism

According to Bagchi (2000:3025), "Federalism or the idea of multi-level governance is widely acknowledged to be the best founding principle of polities around the world". It is not surprising that India opted for a federal government after its independence from Britain, with

the idea of accommodating and protecting its diverse ethnic and cultural composition. Federalism enables constituent units to reap the benefits of strength in unity while retaining their identity and autonomy. Advantages of federalism include gains from a large common market, protection of individual rights and freedom, and the promotion of democratic values (Bagchi, 2000:3025). The Indian Constitution was first adopted in 1950 and included a separation of powers between the parliament and the state legislatures. India is a democratic federal country comprising of 28 big and small states with constitutionally vested powers and functions (AB, 2003:3763; Singh & Verney, 2003:1; Baba, 2011:109).

Indian leaders were educated in the tradition of liberal democracy unlike their counterparts in the Soviet Union and communist China. Despite their liberal democratic education, some Indian leaders (such as Jawaharlal Nehru) were also committed to policies of democratic socialism, agrarian redistribution and a planned economy, which they believed required centralised planning for them to be successful (Singh & Verney, 2003:1). The idea of establishing a unitary state in India was precluded by its sheer size and heterogeneous character. As a result, 66 powers and functions were distributed to states governments, including industry, agriculture, land revenue, public order, police, health, education and welfare. These state government functions were governed by conservative chief ministers over predominantly rural and hierarchically ordered societies (Singh & Verney, 2003:1).

Rebellious groups opposed traditional government arrangements in many states and promoted revolutionary socialism and the overthrow of the regime. Singh and Verney (2003:1) argue that India's centralised federalism with its liberal principles co-existed uneasily from the beginning with both a vast conservative rural society and a variety of socialist movements. Centralisation in the Indian Constitution was recognised in different ways as a result of the residual power residing with the Parliament (Singh & Verney, 2003:1; Baba, 2011:114). The Parliament possessed vast residual powers and therefore could override the executive and legislative powers of the states under certain circumstances, create new states, alter states boundaries and even abolish states, amend the Constitution, and institute "president's rule" in a state which replaces the elected legislature and government (Singh & Verney, 2003:1).

In addition, Indian centralised federalism adopted the British tradition of parliamentary government, whereby the prime minister and the cabinet were responsible only to the lower house of Parliament, namely the House of the People (*Lok Sabha*). The upper house of

Parliament, namely the House of the States (*Rajya Sabha*), was more like the British House of Lords than the US Senate. The third branch of government, namely the Supreme Court, had limited powers compared to its US counterpart. As a centralised federation, the Indian government directed the economy through the functions and powers of the Finance and Planning Commissions. The Finance Commission was set up every five years to develop a formula for the distribution of revenues to the states. The Planning Commission implemented five-year plans of economic development. This centralised planning meant that the states were heavily dependent on Delhi, the central government. Most of the public service was controlled by the Indian Administrative Service, including the police service, even though it was a state function. Arguments that India was not federal are based on the fact that the Constitution makes no reference to federalism, but refers instead to a Union government, which is commonly referred to as the “the Center” (Singh & Verney, 2003:3; Bagchi, 2000:3025; Baba, 2011:113).

The Indian party system was for many years dominated by the Indian National Congress until the 1990s (Singh & Verney, 2003:3; Ruparelia, 2008:40; Baba, 2011:114). The leadership of the Indian National Congress was referred to as the “high command” and was responsible for deciding which state leader was to become the Congress chief minister (Singh & Verney, 2003:3; Baba, 2011:114). Several commissions of inquiry were appointed under the scope of intergovernmental relations to examine the Indian federal structure (Singh & Verney, 2003:3; Bagchi, 2000:3025). However, very few of the recommendations of these commissions were ever implemented. These commissions, which were administered by civil servants until recently, included the 1998 Sarkaria Commission on Centre-State Relations and the 2002 National Commission to Review the Working of the Constitution (the Venkatachaliah Commission) (Singh & Verney, 2003:3; Baba, 2011:115).

The Venkatachaliah Commission was different in that it appointed scholars and research institutions to produce consultation papers, which it then published online. The terms federation and federalism are still avoided in official Indian inquiries partly because of the wording in the Constitution, which states in Article 1 that “India, that is Bharat, shall be a Union of States”. Views by some leaders of the Indian government cement the view that India is not a federation. These views include those by the chairman of the Constituent Assembly’s Drafting Committee, B.R. Ambedkar, who compared the Indian scheme with other federations such as Canada, but also pointed out that the Indian Constitution could be

easily amended and that in time of crisis, the country could be converted into a unitary state (Singh & Verney, 2003:3).

Singh and Verney (2003:3) argue that central administration was particularly necessary for India in the 1950s, under the leadership of Nehru, when it faced an enormous task of national integration. This task included incorporating the provinces of British India and 562 princely states. In addition, integration included rapid industrialisation, similar to that which took place in Russia and China, and the elimination of poverty, especially in rural areas. Singh and Verney (2003:3) argue that central planning appealed to leaders like Nehru who were committed to democratic socialism and wanted redistribution of land and other resources to occur through peaceful means. Democratic socialism and economic planning with support from international financial institutions was successful in India, but only in the early years. Delhi discouraged foreign private capital to prevent a re-occurrence of the past when the British ruled most of India through the East Indian Company. Foreign private capital was discouraged also because the socialist government leadership associated capitalism with uneven development that favoured the few over the many (Singh & Verney, 2003:3).

Singh and Verney (2003:3) argue that Indian federalism may have been more successful than those of other former British colonies, such as the West Indies, Central Africa, Nigeria and Malaysia, because of its centralised character. However, this centralised federalism showed some weaknesses over time, including lack of support for socialist policies by the rank and file of the Congress and the leadership of the states. Socialism in the Delhi administration in practice consisted of a control of the “commanding heights” of the industrial sector through the public-sector undertakings (PSUs), which were directed by members of the Indian Administrative Service. The “permit, license, quota Raj” system that was introduced to prevent expansion of big business corporations and to limit private monopolies failed to achieve comparable free market economy and competition outcomes (Singh & Verney, 2003:3; AB, 2003:3763; Sinha, 2005:343).

The public sector collapsed as a result of this non-profit driven economic system. The states later became recalcitrant and began to elect opposition parties to office. The strong stance of the Centre to resort to the president rule, which replaced elected officials with state governors under Article 356 of the Constitution, only made matters worse. The states became more

hostile towards centralised federalism and pressured the government to reform (Singh & Verney, 2003:3).

4.4.3.6 Decentralisation in India

Decentralisation has increased over the last decade in many developing countries (Asfaw *et al.*, 2007:17; Sinha, 2005:337). Decentralisation is believed to automatically result in the efficient allocation of public resources, an increase in popular participation and accountability, and improved provision of public goods and services, despite the lack of empirical evidence for this preconceived opinion (Asfaw *et al.*, 2007:17; Chattopadhyay, 2012:185).

The effectiveness of fiscal decentralisation can be affected by other complementary factors, such as the level of political decentralisation. Decentralisation is a multifaceted concept that involves the shifting of fiscal, political and administrative authority to lower sphere governments. Asfaw *et al.* (2007:17) argue that decentralisation is a policy tool for devolving power and resources from central to local governments to achieve equity, efficiency and accountability. Sinha (2005:337) argues that India has experienced exceptional economic growth due to economic reforms in the 1990s, despite having a highly centralised fiscal system; that is, fiscal federalism. Devolution of power to local governments is believed to bring decision-makers closer to the people and to enhance community participation in decision-making and implementation processes; hence, the preconceived idea that decentralisation will result in improved efficiency and equity in public service delivery (Asfaw *et al.*, 2007:17; Sinha, 2005:337; Chattopadhyay, 2012:185). Decentralisation has the advantage of reducing dogmatic policies and guidelines imposed on local governments by the central government and increasing access to better information on local circumstances, thereby helping to make rational and flexible decisions that reflect the real problems and preferences of the population.

The resulting improved flow of information and interaction between the public service provider and the client (public) can provide non-bureaucratic institutional support to effectively target local needs. In addition, improved information flow and interaction promotes inter-sectoral coordination, increases accountability, reduces duplication, and improves the implementation of public services. Decentralisation passes responsibility and

accountability to local government bodies, thereby making these entities work efficiently, flexibly and creatively by mobilising all available resources in their localities to meet the targets (Asfaw *et al.*, 2007:18; Prohl & Schneider, 2009:641).

Local governments have closer relationships with the local people, which enable them to have a better understanding of their problems and needs, and therefore being in a better position than the distant central government to establish the right local priorities. Decentralisation also enhances local community participation in decision-making regarding public service policy objectives, goals, strategies, planning, financing, implementation, and monitoring. Decentralisation creates a favourable environment for decision-makers to obtain appropriate and up-to-date information about the preferences and problems of the local people. Further, it creates an effective channel for local people to express their needs and priorities and a favourable environment for local public bodies to respond effectively and quickly to local needs (Asfaw *et al.*, 2007:18; Chattopadhyay, 2012:185).

Asfaw *et al.* (2007:18) argue that a well-designed decentralisation policy should improve the equity, efficiency, quality and coverage of public services and outcomes. Decentralisation may pose serious risks and challenges that may lead to the deterioration of services if not implemented properly. Asfaw *et al.*'s study (2007:19) of decentralisation in the Indian health services highlight the main argument cited against decentralisation as the diseconomies of scale. Some healthcare programmes require a national perspective and therefore may not be better performed at the local government sphere (Asfaw *et al.*, 2007:19).

The effectiveness of decentralisation hinges heavily on strong planning and executive capacity at the local sphere. However, local governments in most developing countries suffer from a lack of qualified personnel and managers to adopt the new responsibilities of decentralisation. This skills shortage may severely restrict the competence of local bodies to plan and execute new tasks. Poorly defined responsibility and accountability roles among different actors at all spheres of government may exacerbate the challenges facing local governments. The effect of decentralisation on the delivery of efficient, responsive and quality public services may further be undermined by opposition and unwillingness of the central government to delegate power and authority to local bodies. Decentralisation may also exacerbate inequalities between rich and poor areas as municipalities in rich areas are

better positioned to mobilise substantial resources to attract qualified labour and to deliver high quality and efficient services compared to poorer areas (Asfaw *et al.*, 2007:19).

Another potential disadvantage of decentralisation is that local government elites and dominant individuals may abuse the devolved power and authority to pursue their own interests, instead of the interests and development priorities of local communities, thereby hindering efficiency and equity. Corruption is higher at local government sphere than at national sphere and may be exacerbated if community participation does not materialise.

Decentralisation is measured in financial terms as a ratio between expenditure managed by local governments and expenditure managed by national government. Studies show mixed results of the impact of decentralisation on the delivery of public health services. In India, decentralisation has a positive impact on the improvement of public health services, while in other developing countries in Asia, Africa and South America decentralisation reduces the access of rural households to public health services due to poor linkages, and the lack of clearly defined responsibilities between local and national governments, and low capacity at local spheres. Poorly trained personnel, poor administration and inadequate finance are other negative consequences of decentralisation (Asfaw *et al.*, 2007:21).

The first steps towards decentralisation in the independent India occurred when the Balwant Rai Mehta Committee recommended the introduction of the Community Development Programme (CDP) in the first Five Year Plan. The National Development Council endorsed a three-sphere scheme of decentralisation in 1958. However, progress towards decentralisation was slow and different states followed different models for the constitution of local bodies. Reasons for the slow progress of decentralisation included political and bureaucratic resistance at the state sphere to sharing resources and powers, paucity of funds which curtailed the functioning of local bodies, and lack of clarity about the responsibilities of elected local bodies, which functioned as mere administrative units without adequate powers (Asfaw *et al.*, 2007:19).

The Ashok Mehta Committee, after the 1970s, recommended the redesign of the institutional structures of the Panchayati Raj institutions for better implementation of rural development programmes. A few states, namely, Gujarat, Jammu and Kashmir, Karnataka, Maharashtra and West Bengal took major steps towards decentralisation. However, these decentralisation

reforms did not occur in larger states like Bihar, Madhya Pradesh, Rajasthan, and Uttar Pradesh, which required decentralised planning because of their size. States like Gujarat and Maharashtra, which were pioneers in implementing decentralised planning, failed to effectively devolve adequate powers to local bodies. Decentralised governance was better implemented in states like Karnataka, West Bengal, and Jammu and Kashmir, especially in Karnataka and West Bengal, which both introduced legislation delegating powers and resources to elected local bodies (Bardhan, 2002:185).

Decentralisation was strengthened further in the mid-1980s by the passing of the 1989 Panchayati Raj Bill, which gave discretionary political power to states to devolve power to Panchayati Raj institutions and to protect the political rights of marginalised groups, such as the Scheduled Castes, Tribes and women. The 73rd and 74th amendments to the Constitution in the early 1990s mandated direct democracy in India, making it constitutionally mandatory for the states to form elected local self-governing bodies, that is, *Panchayats* and Urban Local Bodies (Asfaw *et al.*, 2007:20; Bardhan, 2002:185).

The 73rd Amendment Act of the Indian Constitution together with the *Panchayats* (Extension to Scheduled Areas) Act (PESA Act) of 1996 empowered local governments or local self-governing institutions to prepare their own local development plans to promote socio-economic development, while considering the nature and extent of poverty and backwardness of rural areas. The 73rd Amendment Act vests mandatory powers and functions to the *Gram Sabhas* (Village Assembly) to promote local development plans and to identify beneficiaries under different schemes and programmes (Mohapatra, 2015:2015).

According to Sisodia (2015:2), “The 73rd Constitutional Amendment Act 1993 ushered in a new era of democratic decentralisation, in which both powers and responsibilities are devolved upon elected *Panchayats* at the District, Intermediate and Village levels”. The Eleventh Five-Year Plan derived from the Act advocates for bottom-up planning, inclusive growth and sustainable development of rural areas in India. The Plan substantially empowers Panchayati Raj Institutions (PRIs) as the primary means of delivery of essential services. This commitment and institutional development demonstrate the commitment to decentralisation in India whereby SNGs play a leading role in democratic governance (Sisodia, 2015:2).

The scope, details and pace of administrative and fiscal decentralisation was left to the discretion of the state governments and legislatures. However, the Eleventh and Twelfth Schedules of the Constitution list 29 and 18 functions to be performed by the Panchayats and Municipalities respectively. These Schedules of the Constitution require that the necessary powers and resources be transferred to these local bodies to perform their functions. The Constitution also provided for the establishment of a Finance Commission every fifth year in every state that would recommend the principles governing the distribution and devolution of fiscal resources between the state and local bodies (Asfaw *et al.*, 2007:22-23).

Market-driven reforms, that is, economic liberalisation in India resulted in significant transformation of development governance with respect to the role of the state. These pro-market reforms in the developing world have had an effect of weakening state regulation of the economy, downsizing governments, the state's decline as an employment provider, and the delegation of state roles to non-state actors, thus creating conditions conducive to expand private capital and markets. As a result, state ideology has shifted from intervention for human well-being to linking the poor to markets to improve their well-being. The basis of market-driven reforms is the neoliberal ideology of market-expansion, the reification of contracts and state restructuring, including public sector downsizing. According to Daftary (2014:711), "Neoliberal reforms in the 21st century have led to the marketization of the state - the ascendance of the ideology, tropes and practices of markets becoming the principles governing the state". Thus, state neo-liberalisation in India has led to the following:

The dominance of market rationalities in government-owned banks, the rise of contracting and subcontracting by a restructured rural bureaucracy, the state's devolution of policy implementation to local political actors, and the deployment of self-governance techniques, specifically notation and inscription technologies, to bring about self-regulating development subjects and development workers (Daftary, 2014:711).

India is historically fragmented in terms of religious, ethnic and caste groups and the fragmentation is blamed for prevailing socio-economic tension between caste groups, tribal groups and religious groups, and subsequently the economic deprivation and inequality in the country. Religious minorities in India are defined on the basis of the National Commission of Minorities Act, 1992, and include Muslims, Sikhs, Christians, Buddhists and Zoroastrians (Parsis). Muslims in India are known to have the lowest access to public services due to poor

policy implementation, despite elaborate decentralisation of governance in the country (Das & Kar, 2016:352).

4.5 CONCLUSION

The discussion about federalism in both developing and developed countries always centres around the autonomy of SNGs, decentralisation, devolution of both fiscal and political powers, accommodation of different cultural groups in multi-ethnic societies and efforts to prioritise nationalism in ethnically and geographically divided societies, such as Ethiopia, as a unifying mechanism (see paragraphs 4.4.2.3 and 4.4.2.4 in chapter 4 above). In American politics, discussions on federalism are mainly about decentralisation and centralisation and between the Democrats and the Republicans in policy matters and objectives. Politicians in favour of centralisation argue that more powers should reside with the federal government, rather than with the states, and to only devolve powers to the states in matters which are of a regional nature and therefore not affecting the entire nation. On the other hand, those in favour of decentralisation argue for a free market system where states have both economic and political power to determine their own economic policies (see paragraph 4.2.2 above).

In Germany, discussions on fiscal federalism are also premised on two extreme views of decentralisation and centralisation. Decentralisation is favoured for the subsidiarity principle and Oates' theory, which argues that local governments are more economically efficient in delivering services to the public; hence, the need to decentralise public powers and functions to the lowest spheres of government. Another contentious matter in German politics is joint policy-making (*Politikverflechtung*) especially in relation to EU policy matters, which is seen as a stumbling block to Germany's efforts to address its political and socio-economic challenges (see paragraph 4.3.3 above).

The primary aim of Germany's federal Constitutional reforms of 2006 was to enhance efficiency and accountability by untangling the complex intergovernmental relations system and by reducing the veto rights of the *Bundesrat* (see paragraphs 4.3 and 4.3.4 above). The revised Swiss Constitution was introduced on 1 January 2000 and provides for ethnic diversity, while also allowing individual cantons to hold the federation together in unity. The principle of self-rule for Switzerland's 26 cantons and shared-rule in the federal government

is of utmost importance to accommodate linguistic, cultural and ethnic diversity of the country's populace (see paragraph 4.3.5 above).

The 2000 federal Constitution sought to address these challenges of diversity by focusing more on strengthening federalism in the country. Adamovich and Hosp (2003:1) argue that competitive federalism has been very successful in Switzerland and attribute this success to the fact that Switzerland is the most non-centralised country in the world. The country's fiscal federalism allows all three jurisdictions (federal, cantonal and municipal governments) to independently manage (collection and expenditure) their own taxes. Nearly 75 percent of total income tax goes to the coffers of both cantons and municipalities (see paragraphs 4.3.6 and 4.3.7 above).

Since the 1990s, many developing countries have embraced decentralisation and federalism as a component of their development strategies. Furthermore, greater transfer of authority and autonomy to subnational units is expected to increase efficiency in public service delivery. These countries have adopted democratic principles and values of putting in power democratically-elected national and subnational governments. Other benefits of decentralised governments include good governance, political stability, conflict resolution and economic efficiency (see paragraph 4.4 above). Brazil undertook democratic consolidation measures, including free and fair elections, and eventually the adoption of a new constitution in 1988 as part of its federalism and government restructuring efforts (see paragraph 4.4.1.1).

Brazil is the most decentralised country in the developing world, but it also faces challenges of severe regional resource disparities and dire socio-economic challenges. The country uses federalism as a mechanism to mitigate regional resource disparities and to accord powers to SNGs in order to improve the efficiency in public service delivery. The federal government accorded more fiscal powers and incentives to SNGs in order to achieve its goals of suppressing inflation and controlling prices and unemployment levels.

The 1990s saw drastic reforms and an increase in democratic consolidation in Nigeria and many other developing countries. These democratic and financial reforms were in support of federalism and decentralisation, which were aimed at granting fiscal and political powers to SNGs in order to accelerate development, reduce poverty and strengthen economic growth. However, federalism has not had uniform outcomes, as seen with its impressive economic

growth in countries such as the US and stagnant growth in Nigeria. In Nigeria, economic stagnation is attributed to social, political and institutional factors, which serve as stumbling blocks in achieving the desired outcomes of federalism.

In Ethiopia, the introduction of federalism and reforms in economic and fiscal arrangements were mainly aimed at accommodating diverse cultural, religious, linguistic and ethnic differences among various groups and regions in the country. This chapter concluded with a discussion on two of Asia's largest and fastest growing economies, namely, India and China, which adopted federalism and fiscal decentralisation in the 1970s and 1980s respectively. Both countries experimented with decentralisation and limited or soft centralisation in order to embrace the liberal free market system, while at the same time maintaining a certain degree of control on the political and fiscal autonomy of SNGs.

"We now live in a nation where doctors destroy health, lawyers destroy justice, universities destroy knowledge, governments destroy freedom, the press destroys information, religion destroys morals, and our banks destroy the economy" – Chris Hedges

CHAPTER 5: THE SOUTH AFRICAN POLITICAL AND CONSTITUTIONAL DISPENSATION

“He who is unfit to serve his fellow citizen, seeks to rule them” – Ludwig von Mises

5.1 INTRODUCTION

Chapter five provides a detailed discussion and interpretation of the Constitutional developments in the South African government from the formation of the Union of South Africa in 1910 to the dawn of the new democratic dispensation in 1994, in the context of governance, policy reforms, and political transformation. Ncholo (2000:87) argues that 1994 marked a watershed in the history of South Africa and ushered in a new democratic order and paved the way for revolutionary change. The study also investigates the impact of transformation (Bardill, 2000:103) in other sectors of the society, that is, economic and social, and how these developments and reforms impacted on governance. Some sectors of the society have attributed increased corruption in government and SOEs to economic transformation policies, such as affirmative action and black economic empowerment.

The chapter further explores the role of various structures, systems and processes that were instrumental in facilitating political transformation and promoting good governance. These structures and systems include the Truth and Reconciliation Commission (TRC) and the various legislation and institutions as prescribed by the Constitution. The chapter also provides a detailed study of the structure and systems of government, including the three branches of the state and the three spheres of government and their roles and responsibilities in promoting good governance and facilitating political transformation. Other structures and systems discussed in this chapter, such as Intergovernmental Relations structures and processes, play a significant role in the functioning of government and the promotion of governance, particularly in policy and strategy formulation and implementation, service delivery and the achievement of national targets, priorities and objectives. These aspects of the new democratic political dispensation in South Africa elucidate political, cultural and socio-economic developments in the country, which significantly influenced good governance and the strategic orientation of the state.

5.2 BACKGROUND

This chapter provides a brief historic perspective of the developments in the South African constitutional dispensation since 1990 until the adoption of the current constitution in 1996. This historical perspective is necessary to understand the developments that eventually led to the new democratic political dispensation in 1994. The study then looks in detail at the Codesa negotiations and political developments in the transition period between 1990 and 1994. The chapter concludes by analysing and discussing the new South African constitutional dispensation, paying particular attention to governance and political transformation. This discussion focuses on the key aspects of governance, which have been the subject of political transformation and the focus of a new democratic dispensation. It provides a better understanding of the deliberations that took place and motivations that led to the adoption of the resultant constitutional and legal framework, including the institutional arrangements and governance mechanisms put in place (see paragraph 3.5 in chapter 3 above for a discussion on governance as a structure, process, mechanism and strategy).

These aspects of governance and political transformation include the structure and architecture, powers and functions, and the mechanisms, that is, the systems and processes of the three spheres of government, with particular focus on provincial governance. The form of state refers to the country's political system that is either federal or unitary²⁷ (see chapter 2 for theories and models of federalism), and the organisation of government refers to the model of government, that is, either a parliamentary or presidential government. The powers and functions of government refer to the functional areas, that is, executive, legislative and judicial authority, and the competencies of the different spheres of government (as listed in Schedule 4 and 5 of the Constitution of 1996).

Systems and processes of government refer to such mechanisms and measures as the codes of ethics, codes of conduct, policies, governance model, and legislation put in place and applied by such structures as parliamentary committees, state institutions supporting constitutional democracy (Chapter 9 institutions), the Public Service Commission, and good governance watchdogs or ombudsmen. The role and capacity (institutional and administrative efficiency

²⁷ The focus of the study is on federations or federal states as the South African government is constituted as national, provincial and local spheres, which are distinctive, interdependent and interrelated (see paragraph 1.2.8 in chapter 1 above) (RSA, 1996).

and effectiveness) of provinces in exercising their powers and performing their functions will be investigated. This includes legislative authority, service delivery (service delivery is one of the key indicators used to assess the performance of the spheres/structures of government), poverty eradication, socio-economic development, empowerment of the poor and marginalised, transformation of the economy and the political landscape of the country, and fulfilling the overarching developmental mandate (see chapter seven below for an assessment of governance in provinces using the constitutional values and principles of good governance as performance indicators).

An evaluation of the performance of provincial governments will be carried out, along with the assessments and oversight and advisory roles performed by government agencies/commissions, such as the Public Service Commission and institutions such as State Institutions Supporting Constitutional Democracy, also known as Chapter 9 institutions, for example, the Public Protector, the Auditor-General, and the Standing Committee on Public Accounts (SCOPA). Chapter 9 institutions are provided for in chapter 9 of the Constitution (Act 108 of 1996), hence, the name Chapter 9 institutions. Lastly, this chapter discusses cooperative governance (often referred to as intergovernmental relations) as prescribed in chapter 3 of the Constitution (RSA, 1996), and its impact on the efficiency and effectiveness of the spheres of government in fulfilling their developmental mandate, that is, their legislative and executive obligations (see paragraphs 1.1 and 1.2.1 in chapter 1 above). The Inter-Governmental Relations Framework Act (IGRFA) gives effect to chapter 3 of the Constitution and provides a framework for all three spheres of government to promote and facilitate cooperative governance through intergovernmental relations (RSA, 1996:69; RSA, 2013:1; RSA, 2014:86; Ntlama, 2015:13; Phago, 2013:112; RSA, 1996; RSA, 2000).

The developmental mandate of government seeks to improve the socio-economic wellbeing of the society through a variety of means; service delivery being the most visible and direct as one of the functions of government, particularly the provincial and local spheres of government (see paragraph 4.3.1 in chapter 4 above regarding the subsidiarity principle and Oates' decentralisation theorem that advocates for efficient provision of Pareto-efficient levels of output of public goods by local governments, rather than central government) (Jochimsen, 2008:541; Garzarelli, 2006:238; Prohl & Schneider, 2009:641). The national government is tasked with the responsibility to develop policies, and norms and standards, while the provincial and local spheres of government are responsible for implementing these

policies. IGRFA therefore provides a framework for policy alignment, integration, and coordination (see paragraph 1.2.8 in chapter 1 above). Provincial and local governments are tasked with the responsibility of implementing the policies and mandates developed by the national sphere of government. This is similar to Germany where most legislative powers are centralised and provinces mainly administer national legislation (see paragraph 1.2.8 in chapter 1 above). They are closest to the people they serve and hence are referred to as being at the coalface or frontline of service delivery. However, concerns are often raised regarding the capacity, capability, competence and resources available to these spheres of government to deliver on their mandate. Arguments often put forward include the fact that these spheres of government, particularly the local sphere, are not adequately capacitated in terms of the competency/ levels of skills and financial resources required to carry out the task assigned to them (Ile, 2012: 53; Simeon & Murray, 2001:66; Benz, 2009; Sokupa, 2012:1).

Local governments are generally known to lack the ability to attract professionals with the requisite skills and competencies; thus, further exacerbating their inability to provide the much-needed basic social services such as sanitation, housing, running water and electricity. Skills shortages are more pronounced in the water sector, where there is a 57% vacancy rate for engineers, and thousands of vacancies for health and environmental health practitioners, artisans, technicians and management staff (www.timeslive.co.za retrieved on 5 February 2013).

Further, local governments are known to be inefficient, ineffective and corrupt, in addition to being plagued by financial and capacity constraints (Zuern, 2002:78-79). Davids and Esau (2012:82) argue that the shortage of skills has a negative impact on the government's ability to meet its goals and objectives. They make reference to the findings of the 2004 skills audit conducted across the 284 municipalities in the country, the State of Local Government report and the Local Government Turnaround Strategy (LGTAS), which put the shortage of skills at the centre of most challenges faced by government, in general, and local government, in particular. The shortage of skills leads to many challenges in government, including problems of poor governance, and financial and administrative dysfunction (Davids & Esau, 2012:82).

Another look at the local and provincial spheres of government regarding their poor service delivery record points to inadequate financial resources and poor financial management; thus, there is the need to review the constitutionally vested powers and functions of these spheres

of government. A case in point regarding subnational incapacity to exercise their constitutionally vested powers and functions is a scathing attack by Nganje (2015:52), who argues that “provincial governments have been virtually absent from the foreign policy-making process despite constitutional provisions to that effect”.

The 1996 Constitution makes provision for the autonomy of provinces; yet this authority remained largely underdeveloped owing to factors such as inherent ambiguities in the constitutional design, a strong centralising ethos on the part of the ruling party, and generally weak provincial capacities. The continuing decline in service delivery and the increase in maladministration and reports of corruption bring into question the capacity of local and provincial governments to deliver on their mandate. This capacity to deliver can be explained in terms of the resources and responsibilities vested in them; that is, their powers and functions – political, fiscal and administrative (see page 2, paragraph 1.1 in chapter 1 above) (Habib, 2014; Lues, 2014:789).

The Public Finance Management Act No. 1 of 1999 (PFMA) provides mechanisms to regulate financial management in both provincial and national governments; whereas the Municipal Finance Management Act No. 56 of 2003 (MFMA) provides mechanisms to secure sound financial management of the financial affairs of municipalities and other institutions in the local sphere of government (PFMA, 1999:1; MFMA, 2003:2). It could be argued that provincial governments are in a better position in terms of their revenue transfers from the national government; yet in most provinces the hardships and quality of service delivery in communities does not reflect these enormous allocations. An annual budget act of parliament, that is, the Division of Revenue Act (DORA), makes an equitable allocation of nationally collected revenue to all spheres of government, as provided for in section 214 of the Constitution (RSA, 1996:82; Bardhan & Mookherjee, 2006:340).

This picture raises another question in addition to poor financial management and a lack of requisite skills, one of corruption, which is very much a function of accountability and governance. Further analysis of the system reveals a disconnected or dysfunctional value chain system in the overall system of government in the country in that all spheres are expected to work as integral parts of one unit, that is, in alignment, and in a coordinated and integrated manner by complementing and supporting one another. This provision for working jointly to promote the principles of an effective, transparent, accountable and coherent

government and to achieve the common national goals of government is provided for in Chapter 3 of the Constitution (cooperative governance), where the three spheres are said to be distinctive, interdependent and interrelated (see paragraph 1.2.8 in chapter 1 above) (RSA, 1996:1269).

This implies that the national sphere of government could also be perceived to not be performing effectively its function of playing an oversight and support role to both lower spheres of government. Hence, the widespread service delivery protests against poor levels of municipal and public services (News24, 2014). A thorough understanding and definition of a developmental state or mandate is necessary to ensure that the correct indicators are being used to assess the success or failure of the state; that is, performance of government in achieving the desired developmental goals. A developmental approach to improving the socio-economic conditions of people around the world, particularly in developing countries, is used by many international development organisations, such as the World Trade Organisation (WTO) and the International Monetary Fund (IMF) (see paragraph 3.21. and 3.6 in chapter 3 above) (Rothstein, 2012:143; Sorens, 2016:25; Bardhan, 2002:185; Neamțu, 2016:48).

China tops the list of leading emerging economies that are challenging the existing international development architecture by providing huge amounts of aid both in cash and kind to African countries. However, Ubi (2014:243) warns African governments to develop good policies, adequate institutional framework and regulations when strategising for development and engaging with China, so as to achieve sustainable development and derive maximum benefit from such aid. Grindle (2011:199) argues that a good governance paradigm must be adopted to ensure the realisation of developmental goals, such as poverty eradication and the improvement of the socio-economic and political conditions of a society. On the other hand, Qi (2010:58) contends that governments ought to be reconstructed as service-oriented institutions in order to adapt to the pressures of globalisation and social reform.

In Ethiopia, a coalition of military movements and political parties called the EPRDF ascended to power in 1991. The EPRDF overthrew the military regime of Colonel Mengistu Haile Mariam following protracted rural-based guerrilla warfare that lasted for nearly two decades. The Mariam regime itself came to power in 1974 after the 1971 popular uprising which overthrew Emperor Haile Selassie I (Adem, 2004:611-612). An almost similar

situation developed in South Africa in the period before the democratic negotiations in the 1990s where the African liberation forces and political parties fought in guerrilla warfare against the then South African apartheid government (Phillips, 2014:690; Ngqulunga, 2009:28; Omond, 1987:622).

Muyeba and Seekings (2011:656) point out that apartheid entailed systematic racial segregation between racial groups and discrimination against non-white groups. Omond (1987:622) emphasises that the apartheid regime was probably the most authoritarian and centralised political structure on the African continent that was developed to implement and maintain white minority rule. However, a turn of events in the country led to a negotiated settlement, rather than a full blown civil war and military *coup d'état* (see paragraph 1.2.6 in chapter 1 above) (Wehner, 2000:209; Feeley & Rubin, 2008:1; Napier, 1997:viii; Van Wyk & Oranje, 2013:352).

A discussion on federalism and decentralisation was provided in Chapter 4, highlighting lessons from other countries to overcome the obstacles that prevent the realisation of the desired developmental state. The defining features of federalism, that is, constitutional autonomy of provinces (self-rule) and their constitution-making power at the federal level (shared-rule) serves as a structural foundation and a framework for addressing the key challenges of diversity, power-sharing, joint decision-making, and autonomy, and provide the basis for understanding provincial governance in South Africa (Fessha, 2008:84; Fleiner, 2002:150).

5.3 POLITICAL AND CONSTITUTIONAL DISPENSATION BEFORE 1994

This section discusses historic developments relating to constitutional reforms prior to the 1994 universal franchise elections. These major developments include the 1910, 1948, 1961 and 1983 constitutional reforms and the key political developments arising from these dispensations.

5.3.1 1910 Constitutional dispensation

The Union of South Africa was formed in 1910 to unite the former British colonies and the Boer republics when it emerged as a self-governing union under the British Crown (Suttner,

2004:770; Hyslop, 2005:780; Seo, 2010:128; Mogadime, 2005:157; Ferreira & Henk, 2008:504). According to Ndlovu (2012:286):

The formation of the Union of South Africa in 1910, which discriminated against Africans and excluded them from governing the country, meant that racism was entrenched at the very heart of the South African constitution. What the 1910 Union Constitution marked was the formal creation of a single oppressor, a white minority in which English and Afrikaner nationalities were united.

The aim of uniting the British colonies (the colony of the Cape of Good Hope and the colony of Natal) with the Boer Republics (the Orange Free State and Transvaal) was based on the need to develop imperialist capitalism from exploitation of the vast mineral wealth found in the region of South or Southern Africa, which depended on a large regulated supply of cheap, unskilled black labour (see paragraph 1.2.12 in chapter 1 above) (Mare, 2011:621; Kahn, 2013:191-192; Eriksson, 2014:315; Benson, 2015:370; Kroth, Larcinese & Wehner, 2016:775; Koorts, 2014:170). Kahn (2013:191) emphasises that Southern Africa experienced a mining-led industrial revolution in the mid-nineteen and early 20th century, which led to the immiseration and dispossession of the indigenous people. However, the apartheid economic model and policies were costly, inefficient and inherently incompatible with efficient resource allocation and economic growth. The apartheid government's restriction of movement and advancement of African workers is one example of the regime's detrimental effect on economic growth. Thus, this model evinced a conflict between the demands of the economy on the one hand, driven by the needs of a growing capitalist system, and the polity on the other hand, driven by the ideology of white supremacy and Afrikaner nationalism (Lowenberg, 2014:147; Benson, 2015:370; Bank, 2015:1071). White supremacy is defined as follows:

a political, economic and cultural system in which whites overwhelmingly control power and material resources... and relations of white dominance and non-white subordination are daily reenacted across a broad array of institutions and social settings (Dunaway & Clelland, 2016:17).

The migrant labour system in South Africa had long been used by the British colonial rule and apartheid regime as a highly exploitative and socially destructive mechanism to exploit Black cheap labour for white capital. This system entailed packing men into filthy and unhygienic single-sex compounds and barracks, sweating them at low wages, and shattering

family life. This brutal system “was at the heart of South African inequality and perpetuated a cheap labour regime that fed the mines for the benefit of international capitalism and white privilege” (Beinart, 2014:388).

Strategically, the white British and Afrikaners authorities used migrant labour as a form of coerced labour and in the countryside, that is, rural Bantustan areas, it undermined the peasantry and intensified poverty in the African reserves. However, (Nattrass, 2014:246) argues that the decline in profit rates among South African businesses, especially after the Cold War shows that overall and increasingly over time, apartheid undermined productivity, efficiency and hence economic growth. There was a general decline in profitability during this period even though some capitalists, notably in mining and agriculture, probably benefited from artificially depressed African wages, that is, cheap Black labour (Budlender & Lund, 2011:925; Eriksson, 2014:315)

The trend of cheap migrant labour, especially in the mines, continues today with aggravating and debilitating circumstances as a result of low wages and minimal job security. The killing of platinum miners during a strike at Marikana in 2012 revealed the deep-seated challenges of Black labour exploitation and the abject poverty migrant workers continue to suffer under the capitalist system more than two decades after the dawn of democracy in the country. This situation is worsened and intensified by continuing casualisation of labour whereby employers replace permanent workers with contract workers to cut down on labour expenses and related benefits (James & Rajak, 2014:456).

The mining industrial revolution led to the unification of the British Crown colonies (the Cape of Good Hope and the Natal colonies) and the two Boer Republics (the Orange Free State and Transvaal), including numerous African chieftaincies under the British Crown in 1910. According to Kahn (2013:191), “Fully codified ‘Grand Apartheid’ gradually emerged as a specific means of ensuring settler hegemony and the interests of mining capital”, These developments resulted in the construction of a developmental state between 1910 and 1980, which placed the commanding heights of the economy in the hands of the state (Kahn, 2013:191).

With reference to the race politics of the Union of South Africa, four main categories of classification of the population based on race were European, Native, Asiatic and “Mixed and

Other Coloured', as was used in the 1921 census. The Asiatic category included Indians, Chinese, Syrians and Malays. The apartheid government recognised Indians as a separate population in 1961 by creating a Department of Indian Affairs after conceding that the repatriation scheme of Indians to India had failed. According to Mare (2011:621), the Indian population "referred to indentured labour introduced from India from 1860 to service the labour needs of the successful sugar plantations in the Colony. For a century such people and their descendants were kept in a state of impermanence in the Colony and in South Africa". The Constitution of 1910 excluded blacks from parliament and denied them the right to vote (Smith, 2008:216; Mare, 2011:622; Morrell, Jewkes & Lindegger, 2012:15). Suttner (2004:770) states that the African National Congress "was formed in 1912, as the South African Native National Congress, two years after the establishment of the Union of South Africa".

5.3.2 1948 Constitutional dispensation

The Afrikaner Nationalist Party led by D.F. Malan, who was the Minister of Home Affairs in the Union of South Africa parliament (Mare, 2011:621), came to power in 1948 and continued with the policy of segregation first established by the British colonial officials to entrench their policy of apartheid or separate development (Skelcher, 2003:771; Suttner, 2004:771, Hyslop, 2005:781; Johnson, 1982:217; Seo, 2010:128; Badru, 2012:276; Mkeni-Saurombe & Zimu, 2013:3).

Makombe (2013:291) argues that apartheid was an institutionalised system of racial discrimination and oppression that was founded on strong sentiments of racial hatred and separatism. Mogadime (2005:158) argues that the Afrikaner National Party government proceeded to enforce apartheid as its governing principle, which sought to maintain the already existing system of racial segregation and the oppression of blacks. The apartheid government's strategic imperative was to maintain white privilege by whatever means necessary - the new Constitution of South Africa still protects white privilege through the "sunset clause", which makes provision for the continuity of economic activities that support and maintain white privileges (Phago, 2013:112). However, these oppressive policies drove many black South Africans into anti-regime activity and the armed struggle (Ferreira & Henk, 2008:504).

Ejiogu (2012:258) emphasises that the Afrikaner National Party sustained its first election victory of 1948 over the years through unprecedented repression and brutality of the black majority. However, as compared to its predecessors, the apartheid regime was more systematic and far-reaching, “extended and consolidated pre-1948 practices”, and was “more comprehensive, authoritarian and doctrinaire policy in all matters, especially in regard to labour” (Mogadime, 2005:158). Apartheid was designed to serve as “a means for the white Nationalist government to maintain control over the economic and social system, maintaining white domination while extending racial separation” (Hattingh & Gaede, 2011:501).

Morrell, Jewkes and Lindegger (2012:15) emphasise that in the decade following their ascension to power in 1948, nationalist Afrikaners developed a policy of apartheid, which rigidly segregated South Africans along racial lines. This racial segregation led to “great hardship, particularly among Africans who were forcibly moved off the land and into geographical areas specifically created and set aside for exclusive occupation on the basis of ethnicity for South Africa’s diverse black African population” (Morrell, Jewkes & Lindegger, 2012:15).

The Nationalist Party (NP) government in South Africa emulated a system of institutionalised racial discrimination, inequality and oppression similar to that which was practiced in the Deep South of America from the 1890s through the 20th century, known as Jim Crow (Makombe, 2013:291). For example, Georgia, a southern state in the US had Jim Crow as a legal framework that imposed America’s version of an apartheid system of racial segregation. This law required that every significant aspect of life be separate and unequal for African Americans. African-Americans lived in separate neighborhoods with substandard city services, attended separate and inferior schools, and had extremely limited professional choices. Any African-American who violated this law faced personal humiliation, intimidation, violence, and even lynching (McDougall, 2016:26).

NP leaders would justify the apartheid system and laws, such as the Prohibition of Mixed Marriages Bill of 1949, by making reference to the existence of similar laws in the US (Makombe, 2013:291). The apartheid government police frequently raided black townships outside the cities, incidents which often flared into violence. Police raids in black townships led to three violent outbreaks toward the end of 1952 in Kimberly, Port Elizabeth and East London. Large numbers of innocent whites were killed during these outbreaks. The political

situation worsened for blacks in 1936 when they were removed from the common voters roll in the Cape Province and placed on a separate roll to elect three Europeans to represent them in parliament through the Native Representative Council. Blacks were bitterly opposed to the Council and felt that it did not address or represent their political views. The Native Representative Council was abolished in 1950 and left blacks without any form of constitutional representation in parliament. This lack of constitutional channel for blacks led to the passive resistance to unjust apartheid laws, particularly the Bantu Authorities Act, that is, the pass laws in the defiance campaign of 1952 (Morrell, Jewkes & Lindegger, 2012:15; Carter, 1954:297). The Nationalist government accelerated their rapid implementation of the apartheid programme by passing three laws, namely, the Bantu Education Act, the Native Labour (Settlement of Disputes) Act, and the Separate Amenities Act during the 1953 midyear session of Parliament, which were later followed by the Group Areas Act and the Bantu Authorities Act (Carter, 1954:307; Lichtenstein, 2005:293).

According to Muyeba and Seekings (2011:656), “The Group Areas Act defined residential areas for the use of one or other racial group, and large numbers of people were forcibly removed into designated neighbourhoods”. Moyo (2010:425-426) posits that the Group Areas Act institutionalised discriminatory cultural practices and ensured continued oppression of Africans by the system of apartheid. The apartheid government then banned organisations fighting for political liberation, also known as national liberation movements (NLM) in South Africa, such as the ANC and the Pan-Africanist Congress (PAC) of Azania on 8 April 1960 (Ngqulunga, 2009:28; Ejiogu, 2012:260). The banning of the liberation movements and the killing of 69 unarmed peaceful protesters by the apartheid regime forces in Sharpville in 1960 led the ANC to adopt the armed struggle by forming its military wing Umkhonto we Sizwe and recruiting many young Africans into its camps in exile (Morrell, Jewkes & Lindegger, 2012:15).

The Sharpville massacre occurred during an Anti-Pass Campaign demonstration that was called by the PAC on 21 March 1960 (Ejiogu, 2012:260). Ejiogu (2012:260) emphasises the role played by other national liberation movements in the fight against apartheid, which included the PAC, the New Unity Movement (NUMO) and the Azanian People’s Organisation (Azapo) whose armed wing was the Azanian People’s Liberation Army (APLA). APLA’s operatives were known as Poqo and Azanla, respectively. The PAC was formed as a splinter organisation from the ANC in 1959 because of its radical stance on the

issue of land, also known as the “Land Question” (Ejiogu, 2012:258-260). Smith (2008:216) sums up the atrocities of apartheid and colonialism by arguing that the history of South Africa was characterised by inequality and systematic discrimination, whose manifestation was typified by 46 years of apartheid rule by the NP (Smith, 2008:216).

This “wicked system of law” during apartheid also existed prior to apartheid “under the auspices of infamous Native Land Act of 1913, the Development Native Trust and the Land Act of 1936 which effectively sanctioned the dispossession of land from indigenous people” (Smith, 2008:216). Colonial and apartheid laws along with other regulations placed the control of the means of production under exclusive control of whites, which resulted in great imbalance and inequality in the distribution of income and wealth. Inequality (Gini coefficient) in South Africa is the highest in the world, having increased from 0.56 in 1995 to 0.8 in 2008 (Posel, 2013:59). South Africa operated under the doctrine of parliamentary sovereignty, thus rendering the judiciary unable to challenge the above statutes. The judiciary operated in an extremely “executive minded” manner and rarely reaffirmed the principles of fairness and justice; therefore, it came to be regarded by the majority as a biased arm of government dispensing “white man’s justice” (Smith, 2008:216; James, 2013:31).

5.3.3 1961 Constitutional dispensation

One of the key developments during the early apartheid years was the strengthening and growth of the clandestine Broederbond, which was a covert and ultra-secret organisation which sought to harness social, economic and political forces within and outside South Africa to promote the cause of ultimate Afrikaner domination and to serve as a vanguard of Afrikaner Nationalism. The Broederbond and the South African Bureau of Racial Affairs (SABRA), the intellectual wing of the NP, were key players in apartheid’s ideological and political economy (Lichtenstein, 2005:294; Carter, 1954:301). The Broederbond gave prominence to the ideology of Afrikaner Nationalism, which led to the capture of state power in 1948 with the election of the NP as the ruling party in South Africa (Van der Walt, 2003:169; Skelcher, 2003:771; Hyslop, 2005:781).

Another major success of the Broederbond was South Africa’s secession from the Commonwealth and the declaration of the Republic of South Africa in 1961 (Omond, 1987:622). This declaration led to the formulation and implementation of the complex

programmes of apartheid or separate development (Pirie, Rogerson & Beavon, 1980:97-98). Further, the Broederbond infiltrated agricultural cooperatives and the Land Bank in the 1960s to ensure that political considerations, that is, the objectives of the apartheid regime would predominate in credit allocation (Lodge, 1998:164).

5.3.3.1 Student uprisings

The mid-1970s signaled a new direction for South African politics, particularly the 1973 Durban dockyard workers' strikes, which marked a shift in worker activism from the relative calm of the 1960s. It was also during the 1960s and 1970s when the rise and influence of black intellectuals increased within the anti-apartheid movement, which was inspired by the Black Consciousness Movement of Steve Biko (Helliker & Vale, 2013:27; Posel, 2013:62). Posel (2013:62) argues that Black youth activism recurred ten years later after the banning of the ANC in 1960, "initially within the Black Consciousness Movement and more assertively with the Soweto uprisings in 1976" (Posel, 2013:62). The 1976 student uprising and the nationwide protest that followed were triggered by imposition of Afrikaans by the apartheid regime as a medium of instruction and inferior schooling/education in black schools outside the Bantustans (Lee, 2010:75; Johnson, 1982:231; Brooks, 1996:210).

Brook (1996:210) argues that the 1976 and 1986 Soweto student uprisings during which "education and liberation" became a battle cry was a reflection of the instrumental value Africans placed on education. Many anti-apartheid organisations emerged in the black townships of South Africa following the 1976 Soweto uprising; these included civic associations, sports federations, student organisations and independent trade unions. Posel (2013:62) posits that following the 1976 Soweto uprisings "educational issues linked concretely to broader political objectives... and township school-goers were drawn into community protests and conflicts, mobilized under the rubric of the United Democratic Front (UDF) and allied organisations, including COSAS (Congress of South African Students) and, later, SAYCO (South African Youth Congress)".

A coalition of groups committed to change, which included the ANC, trade unions and small groups of white liberals formed the Mass Democratic Movement (MDM) whose aim was to fight against the injustices of apartheid (Brook, 1996:210). Friedman (2012:20) argues that the 1973 Durban workers' strike and the 1976 Soweto student uprisings revived the mass

movement within the country. The 1976/1977 sports unity talks, which took place at the height of apartheid and during racial tensions following the 1976 Soweto uprisings, marked a turning point in the history of South African race politics and football (Ndlovu, 2012:295).

Black student politics, especially within historically disadvantaged institutions (HDIs), played a significant role in the resistance towards apartheid. For example, the speech by a student at the University of the North, Onkgopotse Tiro, in 1972 sparked events that led to the radicalisation of a generation of black university students. Another example of a HDI that played a significant role in the resistance to apartheid is the University of the Western Cape (UWC), which developed institutionally based resistance to apartheid. Student and staff activists at UWC sparked the largest black political demonstration staged in South Africa since the Sharpeville crisis of 1960 during a mass rally against conditions of learning and teaching in 1973 (Karis & Gerhart, 2001 in Barnes, 2006:154).

UWC transformed itself into an “intellectual home of the left” through changes in enrolment, teaching, community outreach and staffing practices (Barnes, 2006:154). It moved from being called irreverently as “Under White Control” in the 1970s to being proclaimed a “University of the Working Class” in the 1980s (*ibid.*). UWC took progressive steps to transform itself into the “people’s university” after 1987 (Barnes, 2006:154). Johnson (1982:214) argues that schooling or education during apartheid was racially categorised into African, Coloured, Indian and white. Within the racial category there were further ethnic groups and sub-groups such as Tswana, Zulu, Xhosa, etc. within the African race and English-speaking and Afrikaans-speaking ethnic groups within the white race (Johnson, 1982:214).

Access to education was often a status reward, that is, for belonging to a particular racial or ethnic group or class; education was also used as a mechanism of social control. In other words, the apartheid regime used education for social stratification purposes; that is, as an instrument of social engineering. The structure and content of the apartheid education system was designed to sustain apartheid by transmitting the values, norms, myths, and ideology that support established patterns of social stratification and to perpetuate the dominance of blacks by whites. Johnson (1982:214) argues that a radical alteration of the content and structure of the apartheid education system was necessary to create an egalitarian non-racial, democratic society. The inequality in the provision of education between blacks and whites during

apartheid and the period of British colonial rule is illustrated by the ratio of government expenditure for white and African education per capita of population, which was R333 compared to R1 in 1910, the year when the Union of South Africa was established (Johnson, 1982:217).

Government expenditure on education continued to be biased against black people and the ratio above increased to R1211 versus R146 in 1982 (Badat & Sayed, 2014:129-130). The aim of the Bantu Education Act of 1953 was to lower the standard of education in the African community (Johnson, 1982:214). As Ngqulunga (2009:28) puts it, the 1970s marked the revival of active opposition to apartheid, whereas the 1980s marked the period in which insurgency against apartheid reached its tipping point. Morrell, Jewkes and Lindegger (2012:15) argue that anti-apartheid organisations became more widespread and militant in the mid-1970s and that much of the 1980s was characterised by state violence and extreme repression in the townships, but also increasing insurrection and the mobilisation of civil society in opposition to apartheid (Morrell, Jewkes & Lindegger, 2012:15).

During the 1980s, insurgents used various means to fight against apartheid in urban areas and these included “strikes; rent and consumer boycotts; disruption of classes in schools and universities; marches; occupation of buildings and offices; petitions and rallies” (Ngqulunga, 2009:27). The Confederation of South African Trade Unions (COSATU) and the United Democratic Front (UDF) were mainly focused on fighting against apartheid at the national level. As Hirschsohn (2007:11) posits, the conditions of political reform and repression by the apartheid regime in the 1980s created an opportunity for Social Movement Unionism (SMU) to flourish (see sections 4.3.3.1 and 4.4.4 for extensive discussions on the UDF and COSATU, respectively) (Hirschsohn, 2007:11).

5.3.3.2 Forced removals

Forced removals of blacks in the apartheid era by the apartheid government was a very common occurrence. These forced removals occurred throughout the country and entailed the removal of blacks from their homelands where they relied for centuries on subsistence farming to areas designated by the apartheid government where there was very little means of survival. One example of such action was the forced removal of the people of Lake Bhangazi in the Natal wetlands. The wetlands of Lake Bhangazi were fertile agricultural land rich in

various natural materials necessary to sustain the lifestyle and cultural practices of the black people of that region during apartheid. However, in 1974, the people of Lake Bhangazi were forcefully removed by the Natal Conservation Services of the apartheid government from what is now called the Great St. Lucia Wetland Park (GSLWP) in the province of KwaZulu-Natal (Skelcher, 2003:762).

Such areas where blacks were removed, referred to as “black spots”, were considered to be of great value for white settlement, that is, white designated areas by the apartheid government and therefore blacks were not permitted to settle in them (Skelcher, 2003:765). In 1902, the colonial government of Natal established the Joint Imperial-Colonial Zululand Lands Delimitations Commission, which in 1904 after completion of its work called for the segregation of African and white Lands. As a result, the colonial government of Natal designated the land from St. Lucia to Richards Bay for white occupation and sugar cane production. Africans living in these areas known as “black spots” were subjected to forced removal. In the British colony of Natal, Africans found themselves homeless and landless following the destruction of the Zulu Kingdom by British Colonialism in 1884, which disposed them of their land and subjected them to various taxes (Skelcher, 2003:762).

As a result of this repression, Africans had to live in informal shack settlements in the city of Durban; the problem was further exacerbated by the movement into the city of Indians who had completed their indenture on sugar plantations. The result of these informal shack settlements led to the increase of various illegal activities, such as illegal liquor trafficking, theft, assault, as well as the risk of fire as claimed by the colonial authorities. The colonial authorities acted against these acts with the aim of protecting health standards and maintaining property values by legally entrenching racial segregation. Vast tracks of land were designated for setting up capitalist white agriculture, that is, sugar cane plantations by invoking provisions of the 1913 Land Act. In 1923, the colonial authorities used the policy of influx control to limit the flow of people into the city and to constrain and limit blacks’ movement by means of work permits. The movement of Africans was limited to designated and segregated workers’ quarters (Pithouse, 2008:64).

The traditional leaders were used by the colonial authorities to control the movement of black people under what Beall (2006:460) calls “indirect rule”, which was entrenched in South Africa under the Black Administration Act of 1927 “that stripped traditional leaders of more

of their autonomy and allowed the Governor-General of South Africa in addition to prescribe their duties, powers and conditions of service” (Beall, 2006:460). African reserves, also known as homelands, were established by the Commission to accommodate the Zulus removed from the “black spots”. The Commission justified the forced removal of blacks from the white designated areas by claiming the need to conserve natural resources (Skelcher, 2003:769-770).

Skelcher (2003:770) argues that the Joint Imperial-Colonial Zululand Lands Delimitations Commission laid the foundation for the 1913 Natives Land Act, which was passed following the formation of the Union of South Africa in 1910. The apartheid government’s policy of “black spot” removals has its roots first in the Natives Land Act of 1913, which served as a statutory basis for territorial segregation and the creation of African homeland reserves. These were areas where Africans could own land and constituted only 8% of the total land of the country with the provision to increase it to 13%. Millions of blacks were forcefully removed from their land and relocated to these reserves as a result of the Natives Land Act. The 1913 Natives Land Act paved the way for the promulgation of more legislation that solidified the segregation of black and white South Africans (Skelcher, 2003:770).

Maylam (1995:27-28) argues that while some apartheid measures were more indirect, such as the housing, public health and planning legislation, for example the 1919 Public Health Act, the 1934 Slums Act, the 1931 Transvaal Town Planning Ordinance and the 1943 Housing Amendment Act, the majority were obviously and directly segregationist, such as the 1923 Natives (Urban Areas) Act and the 1950 Group Areas Act. The apartheid government viewed disease in racial terms and promoted segregation as a solution to urban health problem using the 1919 Public Health Act as a legislative instrument (Maylam, 1995:27).

The Slum Areas Act of 1934 was used as a measure of racial segregation and provided for removal of black slum communities to create space for white working-class housing schemes and business development. The 1943 Housing Amendment Act provided for racial restrictions in ownership and occupancy of public housing schemes (Maylam, 1995:28). The apartheid government passed the Native Trust and Land Act in 1936, later called the Development Trust and Land Act, which increased the allocation of land to blacks to 13% as promised in the Natives Land Act of 1913. “In 1950 the Nationalist Party government passed

the Group Areas Act which restricted Black People from owning White land” (Skelcher, 2003:771).

Gaule (2005:2335), with reference to the city of Johannesburg, emphasises that the Group Areas Act enforced strict racial residential segregation and created an urban form that was more structured and quartered than was ever the case during the colonial or industrial capitalist times. The segregationist and oppressive nature of the apartheid regime was even reflected and etched in the spatial planning and design of cities such as Johannesburg. As Gaule (2005:2335) observes, policies of racial segregation, Eurocentric attitudes to modernism, and adherence to values of European modernism dominated South African cities. The Eurocentric planning, design and construction of apartheid cities were designed to divide and rule the blacks, to regulate public life and to promote and advance European values and dominance (Gaule, 2005:2335).

Furthermore, the apartheid city was designed to physically locate blacks on the peripheries of the city, for example, the apartheid government provided mass housing for blacks in the township of Soweto 12 kilometers from the Johannesburg city centre. This was done to coerce and subjugate the impoverished black population by quarantining them behind buffer zones, for example, highways and rail lines from the city and main white areas. Policies of apartheid went as far as suppressing blacks within the townships by separating them into ethnic residential areas to advance what the apartheid government claimed to be preservation of their natural ties and to facilitate education of their children in their mother tongue. Only until 1968, blacks were permitted to hold property title deeds for a limited period of 30 years. This was done to reinforce the belief that blacks were only temporary occupants of the city (Gaule, 2005:2338).

The NP government strengthened its resolve to control the movement and settlement of blacks by establishing independent black African states by passing more stringent laws, such as the Bantu Authorities Act of 1951, which allowed the administration of Bantustans by placing them within Bantu Tribal, Regional and Territorial authorities. The passing of the Bantu Authorities Act of 1951 set in motion the Bantustan policy, later to be called the Separate Development policy, which gradually delegated certain executive and administrative powers to black (‘Bantu’ category) tribal, regional and territorial authorities (Mare, 2011:623). Mare (2011:623) refers to the new era of fragmentation or segregation based on

racial and ethnic classification as the “politics of power, exploitation and control”. Furthermore, the Native (Prohibition of Interdicts) Act of 1956 prevented black local authorities from seeking court action to prevent removals by eliminating judicial authority in such matters. The Bantu Authorities Act was passed as a strategy by the apartheid NP government to re-establish the authority of the chiefs within tribal homelands (Carter, 1954:297).

The apartheid government’s vision of creating ten homelands or ethnic nation-states for Africans or Bantu people was realised in 1976 with the announcement in parliament of Transkei as the first “homeland” to be granted independence (Mare, 2011:623; Lodge, 1998:167). The ANC opposed this act as it went against its programme of developing a national spirit among blacks. The ANC rejected tribalism or ethnicity since its establishment in 1912 and race was its basis of opposition to white domination (Mare, 2011:623-624). Morrell, Jewkes and Lindegger (2012:15) emphasise that after its formation in 1912 the ANC organised protest actions against the pass laws and other unjust laws. The strongest opposition from the blacks to apartheid laws was against the pass laws, which regulated the movement of blacks outside the reserves. The argument for opposition against pass laws was that Africans were forced to take low paid and unattractive jobs as the only way of getting out of the reserves and that Africans were humiliated by being the only non-Europeans obliged to carry a pass (Carter, 1954:297). The pass laws negatively affected the traditional fabric that constituted the foundation and values of African families as men were forced to leave their families behind in the homelands in search for employment in white industrial areas. Groenmeyer (2011:262) argues that “the worst example of apartheid social engineering is the migrant labour system which disrupted family and community life by forbidding male mineworkers to live with their families in the urban areas” (see paragraph 1.2.12 in chapter 1 above).

5.3.4 1983 Constitutional dispensation

The apartheid state was faced with unprecedented challenges for social, economic and political change in the 1980s. These challenges and changes included a growing black middle class as a result of the liberalisation of labour laws, that is, increased unionisation of black workers, the end of job reservation due to increased demand for skilled workers for industrial production spurred by economic growth, and the relaxation of influx control and pass laws,

allowing some provision of family accommodation for migrant labour (Mogadime, 2005:155). Other pressures included increased class differentiation due to the rapid increase in a better skilled and property-owning black middle class, increasing insurrection from anti-apartheid movements especially the establishment in August 1983 and rise of the non-racial broadly-based UDF, labour strikes and consumer boycotts in the townships which weakened the economy and rendered township authorities ungovernable, and increasing international sanctions (Simon, 1989:190; Ngqulunga, 2009:27; Hirschsohn, 2007:11).

The intensification of international economic sanctions against the apartheid regime during the 1980s severely impacted private and public investment, particularly in infrastructure development, which was the key driver of economic growth in the country. Economic sanctions led to deceleration of public capital formation, which was further exacerbated by the adoption of market reforms at the end of 1980 (Makuyana & Odhiambo, 2016:142). These international economic sanctions together with the efforts of Ronald Reagan (then US President) through the American Congress, Michael Gorbachev (then USSR president) and Margaret Thatcher (then UK prime minister) played an important role in bringing the NP government and the ANC to the negotiation table (Kondlo, 2015:7).

Omond (1987:622) predicted in 1987 the possibility of the post-apartheid government in South Africa and likely developments which would lead to the handover of power from the apartheid government to the new government. Some of the developments he predicted include the collapse of the apartheid regime due to international economic sanctions, increased guerilla activities, civil unrest, and military intervention by the world community. The latter prediction fortunately did not occur (Iheduru, 2004:4).

Institutionalised repression, segregation and discrimination against black workers by the apartheid government were common in the labour market. Emery (2008:409) emphasises that the apartheid regime systematised racial segregation and the suppression of blacks and depended on cheap black labour for its capitalist growth (Iheduru, 2004:4; Emery, 2008:409). This ethnic cleansing and racialised capitalist growth favoured white mobility and black proletarianisation. For example, the “amendments of the Industrial Coalition Act of 1953 reserved certain classes of work for specified racial categories to safeguard against inter-racial competition” (Lee, 2010:74).

The Industrial Coalition Act of 1953 was amended in 1956 to prohibit registration of mixed unions. Black trade unions were formally recognised by the apartheid regime in 1979 with the aim of deflecting public protest away from black working-class mobilisation against the apartheid government and rather towards industry (Lee, 2010:75). In addition to above-mentioned factors, other factors such as a militant struggle of anti-apartheid activists, strikes, boycotts, international financial sanctions and the subsequent reduction in foreign direct investment (FDI), external pressures, fissures within the Afrikaner community, intractable economic problems and civil unrest led to the weakening and collapse of apartheid and pressures for reform (Schneider, 2003:30; Iheduru, 2004:4; Omond, 1987:622).

For example, the US imposed sanctions on South Africa in 1986 with the aim of pressurising the government to end apartheid (Skelcher, 2003:777; McDougall, 2016:26). However, it should be noted that throughout the 1960s and 1970s American Multinational Corporations (MNCs) were very reluctant to divest from South Africa, citing the strategic value of its geographic location during the Cold War. The US and Britain vetoed international sanctions against South Africa arguing that its strategic minerals and its control over key sea lanes made the white-minority apartheid government a crucial ally in Cold War politics. Nevertheless, American civil rights movement, domestic and student activist organisations, such as Students for a Democratic Society (SDS), pressurised the US government to divest from South Africa through such means as protests against banks offering loans to South Africa. These actions led to the adoption of the Sullivan corporate code of conduct to improve the behaviour of American subsidiaries in South Africa (Sullivan framework), which was designed with the initiative and leadership of Reverend Leon Sullivan, an African American Baptist Minister, who became a member of the board of directors of General Motors (McDougall, 2016:26).

According to Seidman (2003:286-391), the Sullivan framework (released in March 1977) “emerged out of three separate developments through the 1960s and 1970s: first, a growing international movement focusing on economic sanctions as a way to undermine South African apartheid; second, a movement for what was called socially responsible investing; and third, a movement to make American corporations more accountable to American communities”. The US federal government eventually imposed national economic sanctions on South Africa in the 1980s, particularly after the 1976 Soweto student uprisings and American student protests against US investments in South Africa. The EU also played a

crucial role in the international anti-apartheid campaign against the white minority apartheid regime in South Africa, particularly in the 1970s and 1980s (Seidman, 2003:286-391).

Smaller EU member states, such as Ireland, the Netherlands, Denmark, Italy, and later Spain (after joining the EU in 1986) formed the core of a progressive minority that supported the anti-apartheid campaign in support of moral principles such as justice, human rights and self-determination. These smaller EU states sought to influence the larger states, that is, the UK, France and Germany, to change their focus from material interests alone to ethical concerns as well. Transnational networks in Western Europe, based on the emergence of social movements claiming international solidarity with liberation movement in South Africa, gained momentum in the 1950s. These social movements against apartheid in Western Europe included such countries as Britain, Ireland, Sweden and the Netherlands (Christiaens & Goddeeris, 2015:646).

In contrast, Belgium joined the anti-apartheid movement only later because it enjoyed fruitful economic relations with South Africa: its capital flowed to the country as loans or investment, while gold, diamonds and fruit were among the items imported from South Africa. The white minority South African government shared strong cultural ties with Belgium, especially the region in Flanders, the Dutch-speaking region north of Belgium. These cultural ties were also cherished by the conservative sections of the Flemish movement, which openly sympathised with their “kin brethren”, the Afrikaners, with whom they detected parallels with their own nationalism struggle for separate development. Support for “separate development”, that is, apartheid drew strong support from established formations of the Belgian society, which to them seemed to compensate for the sudden loss of the Belgian Congo in 1960 (Christiaens & Goddeeris, 2015:646).

The smaller states strengthened their position against the apartheid regime by developing concrete European Political Cooperation (EPC)/Common Foreign and Security Policy (CFSP) policy actions. The discussions on common foreign policy for the EU began in the 1950s and led to the formation of the EPC in the 1970s, which then transitioned to the CFSP 20 years later. The EPC’s initial position against apartheid was weak, merely stating its condemnation of apartheid and its opposition to racial discrimination. Later, the EU took a strong position and “stressed that the state of emergency in South Africa must be lifted, that

all political prisoners must be freed and that the ban on political parties must be lifted” (Smith, 2004:118).

The Dutch were instrumental in developing the EPC’s first concrete plan against apartheid, the 1977 Code of Conduct for Community Companies with Interests in South Africa, which established numerous protections for the black workers of those firms. “The Dutch also successfully argued that sanctions against the white minority government of that country would be meaningless unless implemented by all EU states” (Smith, 2004:118).

France, Germany and the UK were opposed to apartheid in principle, but objected to stronger measures against South Africa by both the UN and the EU because they profited from arms sales to South Africa and mining investments in the country, among other economic links. Therefore, these three countries were concerned about the negative economic impact they would suffer if economic sanctions were imposed against South Africa. A core of EU states pushed for higher-cost collective foreign policy actions to undermine the apartheid system, which would lead to the collapse of white minority government in South Africa and pave the way for democratic transition. “These actions ranged from the Code of Conduct for Community Companies with Interests in South Africa to include support (diplomatic and economic) targeted at non-violent anti-apartheid groups and sanctions (diplomatic and economic) targeted at the white government and its military forces” (Smith, 2004:119).

Constitutional amendments and the restructuring of 1983 institutionalised measures to control and regulate black presence and movement in cities. Further, the 1982 Black Local Authorities Act gave highly unpopular and corrupt township governments new powers and responsibilities (Badat, 1999:185). Beall (2005:258) argues that effective local government outside former white areas was virtually absent and that the Black Local Authorities set up in the 1970s were unsustainable, having lost legitimacy and virtually collapsed. Local government functions in rural areas largely remained in the hands of traditional leaders who worked within and alongside apartheid structures. Beall (2006:460) argues that when the NP government came to power in 1948 it initially adopted a more reconciliatory stance towards traditional leaders as they fitted in their vision of separate development, compared to the Black Administration Act No. 28 of 1927, which was more oppressive of traditional leaders (Beall, 2006:460; Hilliard & Kemp, 1999:353; Carter, 1954:297).

Hilliard and Kemp (1999:353) argue that prior to the 1994 general elections (Garcia-Rivero, 2006:57) South Africa under the apartheid government was not democratic in that black people were not included in the administration and governance of the country at central and provincial government levels. At local government level, the so-called Black Local Authorities were merely ethnic institutions imposed upon blacks by the apartheid government. “Black local authorities were controlled by the central government and were rarely regarded as legitimate institutions in the eyes of the majority of the population” (Hilliard & Kemp, 1999:353).

The apartheid South African government introduced a “formative action” (Badat, 1999:185) to deal with the “organic crisis” (Badat, 1999:185) of opposition politics. It used the old principle of divide and rule by formation of a Tricameral Parliament Constitution, which incorporated Coloureds and Indians in parliament and excluded blacks from participation in formal parliamentary political processes of the country (Badat, 1999:185; Simon, 1989:190; Seo, 2010:128). The Tricameral Parliament consisted of the House of Assembly (the white chamber), the House of Representatives (the Coloured chamber) and the House of Delegates (the Indian chamber). The 1983 Constitution was designed in such a way that any walkout or boycott of the Parliament by any of the three Houses would not cripple the Parliament and thus made provision for a reduced quorum. The 1983 Constitution “was drafted with all these eventualities in mind based on past experience, that is, the boycott of the Native Representative Council in the late 1940s and the refusal of the Coloured Representative Council in the 1960s to pass a budget, and future possibilities” (Omond, 1987:625).

The Constitution also made provision for referring a general affairs Bill, that is, one that is deemed to affect more than one race, to the President’s Council for arbitration. This provision thus allowed decisions to be made by a handful of people; thus, according to the President’s Council absolute decision-making powers (Omond, 1987:625). The apartheid state’s restructuring sought to divide blacks along urban-rural geographic lines by providing certain concessions to urban blacks, such as end to job reservation, greater opportunities for education and training, long-term housing leases and political incorporation through local government structures. Those blacks designated as rural were stripped of their South African citizenship and incorporated into the Bantustan jurisdictions (Badat, 1999:185-186).

5.3.4.1 Increased insurrection in the 1980s: Rise of the UDF

The South African regime became an international pariah in the 1970s and 1980s. According to McKay (2015:358), this happened as follows:

... when foreign governments, multinational corporations, churches, the media, campaign groups and individuals condemned apartheid, a political system that denied social and economic opportunities and political rights to South Africa's Black majority. The church authorities formed part of the political and social movement that fought against apartheid and its deep structural injustices. Allan Boesak, Albert Nolan and Itumeleng Mosala are some of the key church leaders who at the height of apartheid stood up and used their authority in church to fight against apartheid.

International action against South Africa included “an embargo on the sale of military hardware, financial sanctions, refusing visas to South African officials and nationals, and boycotts of produce and products” (Booth, 2003:477). Internally, various social, cultural, youth, civic, student and political organisations also pressurised the apartheid government to reform in the form of sabotage and guerrilla attacks, civil disobedience campaigns, strikes, staying away from work, schools and universities, demonstrations, marches and rallies, and boycotts of apartheid institutions, goods and services. Booth (2003:477) argues that sports boycotts were used internally as another form of resistance against apartheid, which advocated for racial segregation in sports and denied blacks participation in international sports federations. Only in the 1960s did the international sports federations and forums, such as the General Assembly of International Federations (GAIF) and the Permanent General Assembly of National Olympic Committees and Third World, and Eastern bloc nations begin to use sports as a weapon against racism and call for the expulsion of South Africa from international sports (Booth, 2003:479).

Sports was used by the apartheid government to further its politics of racial segregation and oppression, as alluded to by Ndlovu (2012:285) in his argument that the apartheid government designated football in negative and racist undertones as a sport for blacks whereas rugby, golf, athletics, hockey, cricket and swimming were regarded as sporting codes reserved for white South Africans. However, in addition to the worldwide anti-apartheid and boycott movements, major international sports federations such as the Fédération Internationale de Football Association (FIFA) and the Confederation of African

Football (CAF) used football sanctions as a tool to fight apartheid and racism in sport in South Africa (Ndlovu, 2012:286).

The UDF was a high-profile anti-apartheid umbrella organisation formed in Cape Town in August 1983. The UDF was formed in response to the apartheid government's attempt to coopt the Coloureds and Indians in what Drew (2003:174) calls the "New Deal", that is, the 1893 Constitutional provision for the formation of the Tricameral Parliament, which excluded the black majority. The UDF, which consisted of over 600 youth, civic, social and cultural organisations, became the biggest organisation fighting against the apartheid government and coordinated anti-apartheid struggles during the ANC's exile (Heller, 2009:140; Ngqulunga, 2009:27; Booth, 2003:486; Helliker & Vale, 2013:27).

There was a poor turnout of Coloureds and Indians at the August 1984 elections, thus strengthening the UDF, which was against the formation of the Tricameral Parliament. The UDF was more prominent in Coloured and Indian communities, but its leaders built strong networks in African townships in the Witwatersrand area when riots erupted in these areas during the mid-1980s. The UDF's call for so-called people's power and its emphasis on nation building resonated with many African communities and helped it overcome racial, ethnic and class divisions. COSATU forged an alliance with the UDF and its affiliates located in different spheres of the struggle, such as education, housing, land, women's rights, environment and health care. The combination of economic and political struggles as advanced by COSATU is referred to as social movement unionism (SMU) (Pillay, 2008:284).

SMU differs from militant unionism "by an enduring commitment to participatory democracy, political independence and links to non-workplace struggles, whereas 'political' unions are inclined towards the 'iron law of oligarchy'. In SMU, workers exercise control over officials and policy through representative democracy and direct participation in union decision-making" (Hirschsohn, 2007:11). Further, COSATU practiced both state-power politics, which operated at a pace which severely constrained consultative democracy, and production politics, which allowed for maximum consultation between leaders and members of trade unions. The 1986 state of emergency and the banning of the UDF in 1988 struck a major blow to the success of the UDF. However, COSATU was able to play a leadership role in the anti-apartheid struggle when the UDF was banned (Pillay, 2008:284).

Adam (2002:13) emphasises the important role played by the unions during apartheid particularly after the banning of liberation movements by stating that “politicized unions served as substitutes for outlawed political organisations and their role therefore extended beyond bread and butter issues. Political and community concerns figured as prominently as wages and dismissals on union agendas” (Adam, 2002:13). The UDF then renamed itself as the Mass Democratic Movement (MDM) to be able to continue with its mission of political freedom and rights for all. The UDF declared itself unbanned and resumed its public activity at the end of 1989 when popular resistance was revived. The unbanning of the ANC and other political organisations, that is, the South African Communist Party (SACP) and the Pan African Congress (PAC) in 1990 (Pillay, 2008:285; Booth, 2003:490), gave impetus to the activities of the UDF (Drew, 2003:174).

However, when mass action increased the UDF reoriented itself towards developmental issues to avoid hampering the ANC. This action alienated many UDF activists. However, 14 former regional and national leaders of the UDF were appointed into the national executive committee (NEC) of the ANC in July 1991, which then weakened regional branches of the UDF and led to its final disbanding in August 1991 (Drew, 2003:174; Heller, 2009:140; Suttner, 2004:764). Both the ANC and the UDF supported the Freedom Charter but differed in their preferred approach to dealing with the apartheid regime. The Freedom Charter was a *de facto* manifesto of the anti-apartheid struggle, which expressed the intention to return the nation’s wealth to the people. The most resonant policy of the Freedom Charter was nationalisation of key national industries and resources (Lee, 2010:77).

Balcomb (2004:5-6) argues that the Freedom Charter, which is the precursor of the present Constitution, bears many Christianity features mainly because it was compiled primarily by people who had received Christian missionary school education and were able to phrase, articulate and shape the vision of the oppressed for a free and democratic South Africa. Christianity or evangelism played a significant role during apartheid, and Balcomb (2004:5) classifies all those who were against or in support of apartheid into five categories, namely, the conservatives, the pragmatists, the protagonists of the Third Way, the protagonists of the “alter-native” community and the liberationists. The UDF was sceptical of the insurrectionary and confrontational armed struggle that was strongly advocated for by the underground structures of the ANC. The increase in international funding for anti-apartheid movements further increased the tensions between the two organisations. Furthermore, the activities and

democratic processes of the two organisations were impeded by the increased repression of the late 1980s by the apartheid regime (Drew, 2003:174).

After forcing the disbanding of the UDF in 1991, the ANC moved quickly to consolidate its hegemonic position and assert its right as the agent of the National Democratic Revolution (NDR) and demanded political subordination of mass organisations (Heller, 2009:140). “The term ‘national democratic revolution’ is derived partly from Soviet influence on the ANC and its allies and refers to the type of intermediary ‘revolution’ between capitalism and socialism that was envisaged by the defeat of apartheid” (Suttner, 2004:770). The central tenet of the ANC’s theory of the NDR is its conceptualisation that the seizure of power will have true meaning if it leads to the fundamental restructuring of the society and that its liberation struggle was being fought against “colonialism of a special type”, that is, the national liberation struggle by the oppressed nation was being fought against a white minority who controlled a sovereign state (Southall, 2014:53). The NDR sought to transfer power to the people and to create a non-racial, non-sexist democratic South Africa where all organs of the state are controlled by the people. The NDR had its roots in the SACP’s overarching goals of socialism and its anti-colonial project of national liberation (Butler, 2005:725; ANC, 2012:29).

5.4 THE POLITICAL AND CONSTITUTIONAL DISPENSATION IN SOUTH AFRICA: 1996-2012

The discussion on the new political dispensation in South Africa begins with a historical overview of the events leading to the landmark general elections of 1994. This period began with the commencement of negotiations in 1991 between the De Klerk-led NP government, the ANC and other political parties in the country. The transition to democracy in South Africa was referred to as the Third Wave of democracy with comparison and reference to similar events in regions such as Southern Europe, Latin America, and Central and Eastern Europe (Garcia-Rivero, 2006:57).

This historical perspective is important to understand the political developments in the country since 1994 as the Codesa negotiations laid a foundation for the multi-party democracy and the ANC-led government of national unity (GNU) that ascended to power after the 1994 elections (Badat & Sayed, 2014:130; Lyman, 1996:105; Ferreira & Henk,

2008:505). Codesa “signifies the larger political project that chartered the terms that ended legal and political apartheid and provided the constitutional foundation to forge a post-apartheid political order” (Mamdani, 2014:63). The so-called miracle elections of 1994 laid the foundation for a multi-party democracy that was not based on ethnic or racial divisions as it would have been expected given the history of ethnic and racial division and discrimination that the country experienced (Piombo, 2005:448).

Piombo (2005:448) makes reference to a 1985 study by Donal Horowitz, which sought to establish “whether imposing an electoral system based on party-list proportional representation (PR) with large multi-member constituencies and no cut-offs for minority parties could prevent the emergence of ethnic parties in a plural society”. Piombo (*ibid.*) argues that despite being a deeply divided society, post-apartheid South Africa witnessed a dramatic decline in the number of explicitly ethnic political parties, and attributes this development to a “natural political party alignment”. However, detailed analysis reveals that the emergence of a multi-polar party system was the result of new politics in the country that moved away from the politics of ethnicity as displayed by the ruling ANC. Instead opposition parties used a variety of strategies to mobilise support and appeal to the electorate. In contrast, the ANC used narrow ethnic identities to canvass for support. Thus, opposition parties sought to capitalise on this narrow strategy of the ANC by capitalising on the incentives deriving from the combination of a closed-list proportional electoral system and a weak federal structure and social cleavages in the country (Piombo, 2005:448-449).

The Codesa negotiations also set the tone and pace for many other social and economic developments and political transformation, which took place after the elections (see paragraph 1.2.6 in chapter 1 above). These administrative, socio-economic and political reforms were necessary since the previous apartheid regime was authoritarian, repressive and oligarchic, while the newly established multi-party democratic government was intended to be democratic, developmental, accountable, legitimate and committed to a culture of human rights; that is, it was expected to promote good governance (Cameron & Tapscott, 2000:81; Van Wyk & Oranje, 2013:352; Renner, 2013:274).

The focus of this study is on those developments in relation to political transformation and governance. Key aspects of political transformation and governance being discussed in this section include the Truth and Reconciliation Commission (TRC), socio-economic

transformation, democracy, elections, party politics, corruption, federalism, provincial governance, and intergovernmental relations (IGR). All of these contributed to the process of drafting the 1993 interim Constitution and later the 1996 Constitution, which is the supreme law of the country and the basis for the formulation and design of the state and its governance. An analysis of these factors will assist in offering a clear and coherent discussion on the motivation, that is, the contributing factors and the eventual decision to adopt the current constitutional dispensation in South Africa. The system of provincial government operates within this environment and is therefore subject to the prescriptions and frameworks that define its powers and functions, despite being independent political and administrative structures, as prescribed by the Constitution (Cameron & Tapscott, 2000:81).

5.4.1 Codesa: bargaining and compromise

Lieberfeld (2002:355) identifies three major non-official track-two initiatives between 1985 and 1990 aimed at resolving conflict in South Africa. These track-two negotiations paved the way for official track-one negotiations between the leadership of the ANC and the South African government. Track-two diplomacy refers to the unofficial meetings between international and inter-ethnic adversaries to pave the way for official track-one political agreements. The track-two negotiations had a direct impact on public opinion (especially the white community who later voted overwhelmingly in support of the negotiations in the whites-only national referendum) (Jung, Lust-Okar & Shapiro, 2005:280) and party politics regarding the negotiated settlement. Many independent variables influenced the success or failure of track-two diplomacy, which in the South African case included revolutionary international changes, namely, Soviet military involvement in Southern Africa (South Africa's disengagement in the Angolan war and resolution over South Africa's colony, Namibia) (Jung, Lust-Okar & Shapiro, 2005:280).

Other independent variables, that is, macro-political factors that influenced track-two diplomacy included foreign disinvestment due to black-led resistance and continued government repression, widening cleavages within white electoral politics due to chronic political instability and economic stagnation, the Conservative Party which was formed in 1982 by breaking away from the NP replaced the liberal Progressive Federalist Party (PFP) as the official opposition in Parliament in 1987, and in 1989 F.W. de Klerk ousted P.W. Botha first as the leader of the NP and then as the president of the country. The three major track-

two initiatives, which led to the official agreement between the ANC and the NP government are as follows:

the 1985 meeting in Zambia between business executives and ANC leaders; the 1987 encounter in Dakar, Senegal, between ANC officials and dissident Afrikaners; and the covert meetings in England beginning in late 1987 between ANC officials and Afrikaner academics with links to government officials (Lieberfeld, 2002:356).

Savage (2000) notes that many concessions between the ANC and the ruling NP government had to be made prior to the negotiations. These concessions included the unbanning of liberation movements, the release of political prisoners by the NP government and the granting of amnesty to exiles and political prisoners. On the other hand, the ANC was expected to renounce violence in the country and the armed struggle. However, the ANC only suspended the armed struggle and did not completely renounce it and used this as a trump card to secure the unconditional release of political prisoners before peace negotiations could take place. According to Savage (2000), "The Indemnity Act permitted the State President to grant indemnity or temporary immunity from prosecution if he was of the opinion that it is necessary for the promotion of peaceful constitutional solutions in South Africa or the unimpeded and efficient administration of justice".

The release of political prisoners, including Nelson Mandela, took place soon after the then president F.W. de Klerk made a landmark speech on 2 February 1990 to unban liberation movements and release political prisoners (Iqani, 2015:127). Nelson Mandela was released from prison seven days later on 9 December 1990. His release and the unbanning of liberation movements paved the way for public negotiations towards the transition to democracy. The Group Areas Act was later repealed by a Bill of parliament in 1991 as part of the process to facilitate negotiations and pave the way for democratic general elections (Iqani, 2015:127). The Convention for Democratic South Africa (Codesa) was an important milestone in the history of South Africa and marks the foundation of democracy in the country. It marked a transition from the old to the new political dispensation, and a change from the apartheid regime to a multicultural and multi-racial democracy (April & April, 2007:214-216; Maserumule, 2011:305; Southall, 2014:48; Cameron, 2010:682).

It also marked a period of compromises to accommodate the diverse views and persuasions of the parties to the multi-lateral negotiations and the diversity of the population of the country.

Kondlo (2012:315) chooses to use the word surrender rather than compromise with reference to Codesa and argues that the negotiated settlement amounted to “surrendered revolution” that allowed white South Africans to retain monopoly of the economy and consigned and trapped South Africa’s black majority in abject poverty (see page 289, paragraph 5.3.2 above) (Phago, 2013:112; Ferreira & Henk, 2008:504; Kondlo, 2012:315). His main concern with Codesa and its outcome is with the failure of the resulting democratic dispensation to democratise land tenure systems and full participation of African communities in decision-making processes as had been the case in many African countries. Codesa instead sought to find constitutional solutions to the structure and system, that is, the institutional design of the new South Africa (Kondlo, 2012:315).

Further, the political leadership of the liberation movement in South Africa, particularly the ruling party, is in a semi-permanent state of paralysis due to its failure to devise alternative strategies that will undo and challenge the global trend of polarisation and impoverishment. Kondlo (2015:2) argues that the political leadership then and now lacked the courage and insight to challenge the dominant ideology of financial capital, which would have improved the economic imbalances that prevail today, which threaten the very democratic governance the Codesa negotiations sought to achieve. Codesa stretches beyond just the period between December 1991 when the multi-lateral negotiations began at the World Trade Centre in Kempton Park and May 1992 when the talks broke down (Jung, Lust-Okar & Shapiro, 2005:287). It also encompasses the period when multilateral negotiations resumed in February 1993 and the continuation of negotiations including negotiations on the final Constitution that was adopted on 8 May 1996 and was signed into law by President Nelson Mandela at Sharpeville on 10 December 1996 (Pityana, 2016:86).

Codesa took place in two phases, that is, Codesa I and Codesa II. The first plenary of Codesa I took place on 20 and 21 December 1991 in Kempton Park. The venue for the negotiations was chosen for its neutrality in that it had no connection to the past and political symbolism, thus it was suitable for negotiations free from any threat or prejudice. Codesa was a well thought through forum, which besides its aim of reaching consensus on the future of the country, non-racialism, and universal suffrage and democracy, sought to pacify all stakeholders in such a momentous and tense period. However, the idea of sufficient consensus, which empowers and emboldens spoilers failed dismally in the negotiations. This failure is illustrated by the ANC and the NP, which garnered enough popular support after

engaging in secret negotiations in 1992 regarding the core elements of the settlement, which they then presented as non-negotiable when multi-party negotiations resumed (Friedman, 1993:25).

As a result, the IFP, which was the spoiler, realised that the 1994 elections could not be derailed and that they would be marginalised if they did not participate in the negotiations, and eventually participated in the elections (Jung, Lust-Okar & Shapiro, 2005:307). This cautious and sober calculation was demonstrated by the composition of the first plenary conference of Codesa I whereby all stakeholders from various constituencies were represented, namely, 19 organisations and political parties. The PAC and the leader of the IFP, Chief Gatsha Mangosuthu Buthelezi, did not attend the first plenary. Ejiogu (2012:260) succinctly explains the position of the PAC in the Codesa negotiations as follows:

The PAC's unwavering radicalism influenced its refusal to renounce armed struggle and get involved in the negotiations that produced South Africa's current multi-racial democratic constitution in 1994. That radicalism culminated in the PAC's hard-line position alongside the AZAPO, in which they demanded that the NP-led apartheid government must stand down first as a pre-condition for them to participate in the negotiations. It was not until quite late in those negotiations that the PAC got involved.

Ejiogu (2012:260) argues further that the hard-line stance of the PAC and AZAPO towards the Codesa negotiations was a strategic error as their absence in the negotiations gave the NP leverage to manipulate the ANC and the SACP in drafting the Constitution. Thus, the PAC and AZAPO lost the opportunity to influence the character of the resultant Constitution by shunning the negotiations in the early stages (Ejiogu, 2012:260). Chief Buthelezi believed that a federal arrangement based principally on the geography rather than race could be a solution to the problems facing the country. In the period preceding the Codesa negotiations Chief Buthelezi was strongly in favour of a federal form of government to the extent that it led to the establishment of the Buthelezi Commission in 1980 to inquire into possible constitutional arrangements between the KwaZulu homeland and the Natal provincial authorities. The Commission was seen by participating parties and stakeholders as a potential model for future countrywide negotiations. The proposals and resolutions made at the Commission included constituting a legislature to represent all races or ethnic groups in the

region. The Commission led to the convening of the Natal/KwaZulu Indaba, which brought together representatives from all sectors in the region (Omond, 1987:633).

On 3 April 1986, the KwaZulu/ Natal Indaba was held in Durban by black representatives from the KwaZulu homeland, white (mainly English-speaking) representatives from the province of Natal, and delegates from 35 other racial, business and farming communities and political groups. The negotiations were aimed at merging the parallel government structures of the KwaZulu homeland and the province of Natal and to create a single multiracial entity that would govern that part of the country. The proposed government entity was envisioned to include the following:

a bicameral legislature, a consociational cabinet, proportional representation, minority veto over certain legislation, a segmented representative chamber, enforcement of a comprehensive Bill of Rights, and substantial devolution of power, including the right of the provincial legislature to repeal acts of Parliament that invade areas of provincial competence (Lynch, 1989:231).

In essence, the Indaba sought to find regional solutions to the problems of apartheid and loss of autonomy to the province and the homeland; that is, the Indaba proposed federalism to grant autonomy to the province, while the sovereignty remained with the entire national jurisdiction. However, the P.W. Botha administration in Pretoria, which maintained a firm stance on a strong centralised state, rejected these proposals particularly at the insinuation of a cabinet member and National Party's provincial (Natal) leader, Stoffel Botha. The proposal was also rejected by the then-banned ANC through its representative in Lusaka, Zambia, which advocated for a single national constitution and centralised state, and by the UDF, which was considered the legal proxy of the banned ANC (Lynch, 1986:231-243).

The option proposed by the IFP as a suitable tool to govern a multiethnic or multiracial society is characteristic of ethno-federalism. Ethno-federalism, on the one hand, seeks to accommodate ethnic groups and their needs for self-determination through the devolution of power. On the other hand, it "is believed to promote violent secessionism through exactly the same factors that are meant to appease ethnic groups" (Deiwiks, 2011:i). The NP, then the ruling party, and the ANC were the main parties within the Codesa negotiations. The ANC was joined by its allies, namely, the Transvaal and Natal Indian Congress. The NP was joined by a government delegation in order to distinguish the ruling party from the state. Other

parties who attended the conference included the five parties representing the TBVC states, the parties drawn from the Tricameral Parliament, the IFP and the DP. According to Ebrahim (2000: 98), “The agreed agenda for the Codesa plenary consisted of general constitutional principles, a constitution-making body or process, transitional arrangements or interim government, the future of the TBVC territories, and the role of the international community”.

Mavungu (2016:187) argues that “the territorial reform undertaken at the 1991 Convention for a Democratic South Africa (CODESA) was ultimately a product of compromise and horse-trading among political parties”. Furthermore, the process of redrawing provincial boundaries in 1993 by the Commission for the Demarcation and Redetermination of Regions (CDRR) resulted in nine provinces, as we have them today, namely, Gauteng, Free State, Northern Province (currently Limpopo), Mpumalanga, KwaZulu-Natal, Eastern Cape, Western Cape, Northern Cape, and North West. The geographic pattern of the nine resulting provinces as a result of the land reform and boundary demarcation process cemented the geography of the former Bantustans and reproduced socio-spatial and economic inequalities. The apartheid geographical structure of resources and privileges was left intact, and “uneven development” and inequitable distribution of resources among and within provinces has persisted during the post-apartheid era (Mavungu, 2016:187).

All parties except the IFP and the governments of Ciskei and Bophuthatswana signed the declaration (Friedman, 1993:25). Codesa led to the adoption of an Interim Constitution that was drafted in 1993 and came into effect in April 1994 after the first democratic elections, formally dismantling the structures of institutionalised, legalised racism (Ferreira & Henk, 2008:505). Smith (2008:241) emphasises that Codesa was dominated by the two main dominant political organisations, the ANC and the NP. The final Constitution was adopted in 1996 (Smith, 2008:217). The most striking feature of the first plenary was the Declaration of Intent which, according to Friedman (1993:25), “consisted of statements of goodwill and designed primarily to avoid possibilities for disagreement; it committed participants to an undivided non-racial South Africa, peaceful constitutional change, a multiparty democracy with universal suffrage, a separation of powers, and a bill of rights”.

The IFP signed only after confirmation that the term ‘undivided’ in the Declaration did not commit Codesa to a unitary state (Ebrahim, 1998:103). In terms of structure, the first plenary of Codesa I consisted of five working groups, a Management Committee and its secretariat,

whose function it was to prepare the way to the second plenary in March 1992. The task of the working groups was to reach agreements on key issues assigned to each of them and to compile reports reflecting consensus to the next plenary. There was representation of all stakeholders in the Management Committee and the five working groups. More than 400 delegates representing 19 parties, organisations, administrations, and government participated in Codesa (Ebrahim, 1998:104).

Codesa I represented the first formal multi-lateral meeting to negotiate the settlement of conflict and violence in the country. With Codesa I having paved the way for multi-lateral negotiations and collaboration in addressing conflict in December 1991, the plenary of Codesa II took place on 15 May 1992 and focussed on procedural issues. The NP and ANC agreed on a 70% majority consensus or a vote for all decisions relating to the constitution and 75% for the bill of rights. Codesa II adjourned without ratifying any agreements in order to allow delegates to refer the matters to their principals and constituencies. The Management Committee was instructed to convene another session later where agreements reached at the plenary would be ratified. This break-in session provided opportunity for F.W. de Klerk and Nelson Mandela to meet (Spitz, 2000:26).

Codesa II negotiations broke down in May 1992 amid disagreements due to differences among the main actors. Since deliberations at Codesa were not open to the public, lack of transparency became a major bone of contention among party and actor constituencies and the public at large. Also, procedural matters, such as the large number of delegates at the plenary who were expected to make decisions, somehow contributed to the breakdown of negotiations. Among other lessons from the negotiation process were the qualities of compromise, tolerance, and faith in the negotiation process (Spitz, 2000:26; Deiwiiks, 2011:i). Other issues that led to continued disagreements among the negotiating parties included “the organisation of the future state, that is, centralism or federalism, decision-making mechanisms, minority protection (which essentially meant a veto provision for the white minority), possible power sharing arrangements, and the question of how to deal with past human rights violations” (Renner, 2014:274).

The apartheid government had been pushing propaganda that portrayed the ANC as an instrument for the Soviet Union; particularly due to its strong ties to Moscow, East Berlin, Prague, and other Soviet countries to secure South Africa for the Communist camp. The

apartheid government therefore did not consider the ANC as a genuine voice of a benign African nationalism. The ANC's political publication, *Sechaba*, which was produced in East Berlin, is an example of the strong ties that the ANC had with the Communist countries. The apartheid government took a hard stance against the ANC's strong ties with the Soviet Union to portray itself as a natural ally of the West in the international anti-Communist crusade (Hamill, 1993:12; Maphai, 1993:223; Lynch, 1986:243).

The ANC decided to adopt what it called the "Leipzig option" in response to what it perceived as the consistent pattern of intransigence by the then apartheid government. The Leipzig option would be a non-violent campaign of mass action consisting of street and industrial protests and aimed at forcing the apartheid government to make a series of concessions and ultimately to remove the De Klerk government from power. The campaign was inspired by the protests led initially in Leipzig, Germany by the New Forum movement, which forced the breaching of the Berlin Wall in November 1989 and the collapse of the German Democratic Republic on 3 October 1990 (Hamill, 1993:12; Jung, Lust-Okar & Shapiro, 2005:307).

The multi-lateral negotiations were given another chance in November 1992 when the then president F.W. de Klerk announced a list of measures and schedule leading towards the first universal franchise elections to be held in early 1994. This announcement followed a meeting between De Klerk and Nelson Mandela, the president of the ANC. De Klerk then proposed the resumption of multi-lateral talks with other parties by early February 1993. At this point the country had reached its lowest point with crime and violence on the increase, loss of lives, economy on a downward spiral, and morale among the citizens low (Hamill, 1993:12; Maphai, 1993:223).

Following the breakdown of negotiations in May 1992 the country experienced mass violence until May 1993. During this period, politicians were under pressure from both external and internal sources to resume the talks on a new slate; that is, to find a new framework to resume negotiations, which could eventually lead to drafting the new Constitution. Key among the agreements of Codesa II was to establish an elected body whose task would be to draft the new Constitution. The IFP and COSAG (the Concerned South Africans Group, an alliance formed by the IFP, the CP, the AVU and the Afrikaner Freedom Foundation in October 1992) rejected the agreements reached at Codesa II and instead demanded convening of a

planning conference to determine the prospective of the state and the negotiation process itself (Ebrahim, 1998:149).

Pressures from the IFP and COSAG led to the convention of the Multi-Party Planning Conference on 4 and 5 March 1993 at the World Trade Centre in Kempton Park. The Conference resolved to resume negotiations in a new forum, which would meet first on 1 and 2 April 1993. The new negotiations forum, now called the Multi-Party Negotiation Process (MPNP), was more inclusive in that parties that never participated in the previous forum were now part of the negotiation process (Spitz, 2000:36). Codesa led to a negotiated settlement in 1994, which established South Africa as a constitutional democracy characterised by national reconciliation, early growth, and optimism (Southall, 2014:48). The 1994 democratic general elections marked a change from the apartheid regime, which was “an instrument of discrimination, control and domination to an enabling agency which serves and empowers all the people of the country in a fully accountable and transparent way” (Bardill, 2000:103).

Heller (2009:123) argues that in South Africa, democratic politics and constitutional rule managed a transition from white minority to black majority rule with minimal conflict despite the worst mal-distribution of wealth in the world. The Codesa negotiations sought to reincorporate the Bantustans and the townships and peri-urban areas into one system of political administration. However, concessions and suitable guarantees had to be given to the incumbents of the central state and homelands bureaucracies about the future (Bardhan & Mookherjee, 2006:335).

In any negotiation processes it is common to have one or more parties making compromises on their initial position in order to reach a settlement. The Codesa negotiations in the years preceding the 1994 democratic general elections in South Africa were no different. Some of the political parties that were part of the negotiations, particularly minority parties such as the IFP, pushed for a federal system of government where provinces and some ethnic group reserves known as homelands or Bantustans would have their own autonomy independent from the sovereignty of the country (Schneider, 2003:37).

The NP and the representatives of other minority groups opposed a strong unitary state and instead preferred a string federal state on the basis that a strong unitary state would not protect and enforce the concessions, guarantees and rights of minority groups, as agreed on in

the negotiations (Bardhan & Mookherjee, 2006:335). However, as it often occurs, the minority groups had to make compromises regarding their demands. On the other hand, the ANC wanted to consolidate its power and to prevent entrenchment of the past practices of the former apartheid government, which would perpetuate division and segregation of the society along ethnic and tribal lines and further exacerbate unequal and separate development. The ANC advocated for a unitary state where all former homelands and the apartheid government provinces of Natal, Transvaal, the Orange Free State and the Cape would be integrated into a single jurisdiction under the control of a government of national unity (GNU) (Bardhan & Mookherjee, 2006:335).

However, the ANC also had to make compromises on its ideals and ambitions by agreeing to the formation of the three spheres of government, namely, national, provincial, and local, each exercising a certain degree of autonomy from others in managing its affairs. Key among some of the concessions the ANC had to make was with regards to the Interim Constitution of 1993, which guaranteed that all civil servants from the apartheid regime would be permitted to keep their jobs. This was done to “avoid chaos and soothe white fears” (Layman, 1996:110). This view is strongly supported by Szeftel (1994:457-458), who posits that the success of the “miracle” elections of 1994 was a result of a compromise made by the protagonists in the Codesa negotiations, particularly the ANC and its Alliance partners, the SACP and COSATU, who “made fundamental policy concessions in order to reassure opponents, end deadlock and permit a transfer of power. Fundamental questions of social justice and political power were left unresolved in order to permit democratic progress” (Layman, 1996:110).

Habib (2014) (www.sundaytimes.co.za viewed 31 March 2017) argues that the inequality in South Africa, which is the highest in the world, is a result of the political decision taken during the Codesa negotiations in the early 1990s to indefinitely postpone social justice in the name of democratisation (see page 292, paragraph 5.3.2 above) (Posel, 2013:59). Moyo (2010:426) emphasises that the resolution to ensure the protection of minority rights not only sought to uphold and protect democratic values, but also to “allay the White minority fears of the retributive backlash from the Black majority who were the main victims of the apartheid system and also to ensure general economic stability”. The classification of the resultant form of state found in South Africa varies, as to whether it is a unitary state or a federal state. The

South African system of government is sometimes referred to as a hybrid, quasi-federal or decentralised unitary state due to its highly centralised nature (Simeon & Murray, 2001:65).

The confusion regarding this classification is evident as the country's form of state displays characteristics of both a unitary and a federal state. However, closer scrutiny and analysis of the system from the provisions of the Constitution (RSA, 1996), as expressed in Chapter 3, reveals a system that very much resembles a unitary state. This is particularly because the Constitution explicitly states that all three spheres of government are expected to work together and in accordance with the norms and standards determined by the national government. The three spheres of government are distinctive, interdependent, and interrelated (RSA, 1996:17). Layman (2003:8) explains intergovernmental relations and cooperative governance in South Africa in terms of the Constitution, which allocates government functions on either an exclusive or shared (concurrent) basis, as noted below:

The 'distinctive' element reflects that each sphere exists in its own right; it is the final decision-maker on a defined range of functions and is accountable to its constituency for its decisions. Although provinces are 'distinctive', they exercise their powers and perform their functions within the regulatory framework set by the national government which is also responsible for monitoring compliance with that framework and, if need be, intervening when constitutional or statutory obligations are not fulfilled. Municipalities are likewise subject to both the national and provincial regulatory and supervisory powers.

It is this relationship of regulation and supervision that defines how the three spheres are 'interrelated'; provinces and municipalities exercise their distinctive powers within imposed frameworks and under supervision. Within the regulatory frameworks and subject to supervision, provinces and municipalities enjoy relative autonomy, remaining accountable to their constituencies to reflect their policy preferences. However, they must still exercise their powers to the common good of the country as a whole by cooperating with the other spheres. In this sense the spheres are "interdependent"; only collectively and in cooperation with one another can they provide government that meets the needs of the country as whole (Layman, 2003:8-9).

Section 154 in Chapter three of the Constitution requires all spheres of government to work together and in support of one another in alignment, coordination and integrated manner. This

provision is given effect in the Intergovernmental Relations Framework Act (IGRFA), as mentioned above (see paragraphs 2.6.2 in chapter 2 above and 5.4.5 below). The requirement for the national government to set the norms and standards in policy matters implies that the national sphere of government is considered to be superior to the two other spheres, especially in relation to policy and law making; that is, legislative competence. In this regard, the legislation formulated by the national legislature takes precedence over that made by the provincial legislature and the municipal councils in cases where the two legislations are in conflict. This is true even for legislative competencies exclusive to provinces in circumstances where such deviation is perceived to compromise the security and stability of the country, economic unity, or to maintain national standards, and to prevent unreasonable action by provinces (RSA, 1996:20-21). The unitary character of the South African state is emphasised by Buccus, Hemson, Hicks and Pier (2008:299), who point out that South Africa is a multi-party, representative democracy under a constitution whereby “state power is mostly centralised in the national sphere, with only limited power devolved to provinces and local municipalities”.

5.4.2 The Truth and Reconciliation Commission (TRC)

The Truth and Reconciliation Commission (Judson, n.d.:65) was established through legislative framework of an Act of Parliament, the Promotion of National Unity and Reconciliation Act No. 34 of 1995. Its task was to document the nature, cause, patterns and extent of gross violations of human rights; that is, torture, kidnapping, killing, and severe ill-treatment, making recommendations on reparation and rehabilitation, and granting amnesty (Judson, n.d.:65).

The TRC established three committees to undertake its mission, which dealt with the tasks of providing amnesty, identifying victims of gross violations of human rights, and making recommendations for reparations and rehabilitation (Ross, 2003:326-327; Sacco & Hoffmann, 2004:159-160; Vora & Vora, 2004:305). The TRC chaired by the Nobel Peace laureate Archbishop Desmond Tutu played an important role in healing the division of the country as a result of apartheid and therefore it could serve as a model for deeply divided societies (Gibson, 2004:xii; Moller, 2007:185; Kagee, 2006:11). Golan-Agnon (2010:31) emphasises the importance of the TRC and the role that a similar arrangement could play in the conflict between Israel and Palestine by stating that it “has become a model for other

societies seeking to rebuild their ethical order, to reckon with the past, and to balance peace and justice” (Golan-Agnon, 2010:31). This view is reiterated by Mamdani (2014:61) who posits that the Codesa negotiations in South Africa’s transition period to democracy in the early 1990s as well as the TRC could serve as a model for ending civil wars in the rest of Africa. Mamdani (2014:61) advocates the TRC as a mechanism for the protection and restoration of human rights, justice and peace over the Nuremburg Tribunal, which is held by contemporary human rights movements as a template with which to define responsibility for mass violence. The TRC was a compromise mechanism to prosecute apartheid crimes and injustices and was preferred over the Nuremburg Tribunal. The Nuremburg approach was neither feasible nor workable under the conditions that prevailed in the country after the release of Nelson Mandela as compared to the conditions that led to the establishment of the Nuremburg Tribunal. Unlike in the Nuremburg Tribunal, there was no military victory by the South African government or the liberation movements (Mamdani, 2014:61).

The TRC has been heralded internationally by human rights advocates as best practice and a standard for national reconciliation and the most credible of the truth and reconciliation commissions set up in the past few decades. The TRC derives its credibility largely from its public airing of the reconciliation and forgiveness process, as well as the choice of Archbishop Tutu and Reverend Alex Boraine, two prominent clerics, to serve as its Chair and Vice-Chair, respectively. A generally held consensus is that the establishment of a viable democracy in South Africa would not have been possible without the TRC as a transitional justice mechanism (Andrews, 2016:216).

The task of the TRC was to tell a story about the country’s transition from past violence to future reconciliation and to achieve justice, peace, nation building, national unity, catharsis, healing and reconciliation at an individual and national level and to restore dignity to those who had suffered (Moon, 2006:258; Ross, 2003:327). The TRC compiled this story of the past injustices and crimes by affording perpetrators of violent political crimes in apartheid South Africa an opportunity to give testimony in exchange for the opportunity to receive amnesty for their crimes; thus, providing a strong incentive for detailed and comprehensive accounts of their destructive actions (Kraft, 2015:359). The TRC “provided a historic bridge between the past of a deeply divided society characterised by strife, conflict, suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence, and the development of opportunities for all” (Sacco & Hoffmann, 2004:159).

The TRC as an institution played a key role in the transition from apartheid to democracy, particularly given the contextual constraints within which it operated at that time. It played an important role in facilitating political transition and maintaining a fragile peace, and contributed to creating a more inclusive official historical narrative and human rights culture. The TRC operated on the values and ethos of human capacity for empathy and compassion with the aim of cultivating a shared purpose and sense of national community (Rose, 2015:61). Furthermore, the TRC undoubtedly played a key role in the Nelson Mandela administration that was focused on ensuring that further racial tensions were averted and the restoration of political stability was maintained during the transition period (see page 351, paragraph 6.1 in chapter 6 below) (Rapatsa, 2015:208; Phago, 2013:113).

5.4.3 Structure and systems of the South African government

The South African government is constituted as the national, provincial, and local spheres of government, which are distinctive, interdependent, and interrelated (see paragraph 1.2.8 in chapter 1 above) (RSA, 1996). The purpose of the division of authority and government into different jurisdictions is to ensure autonomy of the different spheres of government in how they exercise their constitutionally vested powers and how they perform their functions as listed in Schedules 4 and 5 of the Constitution. Decentralisation, the process of devolving power to subnational levels of government, ensures the independence of these jurisdictions in political, fiscal, administrative, and financial decision-making (see paragraph 2.8 in chapter 2 above) (Dickovick, 2005).

Garzareli (2006:235) argues, with reference to decentralisation, that one of the benefits of fiscal federalism (economic decentralisation of public governance) is that it serves as a laboratory of rapid trial-and-error learning for public policy. This means that federalism allows SNGs to experiment with legislation and administration, which could not be safely tried in a large centralised country. The three spheres of government in South Africa are structured as follows: one national government (a national cabinet led by the president and his/her ministers), nine provincial governments (each provincial administration is led by a premier and his/her members of executive council (MEC)), and 284 municipalities - each municipality is led by a mayor and his/her members of the mayoral council (MMC), also called councillors (Ruiters, 2007:488).

The number of municipalities was reduced from 843 to 284 following the establishment of the Municipal Demarcation Board in 1998, whose responsibility was to redraw municipal boundaries across the country. The establishment of the Municipal Demarcation Board constituted the third stage of the three-stage process of the restructuring of local government as defined by the Local Government Transition Act No. 209 of 1993 (LGTA) (Beall, 2005:257). The LGTA established the post-apartheid local government framework and served as an interim measure to facilitate the democratisation and deracialisation of local government (Pycroft, 2000:145).

The third phase of the process, that is, the 2000 local government elections, constituted completion of the restructuring of local government, which ensured the autonomy of local government and led to the election of thousands of ANC councillors who had a vested interest in protecting the powers of local government. The first stage of the restructuring process was the elections of transitional local councils in 1995/1996 (Beall, 2005:257-258; Muller, 2008:67; RSA, 2007:4). Since many municipalities, particularly those in rural areas, do not have adequate capacity to raise adequate revenue to fund provision of basic public services, the Constitution provides for intergovernmental transfer of an “equitable share of revenue” from national to provincial and local governments, notably local governments, to enable them to provide basic services (Muller, 2008:70).

SNGs, especially provinces in South Africa, are expected make huge investments in infrastructure development and other development projects for social and economic growth. However, provinces seldom have enough own-tax revenues to fund these large investments despite national transfers from the national government. As a result, SNGs are forced to seek funding from financial markets, where their credit ratings are used as one of the criteria to access infrastructure-investment funding (Fourie, Verster & Van Vuuren, 2016:192).

The revenue collection capacity of local governments in South Africa is inadequate and is further exacerbated by impoverished communities that are unable to supply the necessary operational revenues. Thus, both national and provincial government are required to transfer funds to the local government to achieve delivery of priority services and economic development infrastructure. Poor financial planning and lack of best financial planning practices in South African municipalities compromise effective financial management,

resulting in inadequate or poor service delivery (Klingelhöfer, Erasmus & Mayo, 2015:364). The largest component (about 82%) of the local government equitable share formula that was introduced in 1998 is a set of grants intended to assist municipalities in providing basic services to low income households (Bardhan & Mookherjee, 2006:342). The Constitution makes provision for the national, provincial, and local governments in Chapter five, six, and seven, respectively (RSA, 1996:57).

The Codesa negotiations led to a two-stage transformation phase constituting the passing of the Interim Constitution in 1993, first, and then the final Constitution in 1996 (Smith, 2008:217). The Interim Constitution had a number of power-sharing mechanisms to protect minority rights and consisted of three levels of government, that is, national, provincial and local. The final Constitution took away most power-sharing provisions found in the Interim Constitution but made provision for the three spheres of government, which are distinctive, interdependent and interrelated. Chapter 3 of the Constitution provides for the principle of cooperative governance, which underpins intergovernmental relations. According to Cameron (2010:682), “The shift from the term ‘level’ to that of ‘sphere’ is meant to indicate a non-hierarchical system of intergovernmental relations”.

There are three categories of municipality (local government), namely:

Category A: a municipality that has exclusive municipal executive and legislative authority in its area, Category B: a municipality that shares municipal executive and legislative authority in its area with a category C municipality within whose area it falls, and Category C: a municipality that has municipal executive and legislative authority in an area that includes more than one municipality (RSA, 1996:57).

Category A municipalities are metropolitan municipalities, Category B are district municipalities, whereas Category C are local municipalities. Figure 5.1 below represents the structure of government with regards to the three spheres of government:

Figure 5.1: Spheres of government in South Africa



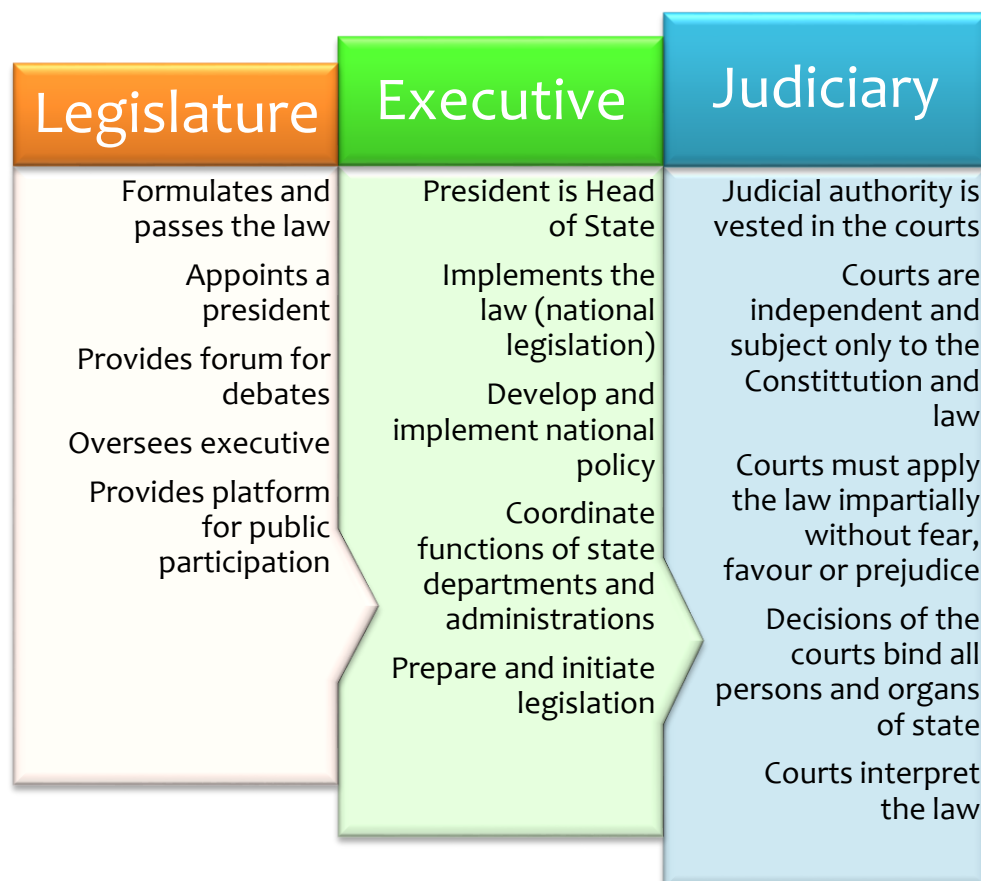
Source: Constructed from the provisions in the Constitution

Figure 5.1 above illustrates the hierarchical structure of government with the national government largely responsible for developing policies for implementation by both provincial and local governments. Further, the national government sets norms and standards to be applied and adhered to by all spheres of government (HSRC, 2008:102).

Both the national and provincial governments are required by the Constitution (Section 155 (6) (a) and (b)) to play an oversight and support role over the local sphere of government (RSA, 1996:58). Lastly, the local sphere of government, as represented by the bottom rung of the pyramid, illustrates its close proximity to the people and its responsibility for provision of basic public services such as water, electricity, sanitation, and safety and security. The powers and functions of the government are separated into three main branches, that is, the executive, the legislature, and the judiciary. The Constitution provides for the establishment of the Parliament in Chapter 4, the Cabinet (President and national executive) in Chapter 5, provinces in Chapter 6, local government in Chapter 7, and the Judiciary (courts and administration of justice) in Chapter 8 (RSA, 1996).

The purpose of the separation of powers is to limit and prevent abuse of the powers of each branch of government. The separation of powers mandates the legislature to formulate laws, the executive to implement these laws, and the judiciary to interpret them (see paragraph 1.2.1 in chapter 1 and 2.11 in chapter 2 above) (Friedman, 1993:25; Dickovick, 2005; Cameron & Falletti, 2005; Erk, 2006:111; Brown, 2009:1; Hechter, 1999; Treisman, 2007). ” According to the Constitution (2005:9). “In terms of the separation of powers, executive authority is then vested in the government, or Cabinet, which is responsible for executing the laws of parliament”. Figure 5.2 below represents the separation of powers between the branches of government:

Figure 5.2: Branches of government



Source: Constructed from analysis of the branches of government (Own construction)

The executive consists of the president and the cabinet. The president of the country and the ministers constitute the cabinet. The ministers and deputy ministers are the political heads of

their respective departments or ministries. The executive branch is responsible for executing, that is, implementing the laws of the country by providing the required public services. The legislature, also known as the parliament, is responsible for formulating and passing the laws of the country. According to the Constitution (2005:9), it provides for “a bicameral parliament comprising a National Assembly of 400 members, a NCOP of 90 members (ten members from each of the nine provinces). Functions and responsibilities are legislative authority and oversight roles, and providing a forum for issues for public consideration”. The role of the National Assembly is as follows:

... represents the people, chooses the President, provides a forum for debate, passes laws, and oversees the executive. The NCOP represents the provinces to ensure that provincial interests are taken into account in the national sphere of government, participates in passing laws, provides a forum for debate of provincial issues, and ensures that local government is represented at national level. Both houses participate in debating and voting on the Budget (www.parliament.gov.za viewed on 31 March 2017).

Other functions of the legislature include overseeing the executive (that is, an oversight role to keep the executive and state institutions accountable), to represent the citizens and provide a platform for public participation, to debate and vote for a budget, and parliamentary committee hearings. The government since 1994 has adopted a new approach of bottom-up management and committed itself to grassroots participation, also called participatory democracy (Muller, 2008:70; Hilliard & Kemp, 1999:353).

Grassroots participation allows for a maximum degree of citizen participation and say in the administration and governance of the country. Mogale (2005:137) defines participation as “the organised effort to increase control over resources and regulative institutions by groups and movements, especially of those excluded from such control”. Citizen participation in the activities of government is critical for strengthening democracy and increasing good governance. This involvement of citizens ensures accountability, transparency, effectiveness and good quality provision of public services (see p.11, paragraph 3.2 in chapter 3 above) (Lues, 2014:789; Hafer & Ran, 2016:206).

Provision of low-cost housing in black townships is a good example of a government programme that lacks sufficient public participation, leading to a number of issues with such

development. Zonke and Matsiliza (2015:86) argue that a participatory development approach towards housing provision is critical for the legitimacy of such projects in the eyes of beneficiaries. The practice of keeping the executive accountable to the parliament is not unique to South Africa. This practice is found in other countries as well, including developed countries such as the UK and Finland where “Select Committees of Parliament are widely recognised as an important instrument of Parliament’s scrutiny of the Executive” (Groombridge, 2006:273).

The South African Parliament has transformed since 1994 to be what is called a ‘People’s Parliament’ because it represents the interests of the citizens and creates a platform for an open and participatory legislative process; that is, for citizens to express their views (Hasson, 2010:366). State institutions like the Auditor-General and the Public Protector are accountable to the citizens of the country through the parliament and are required to report to the parliament. Lindberg (2013:203) defines accountability in the context of delegation of authority, evaluating performance and applying sanctions and posits that “when decision-making power is transferred from a principal (e.g. the citizens) to an agent (e.g. government), there must be a mechanism in place for holding the agent accountable for their decisions and tools for sanction”.

Thus, accountability is inextricably linked to performance management as a means to ensure the satisfactory delivery of expected outcomes. During the 2009/2010 financial year, the government introduced the Outcomes Based Performance Management (OBPM) framework in the public sector in place of the then Input Based Performance Management framework. This shift in performance management framework was aimed at increasing accountability, enhancing good governance and improving service delivery for all citizens. Local governments lack capacity to implement low-cost housing programmes, particularly the recent complex “breaking new ground” (BNG) framework (Diseko, 2012:56; RSA, 2004:6; Jarbandhan, Viljoen, Beer & Blaauw, 2016:170). This challenge can be addressed by urgently “utilising available resources efficiently, improving management and monitoring procedures and renewed commitment to accountability and the prevention of corruption” (Jarbandhan *et al.*, 2016:170).

The OBPM had a moderately positive impact on improving political accountability and performance management (PM) effectiveness. Makoba and Ruffin (2016:143) attribute this

limited success of the OBPM framework to the fact that it does not incorporate African epistemologies into change management and PM implementation processes. The incorporation of African indigenous knowledge systems and Africology (an African epistemology that offers a strategy for putting people first to improve service delivery) in PM frameworks is expected to decolonise the public service and to promote new knowledge production for employee development and citizen driven performance management to improve service delivery. Furthermore, such incorporation of African indigenous knowledge systems will improve the efficiency, effectiveness and economy; known as the 3Es of public service administration (Makoba & Ruffin, 2016:144).

Accountability has become a major indicator of good governance used by donor organisations worldwide. Accountability serves as a means to constrain the misuse of power (Lindberg, 2013:202). Cameron (2010:676) warns against politicisation (partisan control of the bureaucracy), by arguing that political involvement has often led to negative effects on service delivery. The structure, systems and processes of the South African model of government is illustrated in figure 5.3 below:

Figure 5.3: South African system of government: structure, systems and processes



Source: Constructed from provisions of the Constitution

Figure 5.3 above illustrates the structure and function of the South Africa system of government, which is decentralised (Muller, 2008:67) and firmly rooted in the strong values and principles of good governance. The roof of this structure represents the principles and values of good governance in the South African public administration, as listed in section 195 of the Constitution (Muller, 2008:67; RSA, 1996:74). The three pillars below the roof represent the three branches of the state, namely, the legislature, the executive and the judiciary, which signify a separation of powers. Below these pillars is the foundation, which represents the three spheres of government, which are the expression of decentralisation of administrative and legislative power from the central government to the SNGs; that is, provincial and local governments. In this structure, the top layer of the foundation represents the system and processes available to the government to perform its functions and to exercise

its powers effectively and efficiently. The bottom layer of the foundation represents the constitutionally vested powers and functions of government, as listed in Schedule 4 and 5 of the Constitution (RSA, 1996).

The legislative authority of the national government is vested in the parliament, whereas that of the provinces is vested in the provincial legislatures. The Bill of Rights is the cornerstone of the Constitution and the “Constitutional Court is the highest court in all constitutional matters and has the power to decide intergovernmental disputes” (Cameron, 2010:682). A major challenge faced by all spheres of government in relation to their developmental and service delivery mandates is the concurrency or overlap of their functions and powers. This overlap of functions and powers creates confusion about the responsibility for performing certain functions and exercising powers and may prejudice service delivery and cause conflict over resources and authority (Steytler & Fessha, 2005:1).

Schedules 4 and 5 of the Constitution list the functional areas of all spheres of government. Schedule 4A lists the functional areas of concurrent national and provincial legislative competence; that is, power to make legislation. Schedule 4B and 5B list the functional areas of local government; while Schedule 5A lists the functional areas of exclusive provincial legislative competence (RSA, 1996:98-100; Cameron, 2010:682). Provinces have only a limited supervisory role in the functional areas of local governments, listed in Schedules 4B and 5B. Section 155 (6) (a) and (b) of the Constitution requires provincial governments to provide for the monitoring and support of local governments. Further, the Constitution requires provincial governments to “promote the development of local government capacity to enable municipalities to perform their functions and manage their own affairs” (RSA, 1996:58).

The Constitution further empowers the national and provincial governments with legislative and executive authority to ensure effective performance by municipalities of their functions, as listed in Schedules 4B and 5B (RSA, 1996:58; Steytler & Fessha, 2005:2). However, the provinces may only regulate the authority of local governments, that is, to “set frameworks within which local autonomy may be exercised responsibly” (Steytler & Fessha, 2005:2). On the other hand, the national government may only intervene in provincial and local government matters in the circumstances mentioned in section 44 (2) (a)-(e) of the Constitution, that is, to maintain national security, economic unity, essential national

standards, establish minimum standards required for the rendering of services, and to prevent unreasonable action being taken by a province, which is prejudicial to the interests of another province or to the country as a whole. The national government may delegate or assign additional functions to the provincial governments (see paragraph p41, paragraph 2.7.1 in chapter 2 above) (RSA, 1996:19-20; Steytler & Fessha, 2005:2; Monro, 2001:42).

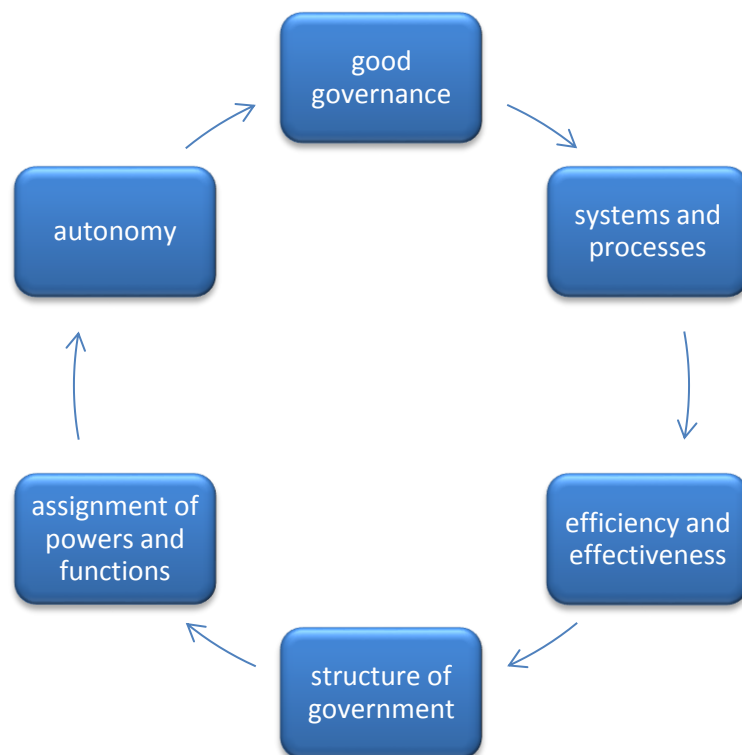
The structure, systems and process of government: concluding thoughts

The South African government is structured in such a manner that each jurisdiction, that is, the national, provincial, and local sphere of government can freely exercise its political, administrative, fiscal and financial authority. Thus, it guarantees and protects the autonomy of all jurisdictions. Furthermore, the system of government provides mechanisms, that is, systems and processes that ensure good governance practices in government (as shown in Figure 5.4 below). The executive, that is, public administration is required to implement and uphold the principles of good governance listed as the values and principles of the public service in section 195 of the Constitution (RSA, 1996:74; Cameron, 2010:677; Monro, 2001:42). Both the judiciary and parliament are required to oversee and enforce the implementation of these values – the parliament is responsible for making the laws and exercising oversight over the executive, the judiciary is responsible for interpreting the law. Therefore, based on this system, the roles and responsibilities of the different branches of the state are all tied together in a common goal (purpose, mission and vision), yet separated; that is, independent and autonomous to ensure good governance (RSA, 1996).

“The Constitution requires the three spheres of government to function as a single system of cooperative government for the country as a whole” (RSA, 2007:4). Furthermore, the inherent processes of these structures and systems facilitate and provide the mechanisms for performing these tasks and achieving the set objectives in an effective and efficient manner. These structures, systems and processes include state institutions supporting constitutional democracy (Chapter 9 institutions), such as the Human Rights Commission, the Office of the Public Protector (Ombudsman), the Office of the Auditor-General, the Commission on Gender Equality, parliamentary committees such as the Standing Committee on Public Accounts (SCOPA), public participation forums such as the NCOP’s community outreach programmes, submissions to parliament by the public, and IDP hearings at local government level (Phago, 2013:112; RSA, 1996; RSA, 2000).

Chapter 9 institutions are anti-corruption and ethical institutions whose duty it is to bring about good governance by strengthening and promoting constitutional democracy. Furthermore, the Constitution empowers these institutions to be independent and impartial in the exercise of their functions in order to provide an effective oversight role of both public and private spheres in the regulation of their authorities (Ntlama, 2015:13). Buccus *et al.* (2008:298) argue that the formal requirement to consult the public, also known as “invited spaces”, is more developed at local government sphere than in the national and provincial spheres of government. Mogale (2005:137) emphasises the role of local government in public participation by referring to the White Paper on Local Government (RSA, 1998:33), which states that “building local democracy is a central role of local government, and municipalities should develop strategies and mechanisms (including, but not limited to, participative planning) to continuously engage with citizens, business and community groups”.

Figure 5.4: Relationships among the structure, systems and processes of government



Source: Constructed from the findings of the present study

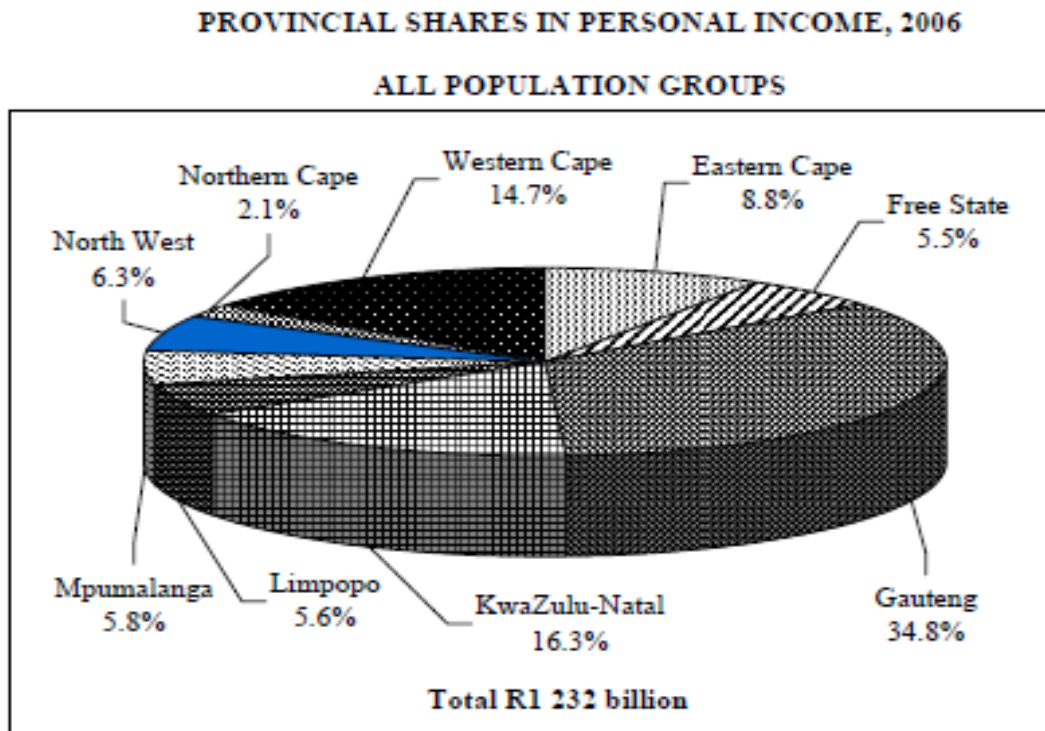
Figure 5.4 above illustrates the integrated nature and relationship of the mechanisms, structures and systems built into the South African model of parliamentary state. This model

ensures autonomy of the three branches of state (legislature, executive and judiciary) and the three spheres of government (national, provincial and local). Further, the structure of government and the built-in systems and processes of the state ensure a separation of powers and functions between the different spheres of government and branches of the state. Such separation is crucial to achieve good governance and for the effective and efficient autonomy and performance of the various state and government structures (see paragraph 1.2.1 in chapter 1 and 2.11 in chapter 2 above) (Friedman, 1993:25; Dickovick, 2005; Cameron & Falleti, 2005; Erk, 2006:111; Brown, 2009:1; Hechter, 1999; Treisman, 2007).

5.4.4 Provincial governance

The levels of poverty, development and socio-economic stability in South Africa vary across all nine provinces. The highest concentration of development and socio-economic prosperity is found in the big cities of the former white provinces of Western Cape, Gauteng and Natal.

Figure 5.5: Provincial shares in personal income, 2006



Source: Freund, 2007:661

Figure 5.5 above illustrates the discrepancy in income levels, that is, Gross Domestic Product (GDP) per capita per province. The three major metropolitan provinces of Gauteng, KwaZulu-Natal and the Western Cape had the highest share of personal income in 2006 and the same scenario persists currently. The relatively higher standards of living and economic prosperity in these areas is largely due to the policies of the former apartheid regime, which were biased towards socio-economic development in white areas as compared to black areas. For example, the apartheid government provided world-class health care services to whites, including the world's first heart transplant (see page 289, paragraph 5.3.2 above) (Freund, 2007:661; Skelcher, 2003:771; Suttner, 2004:771).

The most prominent method used by the apartheid government to sustain this biased system and inequality was based on racial and spatial segregation between whites and blacks. This segregation led to the creation of black homelands in the 1980s, which detached black poorer communities from regions with better health care and other social services. Government policies of the late 1990s, which sought to increase efficiency and reduce budget deficits, exacerbated inequalities and poor public services in the predominantly black communities.

For example, the newly introduced government policy, Washington Consensus style macroeconomic framework (Mather & Greenberg, 2003:393) of Growth, Employment and Redistribution (GEAR), which emphasised privatisation and fiscal austerity, that is, cutting social spending, was expected to increase efficiency but actually favoured white developed areas (Freund, 2007:661; Cheru, 2001:505; Scott, 2003:236; Pycroft, 2000:143; Vally, 2007:49).

The economic policy of the new ANC-led government is clearly expressed by Layman (1996:108-109) who notes that “the first budget of the new government clearly signalled a conservative approach toward spending and borrowing, emphasised economic growth, encouraged the private sector, reduced deficit, and lowered corporate taxes”. GEAR was introduced by the government in June 1996 when the broad-based Reconstruction and Development Programme (RDP) was abandoned; its primary objective was to achieve macroeconomic stability and to reduce the budget deficit (see page 354, paragraph 6.2 in chapter 6 below) (Naudé, 2014:454; Cheru, 2001:505; Binns & Robinson, 2002:26; Ngqulunga, 2009:12; RSA, 1994, RSA, 1997).

James (2013:38) points out that the RDP focused on development in a welfarist sense, whereas GEAR was more explicitly liberal in focus and aimed primarily at producing growth and stimulating foreign investment. The RDP was initially released just before the 1994 general elections as an election manifesto of the ANC; that is, a policy pledge to the ANC’s constituency (Wehner, 2000:184). The aim of the RDP was to address the inequalities of apartheid by meeting the basic needs of the population and to accelerate economic growth through government intervention in the economy (Knoesen, 2008:2). According to Pycroft (2000:143), “Rapid deliveries of social goods, education, health care and housing were used as the basis to stimulate economic activity and job creation”.

After the 1994 elections, which the ANC won by a majority of 68%, RDP was the ANC-led government’s progressive social reform, integrated economic development programme that was based on the principles of people driven development, redistribution, integration and sustainability, peace and security, nation building, building infrastructure, meeting basic needs, democratisation, and assessment and accountability (RSA, 1994:8-9; Padayachee, 1994:585, Hunter & Posel, 2012:285, McLennan, 2007:13). However, the government was pressurised by the international community and the World Bank right from the inception of

the RDP to privatise state assets and enterprises. Gran (2002:425) argues that GEAR is a grand irony of liberation in that “after decades of ANC struggle for a strong social democratic state, some two years into democratic rule the ANC argues for retrenchment of the state and more freedom to entrepreneurs and capital owners in markets”. Gran (2002:425) further argues with reference to land reform that GEAR in practice marginalised land reform because the majority of poor people in rural areas were far from being “emerging farmers”.

Harrison-Rockey (1999:171) presents a different view, that GEAR was touted as an implementation plan for the RDP. Heller (2009:134) argues that the RDP reserved a central role for community participation in promoting local development, whereas a shift to the market-driven vision of GEAR came to see local government more as an instrument of implementation than a forum for participation. The introduction of GEAR was not consultative as was the RDP, which led to great discontent among the ANC leadership and its Alliance partners (Wehner, 2000:184). GEAR “was written by a technical team of 15 policy makers and consultants comprised of officials from the Development Bank of Southern Africa (DBSA), the South African Reserve Bank (SARB), three state departments, academics and two representatives from the World Bank” (Ngqulunga, 2009:71).

GEAR signalled the government’s move from a populist, pro-poor and socialist stance with nationalisation of the mines on the agenda, to a stance that favoured cultivation of a more hospitable business environment characterised by more liberal economic and social policies (Binns & Robinson, 2002:26). As Ngqulunga (2009:72) and Bardill (2000:106) posit, GEAR proposed a set of standard Washington Consensus policies: it prescribed a tight monetary policy, a relaxation of exchange controls, financial and trade (price) liberalisation, export-orientated growth, deficit reduction, privatisation of SOEs, labour market reforms, and fiscal restraint (see paragraph 3.6.1 in chapter 3 above). Iheduru (2004:7) argues that the ANC-led government succumbed to pressure from international financial institutions and corporate South Africa to implement GEAR, despite opposition to this neoliberal programme by the ANC’s Alliance partners, that is, the SACP and COSATU (see page 293, paragraph 5.3.3.1 above) (Heller, 2009:129; Layman, 1996:113; Simon, 1989:190; Ngqulunga, 2009:27; Hirschsohn, 2007:11).

COSATU was formed in 1985 when one of its forerunners, the Federation of South African Trade Unions (FOSATU), in a strategic compromise engaged with the UDF-affiliated unions

to advance its working-class politics of challenging the apartheid state, two years after the formation of the UDF (Pillay, 2008:282). Lawrence (2000:122) and Suttner (2004:769) argue that the inauguration of GEAR in June 1996 by the then Finance Minister Trevor Manuel without consulting the ANC and COSATU constituencies and reaffirmed by the then president Thabo Mbeki was proof that COSATU's influence in government economic policy formulation was diminishing. This view is emphasised by Heller (2009:136) and Pillay (2008:285) with reference to COSATU's failure to block the shift from a redistributive RDP to an orthodox neoliberal GEAR policy that COSATU has become subordinate to the ANC's agenda, particularly in corporatist structures, that is, economic policy formulation and direction (Heller, 2009:136; Pillay, 2008:285).

Hirschsohn (2007:6-11) notes that the conditions conducive for SMU to flourish were eroded after 1990 with the liberalisation of political activities and economic restructuring, as the country has been reintegrated into the global community, and thus COSATU's "worker control remains effective over annual industry-level bargaining, although weaker over political and industrial policy issues". Pillay (2008:284) argues that both COSATU and the SACP lost influence in the Alliance when its leaders assumed positions within the ANC before and after the 1994 democratic elections. The assassination of the SACP's secretary general Chris Hani in 1993 (Jung, Lust-Okar & Shapiro, 2005:295) further weakened its position within the Alliance (Pillay, 2008:285).

The SACP and COSATU formed the Tripartite Alliance with the ANC prior to the 1994 elections and enjoyed a prominent profile in the ensuing ANC-led government (Lawrence, 2000:117). The introduction of GEAR resulted in increased private sector investment in social services, such as health care in the wealthiest provinces. Another factor that contributed to the perpetuation of apartheid structural arrangements is the government's fiscal allocation strategy, that is, the Equitable Share formula that "rewarded provinces according to economic output, rather than exclusively basing allocations on need" (Stuckler, Basu & McKee, 2011:165); thus, poor provinces relied more heavily on conditional grants to address their high burden of social services (Stuckler, Basu & McKee, 2011:165).

If we use health care as an example to illustrate the effects of the government's new economic policy, the end result of government policies of the GEAR strategy and Equitable Share allocation is that predominantly white, urbanised and developed areas were favoured at

the expense of predominantly black, densely populated, largely underdeveloped and poorer areas. This policy resulted in a greater transfer of the Equitable Share Allocation to predominantly well-off white areas, while predominantly black poorer areas with high levels of health challenges and the least economic resources received the smallest share of this allocation (Stuckler, Basu & McKee, 2011:165).

Black areas were marginalised and its populations subjected to the suppression and oppressive laws of the apartheid regime. The ANC-led government is faced with a major challenge of redressing these imbalances of the past. On the economic and fiscal front, this disparity resembles the transformation process in Germany, where even today the central government grapples with the challenges of uneven development across its 16 *Länder* (Green *et al.*, 2008:61). In an effort to attain uniform levels of socio-economic development and standards of living, the German government makes special fiscal allocations for poorer provinces to offset their relatively low revenue base and to accelerate their development process. This policy known as the fiscal equalisation (*Finanzausgleich* or FA) system obliges financially strong states to provide equalisation payments to financially weak states (see page 293, paragraph 4.3.2 in chapter 4 above) (Green *et al.*, 2008:61).

This situation in Germany provides an important lesson for the South African government, which is relatively young in its democracy compared to Germany, and whose socio-economic disparities across provinces are alarming. Fiscal equalisation represents the transfer of financial resources across jurisdictions, that is, from national governments to SNGs with the aim of equalising the capacity of different SNGs to provide similar packages of public services with similar levels of taxation within their respective jurisdictions. It is largely intended to offset any imbalances, or differences, between SNGs that result from fiscal decentralisation. In South Africa, one of the fiscal equalisation instruments, namely, the Provincial Equitable Share (PES) fails in its efforts to equalise across provinces because it attempts to achieve too many conflicting goals. These goals include promoting budget autonomy at the subnational level, providing adequate revenue to SNGs, providing appropriate incentives (e.g., tax effort and revenue mobilisation, expenditure efficiency, fiscal sustainability), enhancing equity and fairness, and achieving national objectives. The design of the PES must be simple, transparent, and stable in order to achieve fiscal equalisation across provinces (Alm & Martinez-Vazquez, 2015:1).

5.4.5 Intergovernmental Relations (IGR)

Cooperative governance, as required by chapter 3 of the Constitution, as a concept is the glue that holds the government together by coordinating actions and legislation of the spheres of government, promoting peace, national unity, well-being of the people, and providing an effective, transparent, accountable and coherent government for South Africa as a whole (RSA, 1996:18; Buccus, Hemson, Hicks & Piper, 2008:299). Yet, it respects the integrity and constitutional status of each jurisdiction and its right to serve its constituency and distinctiveness. These values and principles are enshrined in section 41 of the Constitution, which states that the three spheres of government should cooperate with one another in mutual trust and good faith, to promote effective intergovernmental relations and coordination, to respect the constitutional status of government (see page 27, paragraph 1.2.8 in chapter 1 and page 109, paragraph 2.6.2 in chapter 2 above) (Ile, 2010; Inman & Rubinfeld, 1997; Baggchi, 2000:3026; Staten, 1993:131-136; Edwards, 2008:65; RSA, 1996:18; Monro, 2001:46; Cameron & Simeon, 2002:49).

Opeskin (1998 in Ile, 2010:53) defines IGR as the relations between and among all spheres of government (national, provincial, and local) that facilitate the attainment of common goals through cooperation (Bardill, 2000:111; Ile, 2010:53). Therefore, IGR seeks to achieve mutual benefit for all constituent units and a common national goal and cohesion. In addition, IGR seeks to achieve nationally determined goals and objectives through the coordination, alignment and integration of the actions and legislation of legally and politically autonomous SNGs (Agranoff & McGuire, 1999:354). According to Hilliard and Kemp (1999:360-361), “Cooperative governance, also called intergovernmental relations promotes and facilitates intergovernmental cooperation, coordination and collaboration as well as extra-governmental relations, particularly with the citizenry and other non-government organisations to ensure effective, efficient and economical bureaucracy”.

Hilliard and Kemp (1999:360-361) identify the prerequisites of healthy cooperative governance as “clear, concise and unambiguous communication channels; mutual trust, respect and cordial human relations; adequate devolution, delegation and decentralisation to public functionaries to perform completed work; unity of purpose and command; and a genuine desire to uphold the work ethic”. The need for local government to ensure compliance with the constitutional provisions of cooperative governance is stipulated in

section 24 (1) of the Municipal Systems Act No. 32 of 2000. It states that “the planning undertaken by a municipality must be aligned with, and complement, the development plans and strategies of other affected municipalities and other organs of state so as to give effect to the principles of co-operative government contained in section 41 of the Constitution” (RSA, 2000:37).

The Intergovernmental Relations Framework Act (IGRFA) No. 13 of 2005 establishes the framework for all three spheres of government to promote and facilitate IGR and provides mechanisms and procedures to facilitate the settlement of intergovernmental disputes (RSA, 2005:3). Further, the IGRFA provides a framework for all spheres of government to work together in a concerted effort to integrate their actions in the provision of services and addressing the challenges facing the country. These challenges include poverty, unemployment, inequality, underdevelopment, discrimination, and the marginalisation of people and communities. To achieve these goals, government is required to be stable, effective, efficient, transparent, accountable, and coherent (RSA, 2005:14).

IGR is intended to promote and facilitate cooperative governance, as defined in chapter 3 of the Constitution, by ensuring alignment, integration and coordination of actions, and policies and legislation of the different spheres of government. Such cooperation and agreement in action and policy is required to achieve good governance, which is the cornerstone of effective and efficient service delivery; that is, fulfilling the executive obligation of all spheres of government (Edwards, 2008:65). Yet, the intergovernmental relationship between the national government and SNGs is characterised by a top-down approach with virtually no policy-making initiatives from SNGs, for example, foreign policy (Masters, 2015:74) in the case of provinces. The Constitution further makes provision for intergovernmental processes to coordinate provincial international relations and to align them with national development priorities and South Africa's foreign policy, yet these provisions have largely been ineffective and inefficient (Nganje, 2015:52).

The attributes of good governance include transparency, accountability, discipline, fairness, integrity, and responsibility (see page 139, paragraph 3.2 in chapter 3 above) (Naidoo, 2009; Singh, 2013:191; Mwakaje et al., 2013:51; Baird, 2012:266; Tabi & Verdon, 2013:216; Hegre & Nygard; 2014:984). Transparency is “the release of information about institutions that is relevant for evaluating those institutions” (Lindstedt & Naurin, 2010:301). Lindstedt

and Naurin (2010:301) argue that transparency alone is not effective to combat corruption. They argue that the conditions necessary for publicity and accountability, such as education, media circulation (e.g. a free press), and free and fair elections, must be strong and effective for transparency to be effective in preventing corruption (Lindstedt & Naurin, 2010:301).

It is interesting to note that while autocratic tendencies within the ruling party and widespread corrupt practices did dent support for the ruling ANC in the 2014 general elections, with the ANC receiving 62.15 per cent of the vote, compared to a 68% majority in 1994, there was a significant decline in support in the recent 2016 local government elections (see page 335, paragraph 5.4.4 above) (Engel, 2014:79). During these elections, major metropolitan municipalities were lost to the coalition between opposition parties led by the DA (www.news24.com viewed on 8 March 2016). This is a reflection of public discontent with rampant corruption and poor service delivery in government under the leadership of the ANC. Public unhappiness about poor service delivery manifests itself in widespread service delivery protests. However, the outcome of the 2016 local government elections is a departure from the observed black voter retention of the ANC over historic allegiances since the dawn of democracy in 1994. The ANC appears to have mastered the election rhetoric of “working together” and job creation, which feature strongly in all their local government election manifestos to woo black voters and retain their commitment (Netswera, 2016:251).

Edwards (2008:65) attributes inefficiencies in intergovernmental relations to poor capacity and management, rather than structures and procedures. This view as propounded by Edwards (2008:65) suggests that IGR structures and procedures merely serve as the framework and guidelines to facilitate good IGR and therefore people with the requisite skills and attributes are critical in ensuring the effectiveness and efficiency of the IGR system, which ultimately comes down to political will and commitment to good governance. The government has established various structures and procedures such as the Presidential Coordinating Council (PCC), National Intergovernmental Forums (NIF), Provincial Intergovernmental Forums, and Municipal Intergovernmental Forums to support and promote the efficiency of intergovernmental relations, yet the goal of efficient intergovernmental relations remains elusive (RSA, 2005:14).

It is therefore necessary to review the intergovernmental structures and procedures and the mechanisms, procedures and policies which govern them, to investigate challenges in

achieving effective IGR, and to identify and develop strategies to improve it. The PCC consists of the President, the Deputy President, the Minister in the Presidency, the Cabinet member responsible for finance, the Cabinet member responsible for the public service, the Premiers of the nine provinces and a municipal councillor designated by the national organisation representing organised local government. The role of the PCC is to consult provincial governments and organised local government on matters of strategic importance pertaining to the alignment, coordination and implementation of national policy and legislation, priorities, objectives, strategies and service delivery across all levels of government. A National Intergovernmental Forum (NIF) can be established by any minister in the functional area of their portfolio to promote and facilitate intergovernmental relations (Edwards, 2008:65).

The NIF consists of the Cabinet member responsible for the functional area for which the forum is established, any Deputy Minister appointed for such functional area, the members of the Executive Councils (MECs) of provinces who are responsible for a similar functional area in their respective provinces, and a municipal councillor designated by the national organisation representing organised local government, but only if the functional area for which the forum is established includes a matter assigned to local government in terms of Part B of Schedule 4 or Part B of Schedule 5 of the Constitution or in terms of national legislation. The NIF is chaired by the relevant Cabinet minister and its role is to enable a Cabinet minister to consult with provincial governments and organised local government on matters of strategic importance pertaining to the alignment, coordination and implementation of national policy and legislation, priorities, objectives, strategies and service delivery in the appropriate functional areas at provincial and, where appropriate, local government levels (RSA, 2005:14-24).

The Provincial Intergovernmental Forums include the Premier's Intergovernmental Forum, other Provincial Intergovernmental Forums and Interprovincial Forums. The Premier's Intergovernmental Forum is established to promote and facilitate intergovernmental relations between the province and local governments in the province. It is chaired by the Premier and consists of the Premier of the province, the member of the Executive Council of the province who is responsible for local government in the province, any other members of the Executive Council designated by the Premier, the mayors of district and metropolitan municipalities in the province, the administrator of any of those municipalities if the municipality is subject to

an intervention in terms of section 139 of the Constitution and a municipal councillor designated by organised local government in the province (RSA, 2005:14).

The role of the Premier's Intergovernmental Forum is similar in nature to that of the Presidential Coordinating Council and the National Intergovernmental Forums, but focuses on provincial government matters and those arising from the PCC and the NIFs. At municipal level, there are District Intergovernmental Forums and Inter-Municipality Forums. The District Intergovernmental Forum serves as a consultative forum for the district municipality and local municipalities to discuss matters of mutual interest pertaining to national and provincial policy affecting local government interest in the district, implementation of national and provincial policy with respect to the district, and matters arising from the Premier's Intergovernmental Forum affecting the district (RSA, 2005:15).

Other matters dealt with at the District Intergovernmental Forum include mutual support in terms of section 88 of the Municipal Structures Act No. 117 of 1998, the provision of services in the district, coherent planning and development in the district, the co-ordination and alignment of the strategic and performance plans and priorities, objectives and strategies of the municipalities in the district, and any other matters of strategic importance which affect the interests of the municipalities in the district. In addition, part 5 of chapter 2 of the Intergovernmental Relations Framework Act of 2005 makes provision for Intergovernmental Forums to establish intergovernmental technical support structures, if necessary, to provide formal technical support to the forums (RSA, 2005:14-24).

The effectiveness and efficiency of intergovernmental relations is emphasised by Beall (2005:267) who points out that local politics and decentralisation policy are likely to work in South Africa due to a strong central state and robust intergovernmental coordination. There are however tensions in the structure and function of the IGR in South Africa in that, on the one hand, the Constitution and the IGRFA promote interdependence, interrelation, cooperation, coordination, alignment, and integration of actions and legislation of all spheres of government, thus emphasising and suggesting that the government is a unitary state (Tapscott, 2000:119; Jung, Lust-Okar & Shapiro, 2005:278). On the other hand, the Constitution promotes distinctiveness and administrative, political, and expenditure autonomy by provincial governments, which are features characteristic of a federal state. It is however worth noting that the balance of forces leans more towards a unitary model of

government as evinced by the strong emphasis on the features characteristic of a unitary state. A strong leaning towards a unitary model of state is more evident in legislative and policy matters where national legislation takes precedence in situations where there is conflict between national and provincial legislation (see page 389, paragraph 6.4.4 in chapter 6 below) (RSA, 1996; Hawker, 2000:632).

Further emphasis on a unitary state is evinced in the allocation of powers and functions in matters of policy and legislation where the national sphere of government is required to set and develop norms and standards (RSA, 1996) for application and alignment by all SNGs, thus further emphasising the character of a uniform, integrated, cooperative and centralised unitary model of governance. The ANC asserts in its *Legislature and Governance* policy document that its policy position on the form of state is that of a unitary state based on a cooperative governance system of three spheres of government. However, the ANC argues that problems emanating from the existence of provinces are not structural, but rather have to do with the powers and functions; therefore, the issues of the powers and functions of the provinces need to be addressed rather than restructuring of the government (ANC, 2012:11).

Ile (2010:51) places an improved and stronger IGR framework at the centre of governance in public administration and efforts to improve service delivery and socio-economic development. Key features of an effective and efficient IGR, as propounded by Ile (2010:51), include integrated and improved administrative processes and coordinated and aligned government systems. The interpretation, application and object of the IGRFA are defined in Chapter 1 of the Act. Chapter 2 of the Act provides details about the different intergovernmental structures, which include the President's Coordinating Council, National Intergovernmental Forums, Provincial Intergovernmental Forums, and Municipal Intergovernmental Forums. Chapter 3 deals with the conduct of IGR and Chapter 4 with the settlement of intergovernmental disputes (Ile, 2010:51).

5.5 CONCLUSION

Good governance played a significant role in guiding and facilitating political transformation in South Africa. The values and principles, that is, indicators of good governance, such as public participation, responsibility, accountability, respect for human rights, rule of law,

socio-economic development, effectiveness and efficiency of public services, innovation, democracy, government responsiveness, consensus, legitimacy, fairness, integrity and nation building played an important role as the norms and standards, values and principles on which the process of political transformation that started with the Codesa negotiations hinged.

Most importantly, the Codesa negotiations promoted and upheld the values and principles of good governance and required all role-players in the negotiations to commit themselves to these values and to safeguard them with the result that they crafted the framework and basis of the country's Constitution, which became the supreme law of the country. These values are protected and entrenched throughout the Constitution, for example, constitutional values and principles and professional ethics of the public service as enumerated in section 195, chapter 10 of the Constitution. Soon after the country's first democratic general elections in 1994, the Truth and Reconciliation Commission was established and played a significant role in entrenching and engendering reconciliation and reconstruction (both political, physical, social, and most importantly, psychological) in the country and strengthening good governance through the promotion of peace and unity.

Yet, these constitutional constraints on SNGs, especially the provincial governments, do not absolve them from furthering and upholding the constitutional values and principles of good governance in their jurisdiction. The separation of powers and functions among the three branches of government, that is, executive, legislative and judicial, ensures that each exercises its powers and performs its functions independently from the influence or interference of others within the confines of its jurisdiction while striving towards achieving the common objective of national building and good governance. These branches of government use the legal and constitutionally determined mechanisms, that is, powers and functions, structures, systems, processes and procedures to deliver the required public goods and services in a fair, transparent, accountable, responsible, equitable, responsive, democratic, effective and efficient manner. The autonomy of provinces remains constrained by constitutional prescriptions that elevate the national sphere of government into a position of superiority above other spheres in resource allocation and policy-making.

This subservience of provinces is further institutionalised and entrenched through the constitutional prescriptions of cooperative governance, which require all spheres of government to work together to maintain political, economic, and social stability and uniform

standards in the country. IGR provides the mechanism and means for all spheres of government to work together in unity and trust towards attaining the common goals of good governance, socio-economic development and democracy. Democracy is the cornerstone of good governance, that is, it facilitates and promotes good governance by creating a favourable political environment to advance its values and principles. The democratic dispensation in the country since 1994, which is entrenched in the Constitution, has played a significant role in advancing and promoting good governance, for example, multi-party democracy and holding the government accountable through parliamentary oversight and public participation in policy and decision-making.

The Constitution places a huge responsibility on the government to promote good governance through the provisions of legislation and ethos supporting and fostering the values and principles of good governance. Such practice is expected to yield the positive and lasting benefits of socio-economic development, public participation, coherence in government, democratic legitimacy, economic and political stability, rule of law, democracy, poverty eradication, crime reduction, responsiveness, and the effectiveness and efficiency of public services. Socio-economic development relies heavily on the orientation and thrust of political developments in a country. Political transformation determines the legislative and regulatory environment within which socio-economic development unfolds, that is, the actions of the politicians and government officials; for example, the legislation passed and practices observed affect the processes and outcome of how various sectors of the society interact and unfold.

Therefore, it is important that government provides strong and visionary leadership that has the capacity to provide effective and efficient public services, strategic direction and planning; that is, create structures, platforms, systems, mechanisms, procedures, strategies, policies and processes that facilitate and promote sustainable development and entrench democratic governance. Such mechanisms are critical measures of good governance and therefore support development. Political transformation in South Africa since 1994 has produced some degree of benefit and positive development for the country as a whole. Yet, a great number of challenges persist, such as crime, violence, poverty, underdevelopment, shortage of skills, poor education and other social services, rampant corruption, and inequality.

These challenges indicate the weakness and shortcomings of the structures, strategies, systems, and processes being used to effect political transformation and deliver on the executive obligation of government; that is, failure to achieve good governance. These weaknesses manifest themselves in the increase of labour strikes, service delivery protests, rampant corruption, violent crime and a decline in the quality of social welfare, among other challenges facing the country. Therefore, it is necessary to review the approaches and strategies used by government to strengthen political transformation in order to improve good governance in public administration; that is, its institutions and systems to improve its impact. Good governance is central in achieving the goals and objectives of political transformation and therefore should be the focus and thrust of any efforts to strengthen the structures, systems and processes of government.

One of the key benefits of good governance is the combating and reduction of corruption in government and the private sector. Reports of rampant corruption in South Africa are widespread. Corruption weakens state entities and social structures and their ability to render effective and efficient public services and goods. Furthermore, corruption undermines the rule of law and the constitutional values of democracy and respect for human rights. Good governance and an emphasis on strong and effective leadership are necessary to bolster government efforts to combat crime. Good governance and strong leadership are necessary to engender an environment and culture that will promote the rule of law, respect for human rights, and nurture socio-economic development, professional ethics and effective and coherent government.

The UDF and both international organisations and countries in different parts of the world, particularly in Europe, played a key role in pressurising the apartheid regime to institute constitutional and legislative reforms that produced a constitutional democracy based on the values and principles of good governance. The apartheid government used the Constitution and unjust legislation to suppress and subjugate the black majority. These actions went against the values and principles of good governance, such as respect for human rights, legitimacy and voice, public participation, fairness, ethical conduct and political freedom. The apartheid government solidified its stance on the policy of separate development and segregation on the basis of race and inequity in access to public services such as education, health and housing. Thus, the developments in the epochs prior to the first democratic elections of 1994 paved the

way for a constitutional democracy that values public participation, respects human rights, and promotes the values of fairness and the rule of law (see paragraph 5.3.4.1 above).

“You must be the change you wish to see in the world . . .”

– Mahatma Gandhi

CHAPTER 6: CRITICAL ANALYSIS OF THE SOUTH AFRICAN GOVERNANCE MODEL

“There is an absence of democratic accountability and control in every sphere of government and the state. To address this debilitating legacy requires determined action and a deep commitment to transforming our society from a crisis ridden present into something all South Africans can be truly proud of” – Nelson Mandela (1994)

6.1 INTRODUCTION

Recent calls for the review of provinces in view of widespread public service delivery protests and a plethora of corruption cases necessitates a study to develop an effective governance framework to protect and strengthen the integrity of the government and the state in South Africa and to respond effectively to these challenges. These occurrences are symptoms of a badly structured and ill functioning system of government in which good governance has failed, thus threatening the rule of law and the legitimacy of government. Recent studies have attempted to find alternative measures and institutional arrangements and mechanisms which would reduce corruption and improve efficiency in government. These studies further sought to find new mechanisms and strategies, particularly organisational reconfiguration of the state that will curb corruption, improve public service delivery in government, and produce an effective system of government.

The organisational reconfiguration emphasised the strengthening of the edifices, structures and systems, as well as the policies and procedures of institutional frameworks of good governance. The attempt to identify areas and avenues within the governance framework to find potential remedies and solutions to the challenges of governance, as alluded to above, attest to the different forms and configurations that governance can take, including a structure, process, mechanism and strategy. Thus, these avenues and attributes of governance provide potential leads with respect to areas of provincial governance in the current constitutional dispensation that may be responsible for pervasive poor governance and rampant corruption being experienced across all provinces in South Africa (see page 168, paragraph 3.5 in chapter 3 above).

Bevir (2011:179) argues that the failure of democratic governance in countries throughout the world and particularly poorer countries even before the world economic downturn of 2008, led to failure to deliver the most basic service to the citizens (see paragraphs 2.4 and 2.8. in chapter 2, page 170, paragraph 3.6 in chapter 3 and 4.4.1.1 in chapter 4 above) (Rothstein, 2012:143; Sorens, 2016:25; Bardhan, 2002:185; Neamțu, 2016:48). The present study singles out poor governance as one of the major challenges hindering sustainable development in the country, which manifests itself in lack of institutional capacity of the state to fulfil its executive obligation and maintain constitutional democracy, and failure to safeguard the integrity of institutions of the state. The study therefore seeks to identify the challenges, opportunities, strengths and weaknesses within the provincial system of governance which will inform the positive development of an effective governance framework to strengthen and support provincial governance in South Africa.

The main thrust of the present study is on the nurturing, promotion and enforcement of good governance in the provinces to uphold and promote the values and principles of good governance in this sphere of government, as entrenched in section 195 of the Constitution (RSA, 1996:74; Van Niekerk & Olivier, 2012:131) and many international governance mechanisms (see chapter 7 for a detailed assessment of the constitutional values and principles of good governance in South African provinces). The significance of the Constitution of 1996 as the foundation and pillar of governance emanates from its rights-based character. It places high value on civil and political rights and socio-economic rights as entrenched in the Bill of Rights in the Constitution, section 7 to 39, chapter 2, which forms the basis of the indicators of good governance as defined in section 195 of the Constitution and internationally by the World Bank and other international organisations, as its central tenets. The design of the Constitution of 1996 was to achieve fundamental transformation of the society to bring about substantive social and legal justice, peace, political stability and reconciliation among South Africans (see page 321, paragraph 5.4.2 in chapter 5 above) (Phago, 2013:113; Rapatsa, 2015:208).

This noble intent of transformation culminated in notable entrenchment and eventual justiciability of socio-economic rights as an attempt to find a solution to prevailing socio-economic instabilities. However, Rapatsa (2015:208) asserts that the resultant normative legal framework is struggling to adequately address the country's social and economic challenges, largely inherited from the past, due to persistent poverty. This study draws from the analysis

and assessment of the state of governance in the provincial sphere of government in South Africa. This study will use the findings of Chapter seven to identify key factors responsible for the current state of affairs in provincial governance and use these findings to develop measures and mechanisms to strengthen good governance in the provincial sphere of government. The expected benefits deriving from such a governance system include sustainable, accountable, effective and efficient service delivery measures, which promote good governance and compliance with best national and international practices (Rapatsa, 2015:208).

However, these factors should take cognisance of the contextual realities and uniqueness of the South African history and political and socio-economic climate (see chapter 5 above for a detailed historical discussion on the South African political and constitutional dispensation and chapter 7 below for a discussion on the assessment of good governance in provinces). Sangita (2002:325) defines governance as the exercise of economic, political and administrative authority to manage a country's affairs at all levels. Sangita (*ibid.*) further argues that good governance, that is, efficient, effective, responsive, corruption free and citizen friendly administrative practice “is central to the administration for ensuring people's trust in government and promoting social harmony, political stability and economic development”.

In developed countries, good governance together with the market and new public management models are believed to reduce costs and enhance the accountability of administrators and the satisfaction of citizens. The main emphasis of international development and donor agencies regarding good governance in developing countries is on the removal of corruption and the strengthening of civil society, people's participation, transparency, administrative efficiency and accountability. This view is reiterated by In'airat (2014:63) who posits that countries with good governance are favoured by international donors. Voice and accountability and control of corruption are critical in donor criteria to allocate aid to developing countries. The institutional reforms advocated by international development and donor agencies believed to promote good governance in developing countries are shown in table 6.1 below (see paragraphs 2.4 and 2.8 in chapter 2, page 174, paragraph 3.7 in chapter 3 and 4.4.1.1 in chapter 4 above) (Rothstein, 2012:143; Sorens, 2016:25; Bardhan, 2002:185; Neamțu, 2016:48; Ayhan & Ustuner, 2015:4; Rothstein, 2012:146; In'airat, 2014:63; Sangita, 2002:325):

Table 6.1: Good governance reforms for developing countries

Good governance reforms	Institutional values
Political	Democracy, pluralism, participation, decentralisation, human rights and consensus
Economic	Economic liberalisation, private ownership, investment, growth, poverty alleviation
Social	Civil society and non-governmental organisations or communitarianism, social capital or social cohesion
Legal	Rule of law and independent judiciary
Administrative	Accountability, transparency, less corruption, efficiency, effectiveness and responsiveness

Constructed from content in Sangita (2002:325)

These factors that are pertinent to the South African government and the state of governance are discussed in detail in this chapter and will be incorporated in the proposed good governance framework for the provincial sphere of government, which will be presented in Chapter nine. Chapter seven forms the core of the study and seeks to make a scientific contribution to the body of knowledge on the topic of systems of government and the subject of governance and political transformation by critically assessing governance in provinces across the country and using the findings presented in Chapter 8 to development recommendations for the study, as presented in Chapter 9.

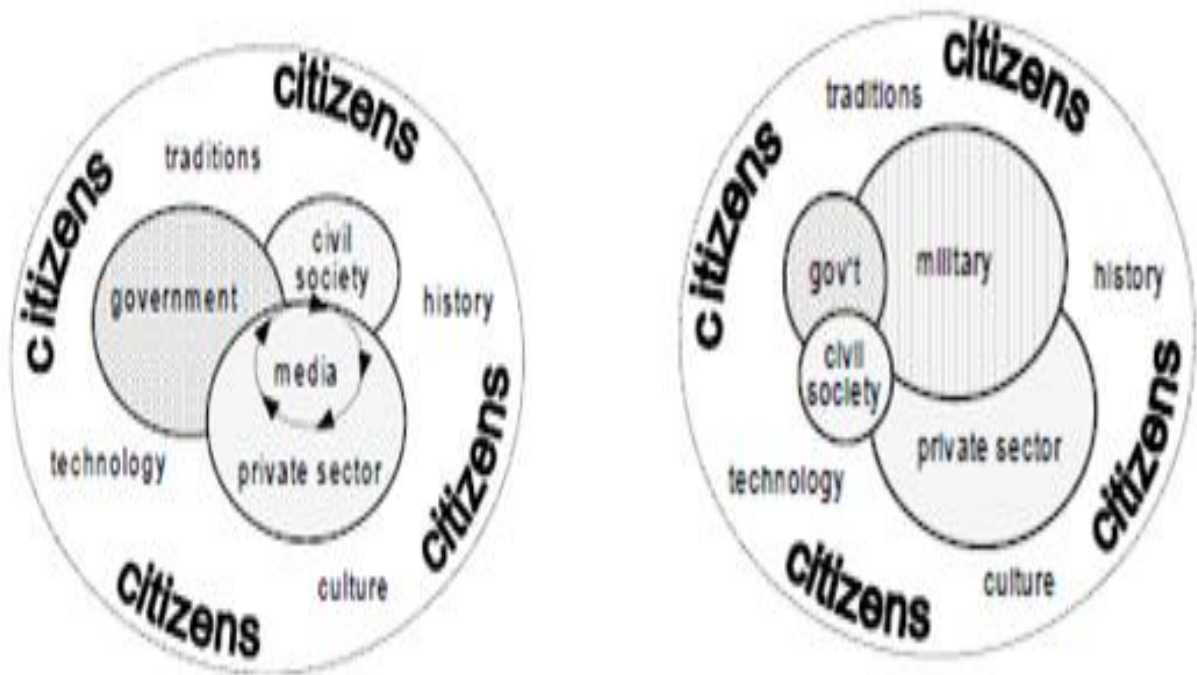
6.2 GOVERNANCE IMPLICATIONS OF POLITICAL AND ECONOMIC DEVELOPMENTS IN SOUTH AFRICA

Governance manifests in many different ways, including the traditions, institutions and processes that determine how power is exercised, how citizens are given a voice, and how decisions are made on issues of public concern (Debnath & Shankar, 2014:237; Graham, Amos & Plumptre, 2003:ii). It is further defined by the World Bank as the manner in which power is exercised in the management of a country's economic resources for development, including the process by which governments are selected, inspected and replaced. Governance is globally perceived as an important factor in eradicating poverty and promoting

development. In order to practice good governance, governments should have properties (indicators of good governance) of accountability, political stability and the absence of violence, effectiveness, regulatory quality, rule of law, control of corruption, and a capable state operating under the rule of law (see page 174, paragraph 3.7 in chapter 3 above) (Debnath & Shankar, 2014:237; Rothstein, 2012:146).

Graham, Amos and Plumptre (2003:1) emphasise that governance is not synonymous with government, but is rather about how governments and other social organisations interact, relate to citizens, make important decisions, and account for their actions. A governance system or framework comprises of agreements, procedures, conventions or policies that define who gets power, how decisions are taken, and how accountability is rendered. Governance may be applied in different contexts; that is, zones of governance including globally, nationally, institutionally, and at community level. At a national level, that is, within a country, it is understood to be the preserve of government at different levels; thus, national, provincial or state, and local or urban. At the national level, the key role players include the civil society, the private sector, government, and the media. These role players (also called sectors of society or entities), their influence, and who makes decisions are illustrated in Figure 6.1 below, where their size in the illustrations is a crude indication of their relative power in many Western countries (Graham, Amos & Plumptre, 2003:1-2).

Figure 6.1: Role players in governance



Source: Graham, Amos and Plumptre (2003:1-2)

Figure 6.1 above shows that in democratic governments, government and private sector have bigger influence than civil society and the media, whereas in dictatorships the military and private sector have bigger influence than government and civil society. In addition, the United Nations Development Program (UNDP) identifies five principles of good governance, as shown in Table 6.2 below (Graham, Amos & Plumptre, 2003:3):

Table 6.2: Principles of good governance

Five Principles of Good Governance	
The Five Good Governance Principles	The UNDP Principles and related UNDP text on which they are based
Legitimacy and Voice	<p>Participation – all men and women should have a voice in decision-making, either directly or through legitimate intermediate institutions that represent their intention. Such broad participation is built on freedom of association and speech, as well as capacities to participate constructively.</p> <p>Consensus orientation – good governance mediates differing interests to reach a broad consensus on what is in the best interest of the group and, where possible, on policies and procedures.</p>
Direction	<p>Strategic vision – leaders and the public have a broad and long-term perspective on good governance and human development, along with a sense of what is needed for such development. There is also an understanding of the historical, cultural and social complexities in which that perspective is grounded.</p>
Performance	<p>Responsiveness – institutions and processes try to serve all stakeholders.</p> <p>Effectiveness and efficiency – processes and institutions produce results that meet needs while making the best use of resources.</p>
Accountability	<p>Accountability – decision-makers in government, the private sector and civil society organisations are accountable to the public, as well as to institutional stakeholders. This accountability differs depending on the organisations and whether the decision is internal or external.</p> <p>Transparency – transparency is built on the free flow of information. Processes, institutions and information are directly accessible to those concerned with them, and enough information is provided to understand and monitor them.</p>
Fairness	<p>Equity – all men and women have opportunities to improve or maintain their wellbeing.</p> <p>Rule of Law – legal frameworks should be fair and enforced impartially, particularly the laws on human rights.</p>

Source: Graham, Amos and Plumptre (2003:3)

Graham, Amos and Plumptre (2003:3) recognise that the principles of governance mentioned above overlap at some point, their outcomes depend on the social context, and that they are not only about the results of power but how well it is exercised. Two of the principles of governance, that is, “legitimacy and voice” and “fairness” have universal recognition as they are directly linked to the United Nations Declaration of Human Rights adopted in 1948 (Graham, Amos & Plumptre, 2003:3). The principles and values of governance in the South African public administration are enshrined and outlined in section 195 of the Constitution. They include a high standard of professional ethics, orientation towards development, impartiality, fairness, equity, public participation in policy-making, accountability, transparency, good human capital management and development practices, promotion of broad representation, and focus toward redressing the imbalances of the past (RSA, 1996:74).

It is therefore expected that in a society like South Africa, which prides itself as the most democratic country whose Constitution is hailed as the best in the world, should epitomise these values and principles. The negotiated settlement of 1994 and the Codesa negotiations leading up to the 1994 elections set the tone for the country to follow the path of good governance and democracy (see page 310, paragraph 5.4.1 in chapter 5 above). Yet, this path of democracy remains elusive given the dire socio-economic challenges in the country, which continue to deprive the majority of the citizens of dignity and basic human rights (Corrigan, 2009:6). This is a tall order that the country’s Constitution has set itself to achieve. The enormity of the task is more evident in the efforts by the current government to tackle the persistent challenges of poverty, skewed development, high inequality, intolerance, corruption, unemployment, crime, poor levels of education, and violent crimes, among others (see paragraph 3.6.2 in chapter 3 above) (Badat & Sayed, 2014:142; Nattrass, 2014:89; Brinkerhoff & Brinkerhoff, 2002:511).

The socio-economic dangers associated with unemployment, for example, are best explained by Korpi (2002:365) who argues that “in Western countries, the labour market forms the context in which citizens create the wealth of nations and participate in distributive processes generating socioeconomic stratification and inequality”. Unemployment is one of the direct results of poor governance as it lies squarely with the economic policy of governments. Korpi (2002) argues that a trade-off between unemployment and the inflation rate needs to be made by the government, thus emphasising the role of governance in controlling the unemployment rate. The ANC government should engage in policies targeting flexibility in production factor

markets (including labour, patterns in land ownership, unionisation, investment and infrastructural development) to support trade adjustment and reduce the unemployment rate (Nattrass, 2014:87; Segal & Brawley, 2009:698; Harmse, Blaauw & Schenck, 2009:363).

These challenges are not new to South Africa, as highlighted in the late former South African president Nelson Mandela's speech in 1997 when he cautioned the government and the ruling party, the ANC, to "abandon "careerism," refuse to be "predatory elite" looting the "national wealth", shun the temptations of greed, abandon its willingness to tolerate corruption at multiple governmental levels, and begin to act thoroughly in the full national, rather than "the party interest" (Rotberg, 2014:9). Even more challenging is the process of socio-economic transformation, whose aim is to redress imbalances of the past and to complement the process of political transformation that ushered in the new political dispensation in 1994. Political transformation sought to achieve public participation, democracy, political stability, and safeguarding the integrity of the judiciary as captured in the ANC's Slogan of 'A Better life For All' (Desai, 2010:2; Mangaliso & Mangaliso, 2013:530; Wenzel, 2007:49).

Good governance mechanisms and practices are key in achieving the desired transformation outcomes. According to Wenzel (2007:55), "The systemic implementation patterns of delays and stalled implementation, of unsustainable delivery mechanisms and stalled benefits to the poor lead to fundamental questions regarding future governance trends and transformation outcomes". These ideals remain elusive today as such transformation is bound to create unhappiness and dissatisfaction among some sectors of the society. Key examples of such transformation processes include enactment of legislation pertaining to land reform and Broad Based Black Economic Empowerment, which are perceived to advantage some sectors of the society over others (Wenzel, 2007:55).

Yet, as pointed out by Bernstein (2014:23), these are some of the tough choices and decisions that the South African government and society as a whole need to make to bring about transformation and progress in the country, and which are now expressed in the country's National Development Plan (NDP). The NDP "aims to eliminate poverty, and reduce inequality by 2030. It also plans to unite South Africans, grow an inclusive economy, build capabilities, unleash the energies of the citizens, enhance the capability of the state, and inspire collaboration between leaders to solve problems" (Lues, 2014:5). These objectives can only be achieved if the government develops and implements effective good governance

structures and mechanisms, which will ensure effective service delivery and promotion of democracy and the rule of law, which are key elements of good governance. One of the key priorities of a development state is economic prosperity for South Africa as a whole. The three key attributes essential for provincial governments to contribute to the developmental state are the ability for strategic or long-term planning; to focus stakeholders on a common agenda, that is, strategic orientation; and to mobilise state resources to build productive capabilities (Turok, 2010:497; Koma, 2012:53).

The primary purpose of a developmental state is to harness the power, that is, resources and potential of government at all spheres to ensure that each part of the country develops to its full potential. Turok (2010:497) argues that provincial capacity is uneven across the country and weakest where support is needed most. Most of the current challenges of uneven and weak capacity among provinces are due to the deliberate skewed development programmes of the former apartheid government, which were biased towards the minority of the population. Good governance hinges on visionary leadership and strong management, which are in turn crucial for driving development programmes and initiatives in the country (Turok, 2010:497).

Any development initiative requires strong and effective governance structures and mechanisms to ensure that state resources are utilised effectively and correctly for the public benefit. The key element of governance in development matters is public participation, which enhances the sustainability of development initiatives in government. For example, the Municipal Systems Act of 2000 (MSA) requires local governments to conduct public hearings and public participation workshops, including Mayor's Listening Campaigns (MLC), in the formulation and development of Integrated Development Plans (IDP) (McKay 2004:v; Mzimakwe, 2010:501; Maphunye & Mafunisa, 2008:461).

However, Smith (2011:504) argues that internal fragmentation across the spheres of government and between politicians and officials and lack of recourse in the service delivery landscape significantly restrains the ability of citizens to access the state; that is, constrains public participation in affairs of the state. The results of these uneven developments include the influx of people from poorer and less developed or rural areas to more developed areas in search of better socio-economic opportunities. Turok (2010:497) argues that most provinces

lack the necessary resources and strategies for sustained implementation of effective developmental programmes (Turok, 2010:497).

Key among other challenges facing government is coordination, meaning that development efforts by all levels and sectors of government are fragmented and not yielding the desired cumulative development impact. A renewed interest in a developmental state across Africa is emerging. This renewed interest is partly due to the failure of market-linked development approaches or Structural Adjustment Programmes (SAP), that is, policies, strategies and programmes as advocated by the Washington Consensus and advanced by the Bretton Woods institutions such as the World Bank and the International Monetary Fund (IMF) in the 1980s and 1990s to deliver socio-economic progress (see page 172, paragraph 3.6.1 in chapter 3, 4.4.1.1 in chapter 4 and 5.4.4 in chapter 5 above) (Padayachee, 1994:586; Abouharb & Cingranelli, 2004:1; Plaza & Stromquist, 2006:95).

SAPs involved rolling back state expenditure and were characterised by selling off state-owned assets, deregulating financial markets and imposing strict monetarist economic policies, among other processes (Laird, 2008:378; Hogenboom, 2012:149; Zutshi, 2014:17; Therien, 2002:240). Effective and stronger governance in government leads to improved quality of life and provision of public services, such as housing, social amenities, job creation and economic development. Thus, the migration of people from poorer and less developed provinces, for example from the Eastern Cape to the Western Cape is an indication of poor governance in the former and stronger and more effective governance in the latter. New inspiration for many African countries comes from the success of East Asian countries where “governments have played a leading role in strengthening growth and spreading prosperity” (Turok, 2010:498).

For example, in Malaysia, the government embarked on the New Economic Policy (NEP) in 1970 following the 1969 race riots. State intervention in the form of the NEP, an ambitious 20 year social engineering plan “greatly reduced poverty among indigenous Malays and made substantial progress towards achieving inter-ethnic economic parity” (Simpson, 2005:iii). The Malaysian government used a combination of policies to achieve its targets and “placed a high premium on political stability and continuity of government, macro-economic stability, an efficient civil service, human resource development, agricultural reform and export orientation” (Simpson, 2005:iii).

Government intervention and an increased role in economic growth and stability, development, and the allocation of resources have increased dramatically in developed economies, such as the US and Europe, following the global financial crisis in 2008. The development challenges facing South Africa include high levels of unemployment (two-fifths of working-age adults are unemployed), poor levels of entrepreneurship, and high-income inequalities. Lee (2010:1) attributes the high levels of socio-economic inequality and the severe under-representation of blacks in socially esteemed and economically influential positions in South Africa to the colonial and apartheid legacies of exclusion, discrimination and repression. In fact, despite the South African government's efforts of transformation in all spheres of the economy and society and to redress historical inequalities, the income gap between the rich and the poor is widening. Income inequality has grown unabated since 1993 and at present South Africa is the world's most unequal society. Poverty correlates strongly with race and wealth is distributed along racial lines. Africans are poorer than Coloureds, who are poorer than Indians, who are poorer than Whites (Coetzee & Rau, 2017:12).

Pityana (2016:88) argues that despite the success of the ANC government under Nelson Mandela and Thabo Mbeki in transforming the socio-political landscape of the country and growing the economy, it failed to deliver on the constitutional values and promise of job creation, poverty alleviation and reduction of inequality to restore human dignity. The new social and economic system continues to benefit the wealthy classes and the elites. Thus, it entrenches and maintains the apartheid fundamentals within the structure of the economy and human relations that continue to be marked by race-based identities and render the social cohesion objective unattainable in the immediate term. The growing inequality in the country despite robust economic growth soon after 1994 is attributed to the policies of the ruling ANC, which adopted neoliberal ideologies during the national liberation struggle, a concept which increased macroeconomic risks (that is, social and environmental injustice) for citizens. As a result, the Gini co-efficient rose from 0.596 in 1995 to 0.635 in 2001, the country failed to achieve its Millennium Development Goals (MDGs) since 1990, it dropped from position 121 on the Human Development Index (HDI) between 1990 and 2006 to position 123 in 2011, with the end result of reduced quality of life for the majority of citizens. GEAR is one of the neoliberal macroeconomic policies introduced by the ANC government soon after the 1994 elections (see page 355, paragraph 5.4.4 in chapter 5 above) (Freund, 2007:661; Cheru, 2001:505; Scott, 2003:236; Pycroft, 2000:143; Vally, 2007:49; Leonard, 2014:372).

Naudé (2014:454) corroborates these findings by positing that “the proportion of people living below the national poverty line first increased from thirty-one per cent (1995) to thirty-eight per cent (2000) and then dropped to twenty-three per cent in 2006”, thus highlighting the positive impact of government’s expansion of social security grants on alleviation of poverty in South Africa. However, this figure increased to 55.3% between 2011 and 2015 (see page 453 paragraph 7.2.3 in chapter 7 below) (RSA, 2017:1; www.dailymaverick.co.za viewed on 25 August 2017). A series of intense policy-making and law-making initiatives by the government in relation to the core issues of poverty, inequality and unemployment has had mixed results, as stated above. These policy initiatives in chronological order since 1994 include the Reconstruction and Development Plan (RDP) in 1994, the Growth, Employment and Redistribution Plan (GEAR) in 1996, the Accelerated and Shared Growth Initiative - South Africa (ASGISA) in 2006, the New Growth Path (NGP) in 2009, and the National Development Plan (NDP) in 2012 (see page 355, paragraph 5.4.4 in chapter 5 above) (Naudé, 2014:454; Cheru, 2001:505; Binns & Robinson, 2002:26; Ngqulunga, 2009:12; RSA, 1994, RSA, 1997).

Part of the neoliberal ideologies of the ANC in the quest to achieve socio-economic development entailed emphasising the partnership between the state and formal civil society actors (that is, non-governmental organisations - NGOs), including subcontracting NGOs to address the legacies of apartheid. This resulted in moving accountability away from marginalised groups to these non-state actors, which pushed for alternative donor agendas as opposed to those of the marginalised groups, thus compromising public participation in policy decision-making and development initiatives. The new policy agenda of international donors based on multi-stakeholder approaches to good governance requires involvement of civil society organisations (CSOs) in public administration functions. These organisations are required to perform two key roles on a national level, namely, to act as professional service delivery agents and democratic watchdogs to promote accountability and professionalism in the public sector. This approach is referred to as network governance (see page 155, paragraph 3.3.1 in chapter 3 above) (Norman, 2014:241; Groutsis, Van den Broek & Harvey, 2015:1562; Bogdanova, Tkach & Aasland, 2016:140; Bevir, 2011:34).

Furthermore, international financial institutions and donors require developing countries such as Pakistan where the rule of law is absent to uphold this principle as one of the indicators of good government (Ahmed, 2015:9). Other than being a racially diverse and divided society

and the history of racial discrimination, South Africa seems to be following right on the path of young democracies of South America since the 1970s. Since 1970 these countries transitioned from political dictatorships to more democratic regimes and have experienced macroeconomic instability (some countries experienced debt crises and episodes of high rates of inflation) and delayed stabilisation processes. Like South Africa, these countries experienced challenges of inflation, inequality and constraints on the executive (see paragraph 2.4, 2.8.1 and 2.7.2 in chapter 2, paragraph 3.6 in chapter 3, page 236, paragraph 4.4.1.1 in chapter 4 above) (Bardhan, 2002:185; Inman & Rubinfeld, 1997; Monro, 2001:54; Bagchi, 2000:3026; Neamțu, 2016:48; Sorens, 2016:25; Bittencourt, 2015:463).

On the other hand, Turok (2010:498) attributes the high levels of income inequality in the country to distorted settlement patterns “which trap poor communities in peripheral urban townships and remote rural areas”. Such skew and uneven patterns of development put poorer communities in a relatively disadvantageous position compared to more affluent communities and thus limit public participation in decision-making processes and mainstream economic activities, thus weakening good governance ideals. Poverty and inequality in South Africa increased in the 1990s and then decreased in the 2000s. The decrease in poverty and inequality during the 2000s was due to the introduction of child support grants and improvements in social expenditure and service delivery (Aguero, Carter & May, 2007:783).

Organisational capacity to focus on the underlying challenges for durable outcomes is one of the key features of a developmental state. Creation of productive employment is at the centre of most development strategies as unemployment is the direct result of poverty and exclusion. Effective developmental states have the capacity to develop strategies to anticipate and deal effectively with risks and to prevent problems from occurring or escalating. Further, these states place national interests above narrow sectional interest and individualistic rent-seeking behaviour. In this way, these states promote dynamic and inclusive economic growth and prevent the exploitation and exclusion of the marginalised masses (Turok, 2010:499).

Koma (2012:57) points out key development objectives, which include the provision of basic services such as water, electricity and sanitation, and social services such as health care, education and community safety. The widespread service delivery protests are a direct result of poor governance at local government level, which manifests in the form of poor public services, corruption, appointment of incompetent staff in critical positions, and lack of critical

skills. This situation can be averted by strengthening good governance structures and mechanisms such as increased transparency, accountability, public participation and good HRM practices. The developmental objectives and responsibilities of local government are entrenched in sections 152 and 153 (Chapter 7) of the Constitution (RSA, 1996:57).

At the frontline of provision of these services is the local sphere of government, which is charged with the task and responsibility of providing these services as it is the closest sphere of government to the people. On the other hand, both national and provincial governments are required by the Constitution to provide a support and oversight role over the local government sphere to ensure attainment of its developmental mandate (see section 154 of the Constitution) (RSA, 1996:57). It is therefore clear that the responsibility for development cuts across all spheres of government. However, given the lack of capacity facing local government, such as challenges of shortage of skills and resources, the Constitutional responsibility of both the national and provincial spheres of government to provide oversight and support to local government is heightened (RSA, 1996:57).

The need for close cooperation among the different spheres of government, as provided for in chapter 3 of the Constitution, is crucial for improved governance in the state as cooperative governance promotes the integration, cooperation, alignment and coordination of the policy and the activities of the three spheres of government. Common legislation, policies, practices and procedures across all the three spheres of government, in accordance with the Intergovernmental Relations Framework Act (IGRFA), is one of the key mechanisms to facilitate and promote good governance within the state (see page 109, paragraph 2.6.2 in chapter 2, page 341, paragraph 5.4.5 in chapter 5 above and page 530, paragraph 8.4.3 in chapter 8 above and the recommendations in chapter 9 below) (Campbell, 2016:655; RSA, 2005:3; Inman & Rubinfeld, 1997; Baggchi, 2000:3026; Staten, 1993:131-136; Monro, 2001:46).

In addition, effective governance models underpinned by integrated and effective governance mechanisms should be complemented and supported by strong legislation and policies. The state should play a central role in implementing (coordinating, facilitating and promoting) and enforcing these models to ensure optimal compliance and maximum impact. New development approaches by government include the development of sustainable and integrated residential areas. An example of this is the social housing initiatives in cities

throughout the country, which are high density sustainable settlements with easy access to social amenities, such as health care, educational and cultural facilities, and basic services, such as transport, water, sanitation and electricity (see chapter 4 for detailed background on governance and the socio-economic profile of South Africa) (RSA, 1996:57).

6.3 GOOD GOVERNANCE MECHANISMS

The present study explores various governance mechanisms employed in South Africa, on the African continent and internationally to strengthen and promote good governance in public administration, particularly regarding its impact on socio-economic development and political stability in a country. An overview of these mechanisms provides a broad and wider understanding of good governance and the various mechanisms available to facilitate and promote it. The key feature amongst all these mechanisms is the universality of good governance values and principles, which are pursued; the basis for these values and principles is respect for human rights and ethical conduct in government. The focus of most governance mechanisms is on key values such as human development, transparency, accountability, responsibility, the rule of law, human rights, public participation and safety. This section provides an overview of various governance assessment mechanisms, which include the African Peer Review Mechanism (APRM) and the Mo Ibrahim Index of African Governance (IIAG).

Other governance assessment mechanisms exist, such as Transparency International, the Afro-Barometer and the World Governance Indicators Survey (WGIS). However, these will not be discussed in the study due to their universal and global focus. In contrast, the APRM and the IIAG have a more direct focus on governance in the African context. The governance mechanisms employed in South Africa, such as those provided for in the Constitution through section 195 and advanced by the Public Service Commission and various institutions supporting constitutional democracy (also known as Chapter 9 institutions), benefit from alignment and congruence with these universal governance mechanisms. It is therefore important in observing these universal principles and mechanisms to ensure that governance mechanisms employed at the national and sub-national government level find resonance in these mechanisms.

6.3.1 African Peer Review Mechanism (APRM)

The APRM is an instrument of self-assessment by African Union member states who voluntarily join the process and agree to hold each other accountable to various standards of good governance prescribed in the mechanism's *Declaration on Democracy, Political, Economic and Corporate Governance* (Chikwanha, 2007:3; Masterson, 2005:2; Nzewi, 2012:37). According to Chikwanha (2007:9), "Its primary purpose is to foster the adoption of appropriate laws, policies, standards and practices that lead to political stability, high economic growth, sustainable development, and accelerated sub-regional and continental economic integration". The APRM uses various mechanisms to achieve good governance in member states; these include sharing of experiences, reinforcement of successful and best practice, as well as identifying deficiencies and assessing the needs for capacity building (see paragraph 3.6.2 in chapter 3 above) (Chikwanha, 2007:5; Dang, Visseren-Hamakers & Arts, 2015:1).

The process of formulating policies on economic cooperation and integration on the continent began since the independence period in the 1950s; yet, the present regional and continental socio-economic growth and development has been elusive. As a result, the continent has a high concentration of sub-regional economic organisations, multilateral arrangements, and institutions promoting the objectives of regionalism through such initiatives as the New Partnership for Africa's Development (NEPAD). Yet, Africa remains the world's least developed and integrated region. Thus, the APRM has not been successful in addressing good governance, development and the quest for regional economic integration (Jiboku & Okeke-Uzodike, 2014:1).

The APRM and other peer review mechanisms, such as the Universal Periodic Review Mechanism (UPR) of the UN Human Rights Council, reflect a growing trend in international organisations to utilise peer review processes to assess and improve governance and human rights performance among member states. Good governance is increasingly seen as a cornerstone for a thriving economy and political stability, thus international efforts to calculate the comparative performance of states in terms of various indicators of governance have been on the increase since the 1990s (Erkkilä & Piironen, 2014:344).

Peer review mechanisms emphasise follow-up and actions to be taken as a result of the reviews to ensure compliance of member states with set standards and objectives. Furthermore, peer review mechanisms are products of a consensus decision-making process based on voluntary engagement; that is, good governance standards and indicators to be achieved are agreed to by member states on a voluntary basis through general consensus (McMahon, Busia & Ascherio, 2013:266). The APRM is an initiative of NEPAD, which together with the Pan African Parliament (PAP) was established by the African Union (AU) to promote good governance in Africa (Phago, 2013:105). NEPAD was drawn up on the basis of a new thinking that political order and progress on the continent was only possible if African countries formed partnerships amongst themselves (Mathoho, 2007:1; Herbert, 2004:1; Ngwainmbi, 2005:284).

The Constitutive Act of the African Union (CA-AU) features good governance among its objectives and principles. In order to advance the spirit and values of good governance across the continent and to fight corruption, AU leaders committed to the adoption of the African Union Convention on Preventing and Combating Corruption (AUCPCC). Mangu (2012:18) argues that despite some progress in fighting corruption and promoting good governance, most African countries failed to comply with the AUCPCC and corruption continues unabated. The fight against corruption should be strengthened by increasing participation of all the stakeholders at national, regional and international levels, and building partnerships among stakeholders. The proliferation of corruption on the continent is linked to failure among AU member states to comply with the APRM, which serves as a good governance instrument to advance and promote the values and goals of the AU and its structures, such as PAP and NEPAD (Phago, 2013:105).

The failure of the AU, its structures and the APRM in promoting good governance and consolidating democratic governance on the continent is further demonstrated by the lack of public trust in representative institutions such as legislatures and local governments; that is, legitimacy. “Representative institutions in a democracy, such as legislatures and local government, are indispensable cogs in the machinery of the state... and ...legitimacy is the oil that lubricates the machinery of the state, preventing friction and conflict in the political system” (Jana, 2014:91). One dysfunctional public representative institution can adversely affect the legitimacy of other representative institutions and by extension the legitimacy of the state. Failure to facilitate participatory democracy and thus promote the legitimacy of

public institutions threatens the sustainability of democracy and improvement in people's living standards on the continent (Jana, 2014:91).

Mathoho (2007:1) however posits that critics of NEPAD and the APRM charge that these institutions advance a Western-led agenda, which will fail to meet the needs of Africans. Chikwanha (2007:1) argues that the regressing levels of development on the African continent have led to an "institutional overload", that is, the presence of fragmented multi-national institutions that are all tasked with addressing the same problem. Many of these institutions have gone through modifications that rarely resulted in significant changes that have a coherent direction (Chikwanha, 2007:1). The APRM is the most decisive element towards achieving the objectives of NEPAD (Mukamunana & Kuye, 2005:591). However, Mukamunana and Kuye (2005:591) argue that the APRM process needs to be revisited by targeting critical governance and continental policies and the provision of incentives to ensure effective and successful implementation (Mukamunana & Kuye, 2005:591).

The APRM is a governance model to which African countries voluntarily commit to comply with the principles of the Constitutive Act and other decisions facilitated through the AU and NEPAD. Mukamunana and Kuye (2005:591) define the APRM as an instrument to monitor and evaluate the political, economic and corporate governance in African states. The APRM was established in response to the challenges and problems facing the African continent since independence and the subsequent poor economic performance. Prior to the establishment of the APRM, Africa was plagued by high levels of poverty and related socio-economic and security issues. Africa relied for many years on wealthy Western countries to solve their governance problems (Mathoho, 2007:1).

In 2001, Africa with a population of nearly 800 million people contributed less than 2% of the global trade balance. This poor economic performance contradicts the sizeable loans and aid packages that have been pumped into African economies by various donor bodies and private banks since the end of colonialism. Good governance has become prominent in African development discourse and in understanding the paradox between vast amounts of aid being given to African countries and their poor economic performance (see section 5.2 in chapter 5 above for a detailed discussion on governance) (Masterson, 2005:2).

Economic stability in a country creates a favourable and attractive environment for foreign investment. Thus, good governance and the efficiency of government are the main factors that influence the decision-making process of investors. Therefore, best practices in governance, that is, good governance leads to the sustainable economic development of countries and the welfare of the citizens (Beleiu, Pop & Țâmpu, 2015:6).

A report by the World Bank in 1989 titled *Sub-Saharan Africa: From crisis to sustainable growth* attributed slow economic growth and development in Africa to bad governance and mismanagement of the continent's resources (Aggad, 2008:29; Mathoho, 2007:9). This publication linked the low economic growth rate of African economies to the poor "governance" of non-Weberian public bureaucracies. To back up this finding, Adkisson and McFerrin (2014:441) found a strong correlation between the level of development, measured as real per capita GDP, and good governance (see paragraph 3.7.3 in chapter 3 above). They also found that culture had a strong influence on good governance and the level of development. Non-Weberian public bureaucracies refer to governments of developing countries in which the World Bank encouraged government intervention to stimulate development. This was based on the success of welfare state principles, which prevailed from the beginning of the 1950s to the end of the 1970s. Hence, the World Bank support for public interventionism in developing countries to bypass inefficient market mechanisms (Adkisson & McFerrin, 2014:441).

"Governance" was initially used to characterise the poor quality of economic management of large public sectors, embracing the Washington Consensus, and the "Victorian virtues" of "free markets and sound money". The concept then gradually expanded over time to encompass political and social values, for example, democracy and its checks and balances, such as civil society participation, eventually reflecting the social contract of the liberal society. The World Bank introduced democracy as an indicator of governance soon after the fall of the Berlin Wall. Thus, the World Bank has over the past three decades had an appreciable impact on shaping and disseminating the concept of governance. It also produced the comprehensive development framework in 1998, which embodied the spirit of "good governance" by encompassing a set of principles to guide poverty reduction and the long-term vision of sustainable development (Diarra & Plane, 2014:474). The World Bank also uses "soft power" and "hard power"; coined by Nye (2004), to shape and disseminate "good governance" principles. "Soft power" refers to the World Bank's use of its influence to

convince member countries to share the same rules and the same vision. On the other hand, “hard power” refers to its ability to allocate aid. Three indicators extensively used to measure good governance are the Country Policy and Institutional Assessment (CPIA), the Worldwide Governance Indicators (WGIs), and the Doing Business (DB) indicators (Diarra & Plane, 2014:474).

Other indicators or indices of good governance commonly used in policy-making and research include Transparency International’s Corruption Perceptions Index (CPI) and Freedom House’s Freedom in the World, and measures designed to capture related topics, such as the UNDP’s Human Development Index (HDI) and the Legatum Prosperity Index (Gisselquist, 2014:513). Donor organisations such as the United Nations, USAID and the World Bank promote the implementation of decentralisation in developing countries around the world as a means to increase good governance in these countries (Musonerwa, 2010:1; Menocal & Eade, 2004:791; Canaleta, Arzoz & Garate, 2004:71; Van Doeveren, 2009:1).

African leaders have acknowledged the need for improved governance and management (Aggad, 2008:29). The APRM was established in June 2002 when the code of good governance and the Declaration on Democracy, Political, Economic and Corporate Governance were approved by the Heads of State and Government Implementation Committee (HSIC) of NEPAD as instruments to lead African countries to good governance and economic development (Mukamunana & Kuye, 2005:591).

NEPAD is an economic development initiative, which seeks to promote African development on African terms through governance reforms and increased transparency and accountability, both to the donor community and other African leaders (Masterson, 2005:2). Prior to the HSIC meeting in June 2002, African leaders initiated a development plan named the New Economic Partnership for Africa’s Development (NEPAD) to lever the continent out of the cycle of poverty, political instability and marginalisation in the global system. HISC met in Abuja, Nigeria in 2001 and agreed on parameters for good governance, which would guide their political and economic operations in order to achieve the objectives set out in the NEPAD programme (Mukamunana & Kuye, 2005:591).

Mukamunana and Kuye (2005:591) liken the APRM to the Organisation for Economic Corporation and Development (OECD) peer reviews in which systematic examination and

assessment of the performance of a state is undertaken by other states (peers), by designated institutions or by a combination of states and designated institutions. The APRM is expected to provide linkages between the principles of good governance, democracy, peace and security, and development (Phago, 2013:107).

Phago (2013:113) argues that in South Africa the African Renaissance concept was revived during the Mbeki administration with the intention to consolidate the democratic gains by further implementing the APRM principles as an indicator for democracy and governance strength in South Africa. However, Phago (*ibid.*) argues that the APRM consolidation of democracy and governance in accordance with AU and NEPAD norms and standards has eroded under the Zuma administration. The status of the APRM under the Zuma administration has diminished and interest towards the APRM has declined. Phago (2013:113) posits that the declining interest in the APRM programme by the Zuma administration could be due to the fact that South Africa and Nigeria have ceased to be strategic continental partners in promoting NEPAD, as was the case during presidents Mbeki and Obasanjo's tenure (Phago, 2013:113).

6.3.2 Mo Ibrahim Index of African Governance (IIAG)

Lagging development in developing countries has led to an increased focus on good governance, which has become the Holy Grail in these countries. The Mo Ibrahim Index of African Governance (IIAG) provides substantial, reliable and objective data for analysis of good governance in Africa (Dassah, 2013:730). IIAG is the most comprehensive collection of quantitative data on governance in Africa. It was established in 2007 to provide an annual assessment of governance in African countries. Further, the IIAG provides a framework for citizens, governments, institutions and business to assess the delivery of public goods and services, and policy outcomes across Africa (IIAG, 2013).

The IIAG provides assessment data on 94 different governance indicators, which are grouped into four categories, namely, safety and rule of law, participation and human rights, sustainable economic opportunity, and human development. These categories are further subdivided into 14 subcategories. The 2008 IIAG used an additional category of transparency and corruption for assessment of governance performance in African countries (Rotberg & Gisselquist, 2008:v). The IIAG measures the degree to which these political, social and

economic goods are provided, that is, it measures governance performance by 48 African countries south of the Sahara. The Mo Ibrahim Foundation defines governance as the provision of political, social and economic public goods and services that citizens have a right to expect from their state and that a state has a responsibility to deliver to its citizens (IIAG, 2013) (www.moibrahimfoundation.org retrieved 20 July 2014).

The five categories of good governance indicators mentioned above constitute the key political, social and economic goods and services that the nation states have the responsibility to provide to their citizens. The Index and the sources of information for the indicators used are updated annually to ensure that the best available data is employed in the assessment of governance (Rotberg & Gisselquist, 2008:1). South Africa shows a consistently higher governance performance in all four categories, as shown in Table 6.3 below:

Table 6.3: South Africa 2012 scores and rankings on IAG

	Score / 100	Change since 2011	Africa average	Rank / 52
OVERALL SCORE	71.3	-0.2	51.6	5
SAFETY & RULE OF LAW	69.8	-0.6	52.7	7
RULE OF LAW	88.2	+0.9	47.6	3
ACCOUNTABILITY	65.2	+0.0	41.5	5
PERSONAL SAFETY	30.6	-3.4	43.1	41
NATIONAL SECURITY	95.0	+0.0	78.4	8
PARTICIPATION & HUMAN RIGHTS	73.1	-0.0	48.4	3
PARTICIPATION	73.0	0.0	46.1	8
RIGHTS	68.8	-0.1	45.3	6
GENDER	77.5	0.0	53.8	4
SUSTAINABLE ECONOMIC OPPORTUNITY	65.1	+0.1	47.0	5
PUBLIC MANAGEMENT	76.9	-1.0	53.4	1
BUSINESS ENVIRONMENT	70.4	+0.5	49.1	5
INFRASTRUCTURE	54.1	+1.0	32.6	7
RURAL SECTOR	58.9	-0.2	53.8	21
HUMAN DEVELOPMENT	77.4	-0.2	58.3	6
WELFARE	77.8	0.0	51.6	3
EDUCATION	71.4	-0.6	52.9	7
HEALTH	82.9	0.0	70.3	10

Source: IAG (2013)

South Africa's performance on the IAG is relatively higher when compared to other African and Southern African Development Community (SADC) countries. It scores 71.3 (out of 100) and shows an improvement of +0.6 since 2000, it scores higher than the African average (51.6) and ranks 5th (out of 52) overall, and scores higher than the regional average for Southern Africa (59.2), ranking 3rd (out of 12) in the region. Further, it achieves its highest category score in Human Development (77.4), and ranks highest in the category Participation and Human Rights (3rd out of 52). However, it achieves its lowest category score in Sustainable Economic Opportunity (65.1), and ranks lowest in the category Safety and Rule of Law (7th out of 52). It achieves its highest sub-category rank in Public Management (1st out of 52), and its lowest sub-category rank in Personal Safety (41st out of 52) (IAG, 2013).

Another example of the IAG rankings is that of Mauritius and the Seychelles, which ranked first and second in the 2008 IAG results, as was the case in the 2007 survey. They were followed by Cape Verde, Botswana and South Africa in third, fourth and fifth positions respectively (Rotberg & Gisselquist, 2008:19). Farrington (2010:81) acknowledges the merits and advances of the IAG as an assessment mechanism of governance in Sub-Saharan Africa, yet questions the conceptual universalism underpinning of the Index and the issues of citizen participation in terms of certain indicators used in the construction of the Index. The concern regarding the universalism of the Index arises from troubles caused by neo-colonial power politics that are often obscured by universalist analytical projects. Farrington's (2010:82) concern with the IAG regarding citizen participation arises from the theoretical engagement of the Index regarding citizen participation.

Farrington (2010:82) argues that the IAG in general and the sub-category indicator of Political Participation in particular relies upon an essentially liberal understanding of citizen participation and overlooks the claims of republican and deliberative democratic theories of citizen participation. This approach of the IAG thus neglects the significance of modes of citizen participation (Farrington, 2010:82).

6.3.3 Summary of the role of good governance mechanisms

Good governance mechanisms provide a framework of norms and standards to be followed in evaluating the performance of organisations or countries regarding their governance practices. The APRM and the IAG specifically focus on good governance performance in African countries and use a variety of indicators to assess this performance. The APRM as a voluntary programme for AU member states seeks to improve the level of good governance in these countries. Good governance indicators employed by the APRM are those actions and targets which seek to achieve political, economic and social stability and development objectives set out in the NEPAD programme.

The IAG, on the other hand, is a governance assessment tool that uses a universal approach in its approach to assessment. The indicators employed by the Index are universal and as a result this conceptual universalism has received criticism from some scholars, such as Farrington (2010:81), who specifically questions the pragmatism, objectivity and applicability of such indicators as citizen and political participation. Farrington (2010:81)

argues that the IIAG's narrow definition of citizen participation excludes other forms of citizen and political participation. However, the vast array of indicators employed to construct the Index covers a wide spectrum of governance issues, which collectively provide a comprehensive and useful tool to assess governance in African countries (Farrington, 2010:81).

Continental or regional good governance mechanisms, such as the APRM and the IIAG, as discussed above, and South African national frameworks and institutions, such as the Constitution, parliamentary committees and oversight bodies provide tools and mechanisms to assess, monitor and promote good governance at all levels of the state. In section 6.4 below, the study employs the findings of the Public Service Commission (PSC), one of the key state entities responsible for facilitating and promoting good governance in South Africa. The findings of the PSC survey regarding provincial government performance in promoting and upholding good governance values and principles are critically analysed to assess and develop a detailed understanding of the status and role of provincial governance in South Africa in the 1996 to 2012 constitutional dispensation (a detailed assessment of governance in provinces is provided in chapter 7 below).

6.4 GOVERNANCE IN SOUTH AFRICA: A NATIONAL OVERVIEW

A brief look at the core values of many of the public entities in South Africa reveals that they subscribe to the common constitutional values and principles of good governance, as set out in section 195 of the Constitution, as well as prescribed by many international agencies and organisations. For example, the Public Protector lists its values as impartiality, courtesy, empathy, integrity, accountability and service-oriented (RSAa, 2011:6). The mandate of the Auditor-General of South Africa (AGSA) is “to strengthen our country’s democracy by enabling oversight, accountability and governance in the public sector through auditing” (RSAb, 2011:6).

These values closely resemble those set out in the Constitution. Further, the constitutionally enshrined values and principles of the public service find resonance in the principles of corporate governance, as embraced by the King II Report and many corporations and public entities (King, 2002:11-12; Maharaj, Heil & Van Rensburg, 2006:21). These corporate governance values include accountability, discipline, fairness, integrity, responsibility, social

responsibility and transparency (Van Wyk, 2003:17-19; Naidoo, 2009:267; King, 2002:11-12).

The *King Report on Corporate Governance for South Africa 2002*²⁸, also known as the King II Report, was published by the King Committee on Corporate Governance formed in 1992 to consider corporate governance in South Africa. The King II Report was the second report by the King Committee on Corporate Governance and was preceded by the *King Report on Corporate Governance*, also known as the King Report 1994 or the King I Report (also see the King III and IV reports) (Maharaj, Heil & Van Rensburg, 2006:21). The universality of the values and principles of good governance signifies their importance in ensuring good performance and governance by both public and private entities to achieve the desired political and socio-economic development outcomes in the country. Naidoo (2011:21) identifies the conditions necessary for supporting and measuring good governance, which include explicit policy and standards on good governance and effective Monitoring and Evaluation (M&E), as depicted in Figure 6.2 below.

²⁸ The King III and King IV (Report on Corporate Governance for South Africa) reports were subsequently published in 2009 and 2016 respectively to respond to fundamental changes in business and society by creating value in a sustainable manner.

Figure 6.2: Support for good governance

Source: Naidoo (2011:21)

The various elements or mechanisms of good governance are mutually supportive of each other, as depicted in Figure 6.2 above. The architecture of the good governance framework depicted in Figure 6.2 bears close resemblance to that proposed by this study for provincial governance in South Africa (see page 609, paragraph 9.2.2 in chapter 9 below), particularly with respect to such elements as policy framework, scrutiny, accountability and assessment mechanisms. Good governance is achieved when tangible activities and outputs at the administrative levels are produced (Naidoo, 2011:21). The various elements or mechanisms of good governance mentioned above serve as indicators against which the performance of public entities in promoting and delivering good governance can be measured, as discussed in Chapter 7. The measurement or evaluation of good governance performance by public entities is the function of Monitoring and Evaluation, as illustrated in Figure 6.2 above.

This section on governance in South Africa discusses the three main pillars of good governance, that is, the Constitution, Parliamentary committees and state institutions supporting constitutional democracy. The Constitution provides the foundation and legislative framework for good governance in South Africa, thus, structure, while the parliamentary committees and state institutions supporting constitutional democracy provide institutional arrangements, thus, mechanisms, strategies and processes that serve as oversight

bodies to scrutinise, monitor, enforce and protect good governance values and principles within state entities (see page 168, paragraph 3.5 in chapter 3 above). The Constitution is the supreme law of the country and thus provides the basis for all legislation passed in the country. Therefore, this section will provide a detailed discussion of the Constitution as a bedrock of governance in the country, particularly in affairs of the state; for example, section 195 of the Constitution provides for the constitutional values and principles which all state entities are constitutionally obliged to protect and uphold (see chapter 7 for a detailed discussion on constitutional values and principles and assessment of provinces against these indicators) (Rotberg, 2014:512; RSA, 1996:41; Jakobsen & Mortensen, 2016:302; RSA, 2012; Cloete & Auriacombe, 2007:194).

Parliamentary committees are structures of the parliament, which exercise oversight over the executive; for example, the Standing Committee on Public Accounts exercises oversight over the financial performance and accountability of government departments and state entities. Financial propriety is one key element of good governance practice, which is further entrenched in national legislation; that is, through the Public Finance Management Act (PFMA) No.1 of 1999. State institutions supporting democracy exercise oversight over state entities and focus on key performance areas in these entities, which include good governance standards, public service policy, fairness, transparency, democratic principles, political commitments and financial propriety (Naidoo, 2011:21).

6.4.1 The South African Constitution

The South African Constitution, which was adopted in 1996, provides for good governance practice, particularly in the public sector by setting out the values and principles which must be fostered and upheld by public entities in the country. For example, the Public Service Commission is required to maintain high standards of professional ethics – section 195 of the Constitution (RSA, 1996:75), the conduct of Cabinet Ministers and Deputy Ministers – section 96 of the Constitution (RSA, 1996:39), and Members of the Executive Council of provinces – section 136 of the Constitution (RSA, 1996:51) must be in accordance with the code of ethics as prescribed by national legislation. The Public Service Commission Act No. 46 of 1997, which provides “for the regulation of the Public Service Commission and for matters connected therewith” gives effect to section 195 of the Constitution (Kotze, 2001:21; RSA, 1997:3).

The Executive Members Ethics Act of 1998 “provides for a code of ethics governing the conduct of members of the Cabinet, Deputy Ministers and members of provincial Executive Councils; and to provide for matters connected therewith” (RSA, 1998:3) (see page 308, paragraph 5.4 in chapter 5 above for a detailed discussion on the South African Constitution). The Constitution makes provision for the enforcement and promotion of good governance, for example, supremacy of the Constitution and the rule of law, universal adult suffrage (that is, voting in government elections and public participation), accountability, democracy, responsiveness and openness (section 1 of the Constitution), the Bill of Rights that enshrines the rights of all people in South Africa and affirms the democratic values of human dignity, equality and freedom (chapter 2 of the Constitution), access to information, that is, transparency (section 32 of the Constitution), just administrative action (section 33 of the Constitution), principles of cooperative government and intergovernmental relations, that is, effective, transparent, accountable and coherent government for the Republic as a whole (chapter 3 of the Constitution), and composition of parliament to represent the people and to ensure government by the people under the Constitution (chapter 4). Many other sections and chapters of the Constitution make provision for good governance values and principles, as set out in section 195 of the Constitution (RSA, 1996:74).

6.4.2 Parliamentary committees

The configuration of government at the provincial sphere resembles that of the national government, particularly with regards to functions and procedures (RSA, 1996). Therefore, a discussion on parliamentary committees at the provincial sphere of government will make greater reference to the national legislature. As an example of these similarities, both national and provincial legislatures are elected by the public (constituencies in their jurisdictions), that is, represent the public and are mandated by the Constitution to make laws and exercise oversight over their executives. Hence, in principle the discussion on the mechanisms and procedures of either one of these branches of the state at different spheres of government and the outcomes of their actions will yield a common understanding that applies to both. Legislatures are the oldest political institutions known to society and have been crucial in the development of democracy (Heywood, 2007:293; Hiroi, 2008:1583).

Assemblies (also called parliaments or legislatures) constitute an important part of the state machinery. They represent the public and democratic face of government and have traditionally been treated with respect and status. Their prominence is reflected in constitutions where, for example, they are accorded pride of place by being described before executives and judiciaries. Respect for assemblies derives from the fact that “they are composed of lay politicians who claim to represent the people rather than by trained or expert government officials” (Heywood, 2007:293).

Legislatures act as debating chambers and public forums for open discussion and analysis of government policies and major issues of the day. The formal law-making function of legislatures gives them some power to shape or influence public policy. Heywood (2007:293) argues though that parliamentary power has progressively weakened in the 20th century as a result of the decline of assemblies. Assemblies have been reduced to so-called ‘talking shops’ that merely rubber stamp decisions made elsewhere outside the legislature; thus, illustrating the power and influence of external stakeholders and interest groups, such as business, labour, military and society in policy direction and decisions in the assemblies (see page 354, paragraph 6.2 above) (Heywood, 2007:293; Graham, Amos & Plumptre, 2003:3; Madue, 2012:431).

Political leaders have been faced with difficult choices about the most appropriate parliamentary structures for democracy. This has been the case in South Africa with the recent transition period from authoritarian rule to democracy, which led to the adoption of a new Constitution in 1996. In South Africa, it is difficult to gain full confidence of the electorate in parliamentary institutions given the history of racial domination, which was prevalent in these institutions in the older order and their potential abuse in the new constitutional dispensation, thus questioning the democratic legitimacy of legislatures; that is, their capacity and ability to fulfil their legislative and executive obligations and account to their constituencies. Kotze (2001:21) argues that the parliament has been central in the progress of the democratisation process from transition to consolidation. Wenzel (2007:47) argues that in South Africa the development and the democratisation processes, the emerging modes of governance and nation building have failed. He attributes this failure to what he terms the autocratic leadership style of the new politico-administrative elite and the overall ineffectiveness of managerialist public sector reforms (Wenzel, 2007:47).

The oppressive and hegemonic apartheid regime prior to the 1994 democratic elections used oppressive measures, including legislation and violence, to suppress and control any form of democratic dissent and thus relied on this mechanism to sustain itself (Kotze, 2001:21). However, survival of the current constitutional democratic dispensation depends on perceptions among the public of the capacity of political leadership and its institutions, such as the parliament to protect the rights of the minority; that is, democratic legitimacy (Kotze, 2001:21). Access to information and transparency are key requirements for evidence-based policy assessment, which then promotes good governance in government. However, in developing countries the goal of good governance is fraught with many challenges, including social, economic and political constraints which complicate the effective implementation of measures to improve transparency (Cloete & Auriacombe, 2007:193).

Fung (2013:183) refers to an environment where citizens enjoy a wide range of information about the organisations upon which they rely for the satisfaction of their vital interests as infotopia. The provision of information to achieve infotopia is governed by the principles of democratic transparency. Razzano (2012:3) posits that the “South African Constitution has expressed in the Bill of Rights several fundamental human rights that support the pursuit of open government and transparency”. However, South Africa has a fundamental need for an independent information office, that is, a transparency ombudsman who would have the powers to promote and protect the rights of the citizen to access to information and protection of personal information. These provisions are made in legislation, including the Promotion of Access to Information Act (PAIA), the Protection of Personal Information Act (once passed), and the Protection of State Information Act (once passed). The right of access to justice and information, that is, transparency as enshrined in the Bill of Rights of the Constitution requires an alternative dispute resolution mechanism to be given effect to (Razzano, 2012:3).

The Constitution makes provision for the establishment of parliament, which consists of the National Assembly (NA) and the NCOP. The NA is elected to represent the people of the country by electing the president, providing a national forum for public consideration of issues, passing legislation and scrutinising and overseeing executive action. Section 55 of the Constitution lists the powers and functions of the NA, which include legislative powers and mechanisms to ensure accountability of executive organs of state at the national government level and to exercise oversight over these organs of state (RSA, 1996:23). “The National Council of Provinces represents the provinces to ensure that provincial interests are taken into

account in the national sphere of government. It does this mainly by participating in the national legislative process and by providing a national forum for public consideration of issues affecting the provinces” (RSA, 1996:19).

The powers and functions of the NCOP are listed in Section 68 of the Constitution and include legislative powers on legislation before the Council and legislation falling within functional areas listed in Schedule 4 of the Constitution or any other legislation referred to it in terms of section 76 (3), but may not initiate or prepare money bills. The legislature is the custodian of the electorate’s trust and its main task is to ensure executive accountability through a parliamentary process of assessing the performance of Cabinet ministers and their departments. South Africa consolidated its democracy by successfully holding five successive national and provincial elections, all of which have been labelled by international and domestic observers as “free and fair”. However, this track record is tarnished by the lack of accountability that results from the closed list aspect of the proportionality system, continued dominance of the ANC, and the lack of disclosure of private party funding (Graham, 2014:52).

However, while the ANC may have won successive general elections with a resounding majority, including 62 per cent of the poll in the 2014 elections, and continuing to remain solid overall, the growth of the main opposition party, the DA, and the emergence of the Economic Freedom Fighters (EFF) in the “third” party politics indicates that its foundations are beginning to crumble (see page 8, paragraph 1.1 in chapter 1 above) (Paret, 2016:420; Southall, 2014:81; Mangcu, 2016:27; Beresford, 2015:226; Parker, 2014:30). The ability of the state to hold elections does not necessarily translate into good quality democracy as elections do not guarantee that all traditional attributes of democracy are being adhered to. The state may hold elections while lacking in a number of societal freedoms, such as poor civil liberties regimes, limited societal toleration, and corruption, crime and violence, all of which undermine democracy (Southall, 2014:81).

Harber (2014:218) argues that the Constitution instructs all spheres of government, organs of state and public enterprises to uphold the principles and values of good governance. For example, the parliament as an institution of democracy is required by the Constitution to “make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public involvement” (RSA,

1996:24). Madue (2012:431) provides a detailed description of the functions of the legislature, which include law making, exercising oversight over the executive, facilitating public participation and promoting cooperative governance. Moreover, the legislature, being an elected body as compared to government, is expected to monitor and control government actions, to ensure transparency in government, and to take appropriate action against government officials or executive members who abuse state power and resources (see page 7, paragraph 1.1 in chapter 1 above) (Madue, 2012:431; CASAC, 2017:2).

Madue (2012:431) questions the integrity and capacity of the legislature in South Africa to exercise oversight over the executive and to hold it accountable. This weakness in the legislature prevails despite it having all the formal accessories of a modern legislature, which include detailed rules of procedure, an extensive committee system, a professional staff and an elaborate physical infrastructure. Madue (2012:431) argues that the South African legislature merely serves as a rubber stamp for the ruling ANC (see page 389 in this paragraph above). Madue (2012:431) further questions the autonomy of the legislature and its capacity to hold the executive accountable. Doubts about the autonomy of the legislature are attributed to the parliamentary form of state enshrined in the country's constitution, which does not promote the separation of powers between the legislature and the executive as does the presidential form of state (Heywood, 2007:293; Graham, Amos & Plumpre, 2003:3; Madue, 2012:431).

A variety of provisions enable legislatures to exercise oversight and to perform their functions effectively. These provisions include tools to ensure that policies, programmes and laws fundamentally reflect the interests of society; certain functions and powers to exercise oversight of the executive and its departments; legislative practices and institutions allow the legislature to establish whether public monies are spent as intended; and democracies provide for practices that enable the legislature to assess whether the principle of value for money has been upheld. Despite these institutional arrangements for legislative oversight and tighter regulations various reports by the Auditor-General, Public Protector, media and parliamentary committees highlight problems of non-compliance by government departments. For example, a performance audit of the Auditor-General in 2009 found that the Department of Minerals and Energy (DME) lacked the policies and procedures necessary to ensure that service delivery and the problem of abandoned mines are addressed effectively (RSA, 2009:1).

Another good example of the oversight exercised by Chapter nine institutions in support of the legislature is the report by the Public Protector in 2013 titled *Unsolicited Donation* on the alleged abuse of state authority by the former minister of Communications, Ms Dina Pule. The Public Protector found that Pule acted unlawfully and improperly by committing the Department of Communication (DOC) to donate R10 million to a private company towards hosting the 2012 Information and Communication Technology (ICT) Indaba, and that this conduct constituted maladministration (RSA, 2013:203). A report by the Public Protector titled *Secure in Comfort* deals with the construction of President Jacob Zuma's private residence, Nkandla. This report found many acts of misconduct, violation of laws and maladministration on the part of various government departments, and that the President's immediate family members improperly benefited from the measures implemented in the construction of his private residence (RSA, 2014:427).

These reports and the work of the various oversight bodies, including parliamentary committees and Chapter nine institutions, demonstrate the effectiveness of these structures of governance and the accompanying mechanisms in facilitating and promoting good governance and strengthening democracy in the country. These reports have prompted the opposition to question the efficacy of processes of legislative oversight in South Africa (Esau, 2008:96). On the other hand, the ruling ANC has questioned the value of the opposition as a mechanism of oversight in parliament. At the provincial government sphere, provincial legislatures have powers to legislate; that is, consider, pass, amend or reject any bill before the legislature and to prepare or initiate legislation within Schedule 4, except money bills. In addition, the provincial legislature has the powers to exercise oversight over provincial executive authority and any provincial organ of state within that province as listed in section 114 of the Constitution (RSA, 1996:45; Francis, 2008:2; ANC, 2010:2; Pelizzo & Staphenurst, 2004:2).

The Standing Committee on Public Accounts (SCOPA) provides the most interesting and effective example of the practice of parliamentary legislative oversight. Esau (2008:95) argues that the prevailing political environment in South Africa stifles the ability of parliament or the legislature to exercise oversight over the executive and its departments. Esau (*ibid.*) further attributes this view to suggestions that the South African legislative and policy arrangements introduced after 1994 are not sufficient to guarantee effective oversight.

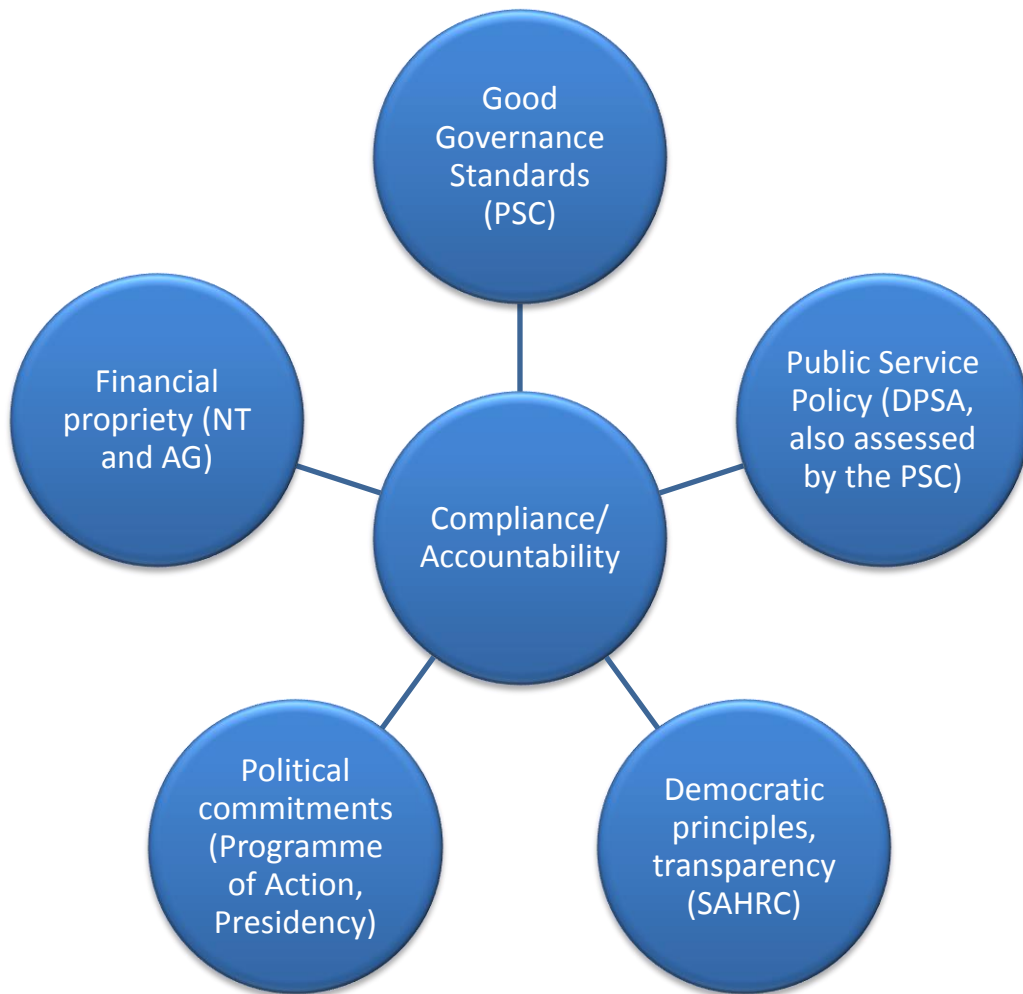
The efficacy of parliamentary committees is threatened by various factors, including inter- and intra-party issues, the character of the chairperson, the extent to which oversight is viewed as important by government departments and agencies, and the nature of the issue under investigation. Various measures can be applied to address challenges facing parliamentary committees; these include the introduction of clearly articulated policies and handbooks, workshops, seminars and training interventions (Esau, 2008:95-96).

6.4.3 State institutions supporting constitutional democracy

The existence of numerous state institutions supporting constitutional democracy, particularly those mandated to fight corruption such as the Offices of the Public Protector and the Auditor-General, is necessary to develop a comprehensive approach to combatting corruption. The successful crime combatting model used in Hong Kong is attributed to a three-pronged approach, which consists of enforcement, prevention and education. The Directorate of Corruption and Economic Crime in Botswana, whose modus operandi and approach is strongly based on the Hong Kong model, has proven to be effective in combatting economic crime (Cloete, 2013:287). The effectiveness of a crime investigative agency strongly hinges on its independence from influence and interference by all sectors of the society, including political authority (Olowu, 1991:170).

The key function of state institutions supporting constitutional democracy, also known as Chapter 9 institutions, is to scrutinise and exercise oversight over the performance of state departments and agencies at all levels of government. The focus areas of these oversight bodies include good governance standards, public service policy, democratic principles, political commitments and financial propriety, as shown in Figure 6.3 below.

Figure 6.3: Performance areas brought under scrutiny by oversight bodies



Source: Naidoo (2011:106)

Figure 6.3 above indicates “the core performance areas that departments are expected to comply with, and institutions responsible for exercising this form of oversight. Each of the institutions work off a political or policy mandate, and has their own protocols for gathering and reporting on performance information” (Naidoo, 2011:106). State institutions mandated by the Constitution to strengthen constitutional democracy²⁹ include the Public Protector (PP), the South African Human Rights Commission (SAHRC), the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities,

²⁹ This section of the study provides an overview of two of the Chapter 9 institutions, that is, the Public Protector and the Auditor-General whose responsibility largely has to do with scrutiny and oversight of state entities and government departments to ensure accountability and good governance in the state. Chapter 9 institutions are the following: the Public Protector (PP), the South African Human Rights Commission (SAHRC), the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Commission for Gender Equality, the Auditor-General (AG) and the Electoral Commission, also known as the Independent Electoral Commission (IEC).

the Commission for Gender Equality, the Auditor-General (AG) and the Electoral Commission, also known as the Independent Electoral Commission (IEC) (see page 281, paragraph 5.2 and page 323, paragraph 5.4.3 in chapter 5 above) (RSA, 1996:69; RSA, 2013:1; RSA, 2014:86; Ntlama, 2015:13; Phago, 2013:112; RSA, 1996; RSA, 2000).

These institutions are independent and subject only to the Constitution and are required to be impartial and to exercise their powers and perform their functions without fear, favour or prejudice. “These institutions are accountable to the National Assembly, and must report on their activities and the performance of their functions to the Assembly at least once a year” (RSA, 1996:69). The constitutional requirement for these institutions to report their performance to the National Assembly is the demonstration of the importance and emphasis placed on accountability and the role of the National Assembly in exercising scrutiny and oversight and promoting good governance in government and the state. Suttner (2004:767) emphasises the importance of constitutional institutions by positing that “some of the constitutional mechanisms in place currently provide a far sounder basis for monitoring abuse and ensuring accountable government than an opposition with some potential to become ruling party”.

The Public Protector is established by the provisions of section 181 of the Constitution and the Public Protector Act No. 23 of 1994 (RSA, 1996:69; RSA, 2010:5). The functions of the Public Protector as envisaged in section 182 of the Constitution include “to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice; to report on that conduct; and to take appropriate remedial action” (RSA, 1996:69). As a sign of commitment to its constitutional mandate, the Office of the Public Protector promises the parliament (to which it is required to report in accordance with section 182(5) of the Constitution) and the public to “be accessible and trusted by all persons; deliver prompt remedial action; and to promote good governance in all state affairs” (RSA, 2010:7). The Office of the Public Protector states its mission as follows:

to strengthen constitutional democracy in pursuit of our constitutional mandate by investigating, rectifying and redressing any improper or prejudicial conduct in state affairs and resolving related disputes through mediation, conciliation, negotiation and other measures to ensure fair, responsive and accountable public-sector decision-making and service delivery (RSA, 2010:9).

The mandate the Office of the Public Protector is to investigate, report and take remedial action in public or state matters, including the violation of the provisions of legislation, which includes the Executive Members Ethics Act No. 82 of 1988 and the Executive Ethics Code, the Promotion of Access to Information Act, the Protected Disclosures Act and the Prevention and Combating of Corrupt Activities Act No. 12 of 2004 (RSA, 2010:10).

The values and principles of the Office of the Public Protector give supremacy to the Constitution and the rule of law, particularly the Bill of Rights and Public Service Principles in Chapter 10 of the Constitution, the *Batho Pele* Principles (Raga & Taylor, 2005:22), the Global Ombudsman Principles and the institutional core principles of accountability, integrity and responsiveness (see Appendices A, B and C) (RSA, 2010:13). The mandate of the Office of the Auditor-General is entrenched in the Constitution and is further supported by an Act of Parliament, the Auditor-General Act No. 12 of 1995 and the Public Audit Act (PAA) No. 25 of 2004 (Fakie, 1999:1). The constitutional mandate of the Auditor-General (AG) as a Supreme Audit Institution (SAI) in South Africa is “to strengthen our country’s democracy by enabling oversight, accountability and governance in the public sector through auditing, thereby building public confidence” (RSAb, 2011:6).

The role of the Office of the AG is to prevent, detect and investigate economic crime (Fakie, 1999:5). The independence of the AG is provided for in section 3(3) of the Auditor-General Act which states that “the Auditor-General may at his or her discretion determine the nature and extent of the audit to be carried out and request the details and the statements of account which he or she considers necessary” (RSA, 1995:3). The Constitution and legislation empowers the Office of the AG to conduct special audits whenever it considers it to be in the public interest or upon a receipt of a complaint or a request (Cloete, 2013:285).

6.4.4 Governance indicators

Governance attributes used to measure the level of governance as used by the World Governance Indicators Survey include accountability, participation, transparency, and the rule of law. Another form of comprehensive survey used to measure governance is the Ibrahim Index of African Governance. Governance is measured in one of two ways, namely, either by its attributes (process indicators) or by its impact (outcome indicators). McFerson (2009:253) classifies the existing measures of governance into three categories, namely,

indicators of governance and corruption; measures of civil liberties and human rights; and specialised surveys (McFerson, 2009:253).

The measure of governance globally has since the 1990s shifted from focusing entirely on process dimensions to a more inclusive view of good governance, which includes results-oriented aspects of governance. Some indices focussed on only one of these process dimensions, for example, the Transparency International Index focused only on transparency processes. The World Bank was instrumental in developing systematic governance indicators since the end of the Cold War. New governance indices and surveys that have emerged address specialised aspects of economic governance, such as budget transparency as well as broad issues such as the risk of catastrophic state failure (McFerson, 2009:254).

The World Governance Indicators (WGI) developed by the World Bank since 1996 to measure the quality of governance is the most comprehensive global survey of governance. It measures the main attributes or indicators of governance, which include accountability, participation, rule of law, and transparency and other attributes including the effectiveness of government, the quality of its regulatory framework, and the degree of political stability and absence of violence. However, McFerson (2009:254) notes that the WGI focusses heavily on process aspects and less on outcomes. McFerson (2009:254) calls the process aspects of governance the “rules on the ground” and the outcomes aspects the “rules on the books”. The WGI governance measure includes indicators along with six key dimensions, as shown in Table 6.5 below (McFerson, 2009:254; Diarra & Plane, 2014:479):

Table 6.4: WGI Indicators of good governance

WGI Indicator	Definition
Voice and Accountability	The extent to which a country's citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association and a free media.
Political Stability and Absence of Violence	The likelihood that the government will not be destabilized by illegal or violent means, including terrorism.
Government Effectiveness	Combining quality of public services, capacity of the civil service and its independence from political pressures; and quality of policy.
Regulatory Quality	The ability of the government to provide a sound regulatory framework that enables and promotes private sector development.
Rule of Law	The extent to which agents have confidence in and abide by the rules of society, including the quality of contract enforcement and property rights, the police and the courts, as well as the incidence of crime and violence.
Control of Corruption	With corruption defined as the exercise of public power for private gain, including both 'petty and 'grand' corruption, as well as 'capture' of state activities by elites for their own interests and profit.

Source: Constructed from definitions in McFerson (2009:254)

It should be noted that although the WGI and other global governance measurement surveys and indicators are designed to measure governance at a country level, for a geographically large country like South Africa with greater levels of decentralisation, subnational autonomy, and socio-cultural and economic diversity these measures find application at SNG level, that is, provincial government level as well, which individually display characteristics of sovereign countries. This assertion is more evident in the Western Cape Province, which has its own Constitution and whose economy, culture and politics are characteristic of those of an independent country. Hence, in this chapter reference to these surveys and measurements will be made in relation to governance in both central and SNGs. However, constitutionally South Africa is not a federation; that is, it is a unitary state where its SNGs (provincial and local governments) have only limited powers (legislative, judicial and financial) (see page 341, paragraph 5.4.5 in chapter 5 above) (RSA, 1996; Hawker, 2000:632).

For South Africa, there could not be a better measure of governance than the WGI; it speaks directly to the core challenges and most important aspects of the country's governance. The country's ratings on the WGI are a direct or even a partial reflection of the actual performance and situation on the ground; that is, at both provincial and local government level. Reference is made here to the country ratings as a partial reflection of the governance situation at provincial and local government to emphasise that the national rating in many ways cushions the poorer ratings that individual provinces and local governments would achieve. The performance of provinces and local governments in terms of governance are generally known to be very poor.

The annual AG, PSC, SCOPA and Public Protector's reports on these SNGs always paint a gloomy picture characteristic of rampant corruption, lack of accountability, violence, political instability, poor quality of public services, financial mismanagement, lawlessness, and poor application and enforcement of the law (see page 2, paragraph 1.1 in chapter 1 and page 281, paragraph 5.2 in chapter 5 above) (Habib, 2014; Lues, 2014:789). A detailed discussion and analysis of these government agencies or watchdogs, as they are commonly called, will be done in Chapter 7 where a case study focus will analyse governance issues across all nine provinces. Even at national government level, which could be perceived as a consolidated reflection of the quality of governance across all spheres of government throughout the country, South Africa's governance is very poor by international standards. It also ranks poorly compared to its neighbours and other comparatively larger economies on the African continent (McFerson, 2009:260-261). It, for example, ranks below Cape Verde (75% vs. 69%) in terms of accountability, below Benin, Botswana, Cape Verde, Gabon, Ghana, Mauritius, Mozambique, Namibia, S. Tome/ Principe and Seychelles at a 51% in term of stability, lower than Mauritius (68% vs. 66) in terms of quality of services, below Botswana, Cape Verde, Mauritius and Seychelles in terms of the rule of law, and below Botswana, Cape Verde, and Mauritius in terms of corruption measures. South Africa surpasses all African countries only in one indicator, that is, effectiveness, with Botswana and Mauritius close in this aspect (McFerson, 2009:260-261).

It is important to note that even though South Africa lags behind other African countries in most of the indicators mentioned above, it does not lag too far behind; therefore, this means that on an overall perspective it is doing relatively well. This view is shared by Rotberg (2014:9) who argues that in comparison to its African neighbours, South Africa has delivered

many of the desired political goods; that is, its governance performance is relatively higher compared to other African countries. In support of the findings of the WGI, Rotberg (2014:13) reiterates that Botswana, Mauritius and Cape Verde have effective anticorruption measures in place, a legacy of good ethical governance that has been inherited from their founders and carried over through generations of leaders in high office (Rotberg, 2014:13).

These countries consistently remain above other African countries in Transparency International's annual Corruption Perceptions Index ratings. Rwanda and Ghana have recently improved their governance ratings, particularly with respect to transparency. In all six these countries, leadership actions and attitudes had more impact on governance than anti-corruption commissions, legislation, prosecutions and judicial remedies. It is important to note that these countries have relatively small populations, similar to Singapore, which also ranks high on the Transparency International Index (Rotberg, 2014:13-14).

It is therefore important to look not only at the country's performance or rankings in isolated dimensions, but also in a holistic manner. This is important because different dimensions and a variety of factors generally influence the outcome of other dimensions. For example, an industrially advanced and geographically and culturally diverse country like South Africa is likely to experience high levels of crime and corruption (Powdthavee, 2005:542). This is evident in South Africa because of its relatively high standards of living and larger economy it has become an attractive haven for all sorts of criminal activities, including human and drug trafficking, due to a high influx of foreign immigrants (Moletsane, Coetzee & Rau, 2017:75).

According to Demombynes and Ozler (2003:265), crime rates in South Africa are among the highest in the world and inequality leads to crime in general. Kynoch (2005:492) attributes the high levels of violent crime in South Africa to the political violence of the 1980s and 1990s and decades of repressive racial policing, violent crime and social conflict, and the continuing deterioration of law and order structures in the final years of apartheid. Snodgrass and Bodisch (2015:63) posit that in South Africa the "culture of violence" is deeply rooted in a past in which humiliation emanating from institutionalised racism and structural violence featured strongly. According to Snodgrass & Bodisch (2015:63), "Humiliation or shame is a powerful motivator and a triggering role in ongoing cycles of violence".

In addition, other causes usually cited for high levels of violent crime in the country include “poverty and joblessness, a new criminal-friendly constitution, a corrupt and ineffective national police force and the post-apartheid influx of African migrants” (Kynoch, 2005:493). Another example is the case of collusion among big construction industry firms that excessively hiked their prices during the construction boom that took place prior to the 2010 *Fédération Internationale de Football Association* (FIFA) World Cup tournament in South Africa. Bowen, Edwards and Cattell (2012:1) emphasise the extent of corruption in the construction industry in South Africa by arguing that “public officials are thought to be actively involved in acts of corruption, particularly in the soliciting of bribes and in tender manipulation. Professional consultants and other actors in the construction supply chain are not above reproach”.

Examples of fraud and corruption in South Africa are endless and these could be linked directly to improved standards of living, economic growth, and improved public services. An example that springs to mind is the widespread corruption among government officials relating to government social grants (www.news24.co.za retrieved 3 October 2014). In this case, efforts by government to improve the lives of citizens and to better service delivery led to unforeseen or unintended negative repercussions. It is therefore important to establish the relationship between and among these indicators to determine how they impact on each other and thus the overall ranking of a country.

This assessment should also take into consideration the performance of SNGs, which have different levels of competencies, different cultures and social, economic and political settings, which impact on the processes and outcomes of governance. For example, a relatively wealthy and economically advantaged province, for example, through its natural resources endowment, such as Gauteng and North West, or its geographic location, such as the Western Cape and KwaZulu-Natal, is likely to experience high levels of economic growth and government efficiency. However, the inverse could also be true in that an economically advantaged province like Gauteng is likely to experience high levels of crime, corruption, violence, and poor enforcement of the rule of law (Bowen, Edwards & Cattell, 2012:1).

Such negative consequences could be explained by the fact that such provinces become magnets for economic and social immigrants; that is, people seeking welfare and job opportunities. This concept of citizens moving from one jurisdiction to another in pursuit of

better SNG services is referred to as “voting with their feet” (see page 118, paragraph 2.7.2 in chapter 2 above) (Monro, 2001:54). Also, such provinces tend to have efficient and higher levels of service delivery, explaining the reason for the high influx of immigrants. On the other hand, these provinces cannot opt to reduce the quality and level of public services in an effort to discourage potential immigrants as this would be tantamount to violating the law and breaching nationally determined norms and standards. Also, such action would result in what Volden (2004:352) and Adamovich and Hosp (2003:9) term a “race to the bottom” where SNGs, especially municipalities, reduce their welfare benefits and levels of public service in an effort to discourage potential immigrants (see paragraph 4.3.8 in chapter 4 above) (Adamovich & Hosp, 2003:4).

The researcher holds the opinion that there is a room for improvement regarding governance in South Africa, as seen with relatively high rankings in most of the WGI surveys; yet there are pockets of poor performance, which have the potential to spoil good performance in other dimensions, as illustrated in the examples above. In the same vein, the vast areas of exceptional performance in terms of rankings, such as government effectiveness, need to be explored and analysed thoroughly to identify the strengths linked to such performance and to find measures to harness such strengths and create synergies. Similarly, areas of poor performance should be analysed to identify the weaknesses and their root causes, and how these weaknesses can be addressed and improved (Bernstein, 2014:21).

The small populations of Botswana, Mauritius, Cape Verde, Rwanda, Ghana and Singapore could be another factor that has a direct or indirect bearing on the processes and outcomes of governance. Challenges of fraud, crime, corruption, violence, poor service delivery, lawlessness, government inefficiency and unemployment are usually common in larger populations due to the challenge of having to deal with large numbers of citizens with limited resources. However, good ethical leadership remains the cornerstone of good governance in any country. Bernstein (2014:21) argues that as much as visionary leadership was required to end apartheid, bold leadership is required to govern South Africa and overcome the challenges of corruption, civil unrest, declining state capacity, the quality of judicial appointments, poor performance and governance, poverty and unemployment, and diverse races, classes, ethnicity, expectations and opportunities (Bernstein, 2014:21).

It is for this reason that the argument that economic growth and high living standards in a country could be the driving factors behind corruption, crime, violence and many other social and political maladies is not entirely valid. Singapore is a good example of this view, whereby as a highly advanced and economically successful developing country it has virtually no corruption. The country's high governance rankings are attributable to the leadership (the prime minister) of Singapore in the 1960s taking a stern stance against corruption, thereby sending a very strong message of zero tolerance to corruption (Rotberg, 2014:13).

An effective public administration that serves the needs of all citizens is one of the prerequisites for strengthening the rule of law and the credibility of the state. Key prerequisites for a democratic state include transparency, accountability, responsibility and honesty in government. Good governance requires accessibility and transparency of government activities to facilitate evidence-based policy assessment (Cloete & Auriacombe, 2007:193-194).

The South African Constitution is the supreme law of the country; thus, providing the basis for good governance and the values and principles of good governance all state entities should abide to. Parliamentary committees exercise oversight over the executive; thus, holding these entities accountable on behalf of the public. Lastly, the state institutions supporting constitutional democracy protect and uphold good governance values within state entities in various areas of good governance, such as financial propriety, human rights, service delivery and the protection of cultural, gender and linguistic rights. The main elements of good governance in South Africa, as discussed above, are the internal state mechanisms established to facilitate and promote good governance in the affairs of the state (see Table 6.4 on page 390 and paragraph 6.4.4 in this chapter above) (Cloete & Auriacombe, 2007:193-194; Smith, 2011:504).

However, other mechanisms of good governance, which are structures outside the ambit of the state, do exist; they include the African Peer Review Mechanism (APRM), the Mo Ibrahim Index of African Governance (IIAG), Transparency International, the World Governance Indicators Survey and the Afro-Barometer. These structures, like the parliamentary committees and state institutions supporting constitutional democracy discussed above, facilitate and promote good governance in countries across the continent

and the world. The section that follows will discuss two of these mechanisms, which have a direct bearing on governance in South Africa, namely, the APRM and the IIAG (see page 366 and paragraph 6.3 above in this chapter) (Cloete & Auriacombe, 2007:193-194).

6.5 GOVERNANCE AND POLITICS IN A DEMOCRATIC SOUTH AFRICA

The negotiated settlement of Codesa led to a democratic South Africa, following the 1994 elections in which the ANC emerged victorious (see page 310 and paragraph 5.4.1 in chapter 5 above) (Lieberfeld, 2002:355; Jung, Lust-Okar & Shapiro, 2005:280). This democracy has been relatively stable over the past two decades despite concerns about threats of corruption, the electoral hegemony of the ANC and the blurred lines between the party and the state. The voice of the people and their meaningful participation in political processes, particularly the decision-making processes of the state, are central to a sustainable democracy. This section discusses democracy in South Africa in detail and key factors that have a direct influence on the political and socio-economic stability of the country. Key among these factors is democracy, governance, public administration, politicisation, development orientation, political transformation and corruption. A detailed discussion below of these factors seeks to understand their role and impact on the political climate in the country and the extent to which they strengthen or weaken the political structures and institutions of the state and, subsequently, how the impact on good governance in the provinces.

6.5.1 Democracy and party politics

Discussions about democracy in South Africa almost always make reference to the ANC, particularly about its dominance of the political landscape and the electoral system of the country (see page 497 and paragraph 8.1 in chapter 8 below) (Ellmann, 2016:59; Shepperd, 2009:289; Kende, 2016:184). Being considered the oldest liberation movement on the continent (Wallerstein, 1996:2695), it is not surprising that the ANC has had and continues to have a great influence on the politics of South Africa. The ANC came into power in 1994 following the landmark first democratic national general elections. It is the ANC and the role it played in fighting against the racially motivated and oppressive apartheid government that led to the realisation of democracy in South Africa (see section 4.4. in chapter 4 for a detailed discussion on the role of the ANC in democracy in South Africa) (Butler, 2005:719; Beall, 2005:258).

The Concise Oxford English Dictionary (2008) defines democracy as a form of government in which the people have a voice in the exercise of power, typically through elected representatives. McLaverty (2011:413), on the other hand, borrows from the views of different scholars to define democracy. He (*ibid.*) argues that democracy is underpinned by the principles of political equality, popular control and public participation in political processes. In essence, democracy represents the rule or wishes of the people (see page 502 and paragraph 8.2 in chapter 8 below) (Bigdon, 2006:17; McLaverty, 2011:413). However, it cannot be simply concluded that the more the people participate in politics, the more democratic the system of government. Three important factors about public participation in politics, which determine the extent of democracy, are who participates, whether the views of those who participate are representative of the views of the wider populations, and whether elite decision-makers respond to the outcomes of the participation (McLaverty, 2011:413).

The eclectic nature of the ANC derives from its history and embracing different ideologies and traditions, which are all intertwined in a single fabric. The ANC has enjoyed widespread support and enduring dominance since 1994, thus favouring its intent to increase control of the state and society. These factors collectively culminate in the party's national project known as the National Democratic Revolution (NDR) (De Jager, 2009:275; Butler, 2005:719; ANC, 2012:8). According to Southall (2004:314), in contrast to the white capitalist apartheid regime prior to 1994 whose economy was racialised, the NDR sought to create a black capitalist class and limited deracialisation of the economy (see page 36 and paragraph 1.2.10 in chapter 1 and page 300, and paragraph 5.3.4 in chapter 5 above) (ANC, 2012:29; Heller, 2009:140; Suttner, 2004:770; Butler, 2005:725; Southall, 2004:314). According to Southall (2004:314), "The objectives of the NDR are to overcome the legacy of racial oppression of the black majority and to thereby forge a united nation; to achieve democratisation; and to transform power relations as a basis for societal equality",

Southall (2014:314) however warns against the enduring electoral hegemony of the ANC, which threatens the rule of law and accountability, and challenges constitutionalism. This electoral hegemony, which has turned South Africa into a party-state, provides the opportunity and scope for corruption and predatory behaviour by the ANC elite (Southall, 2014:48). Butler (2005:719) argues that the ANC's internal democratic processes and the external democratic goals are in conflict, thereby producing two opposing sets of results. The

positive outcomes of the ANC's democratic process include defending constitutionalism, promoting social transformation, and preventing debilitating conflict over policy and candidate selection. This view is in contrast to that advanced by Southall (2014:48) above who believes that democracy and constitutionalism is threatened under the ANC government (Southall, 2014:48; Butler, 2005:719)

On the other hand, the party failed to entrench democratic attitudes and to promote a multi-party system, to support and strengthen the minimal gains of liberal democracy, and to promote and increase tolerance of internal debate and competition (Friedman, 2012:19; Butler, 2005:719, Lotshwao, 2009:901). The argument above implies that the internal party politics of the ANC as a ruling party have the potential to translate into intolerance and undemocratic practices within the state. Such practices threaten the sustainability of the hard-earned constitutional democracy and undermine the progress made thus far (Friedman, 2012:19; Butler, 2005:719, Lotshwao, 2009:901).

This intolerance towards internal debate and competition manifested itself with the purging of senior party and government officials linked to the ousted former president Thabo Mbeki in 2007. Mbeki was defeated as the president of the ANC at the party's 52nd National Conference in Polokwane by the current president Jacob Zuma. Mbeki was later removed from government as the head of state and replaced by Kgalema Motlanthe, who was elected as Zuma's deputy. Zuma was at the time facing 783 counts of corruption, fraud, racketeering and money laundering, which prevented him from taking a seat as the country's president. Zuma's case was thrown out of court in 2007 by the then National Director of Public Prosecutions (DPP) of the National Prosecuting Authority (NPA), Advocate Mokotedi Mpshe, on the grounds that there had been political interference in the case and that Zuma would not have a fair trial as a result. Many commentators, particularly opposition parties such as the DA, questioned the dismissal of the case by the NPA and approached the court to review the decision to drop the charges against Zuma³⁰. Zuma was later appointed as the country's president (Butler, 2005:720; www.news24.com viewed on 18 September 2017; www.huffingtonpost.co.za viewed on 18 September 2017).

³⁰ This case dragged on for over eight years and eventually Zuma's legal counsel conceded to the Supreme Court of Appeal in Bloemfontein that the decision by Mpshe to drop charges against Zuma was irrational and not based on sound reasoning (www.huffingtonpost.co.za viewed on 18 September 2017). This followed the High Court ruling in August 2016 that ordered the review of the 2009 decision to drop 783 corruption charges against President Jacob Zuma on the basis that the decision was irrational (www.ewn.co.za viewed on 18 September 2017).

Heller (2009:123) compares the success of South Africa in consolidating democracy to that of India. His argument alludes to the fact that both countries have never experienced serious challenges to democratic rule since their transition to democracy and the likelihood of democratic reversal or destabilisation, as has been the case in Latin America, East Asia and the rest of Africa. However, the difference between the two countries in their democratic consolidation is that India experienced brief authoritarian rule during the Emergency of 1975 to 1977. In South Africa, the dawn of democracy ushered in constitutional rule and a transition from white minority to black majority with minimal conflict. These achievements were made despite the social backdrop of extreme social exclusion and unequal distribution of wealth (see page 15, paragraph 1.2.2 in chapter 1; page 289, paragraph 5.3.2; and page 310, paragraph 5.4.1 in chapter 5 above) (Mogadime, 2005:155; Sayed & Motala, 2012:672; Schwella, 2016:74; Posel, 2013:59).

This outcome of South Africa's democracy is a result of strong and effective control measures, that is, checks and balances, in the country's governance model, which prevent the abuse of power by any one of the three branches of the state (legislature, executive or judiciary). These three branches of the state and the inherent separation of powers and governance mechanisms are key to maintaining and protecting the country's democracy. Fioramonti and Fiori (2010:23) argue that organisations and movements concerned with public accountability and good governance in South Africa were side-lined when institutional politics reasserted itself in the early years of the country's democracy. However, public accountability and good governance has resurfaced through the action of new social movements (Fioramonti & Fiori, 2010:23).

South Africa is considered the most unequal country in the world; it has the highest Gini coefficient (also known as the inequality index), followed by Brazil. As alluded to in the previous chapter, inequality is one of the main factors leading to political, social and economic instability in a country; thus, contributing to poor governance (see paragraph 3.6.2 in chapter 3 and 5.3.2 in chapter 5 above) (Binns & Robinson, 2002:25-26; Brinkerhoff & Brinkerhoff, 2002:511; Posel, 2013:59).

Authoritarian rule and racial oppression were the forms of oppression and deprivation black people faced during apartheid. Blacks were not allowed to vote in the national elections and

that meant that the then apartheid government was undemocratic. It also meant that black people were prohibited from active participation in matters of public governance and administration; that is, they did not have a say in how the government was run. Public participation is the defining principle of democracy throughout the world; however, lack of public participation by blacks was the order of the day at central and provincial government level in South Africa prior to 1994. During apartheid, blacks were partially involved in the administration of local governments in the so-called Black Local Authorities. These ethnic institutions did not have any legitimacy in the eyes of the black majority as they were imposed upon them in the urban areas and controlled by the central government (see page 286, paragraph 5.3.1 in chapter 5 above) (Smith, 2008:216; Mare, 2011:622; Morrell, Jewkes & Lindegger, 2012:15; Hilliard & Kemp, 1999:353).

South Africa witnessed open democratic elections of the national and provincial spheres of government in 1994 and the local government sphere in 1995. Immediately after ascending to power, the newly appointed government embraced the bottom-up managerial style to promote grassroots participation, also known as participatory democracy (Mzimakwe, 2010:501; Msibi & Penzhorn, 2010:225). This new approach to public administration would allow maximum citizen participation in the governance and administration of the country and afford citizens a say in the administration of government. However, participatory democracy becomes more difficult as the population increases and the country becomes more industrialised. An alternative to participatory democracy for populous and industrialised countries is an indirect form of participatory democracy, called representative democracy (see page 323, paragraph 5.4.3 in chapter 5 above) (Mzimakwe, 2010:501; Msibi & Penzhorn, 2010:225; Muller, 2008:70; Hilliard & Kemp, 1999:353).

In a representative democracy, the duly elected representatives act on behalf of the electorate. Hilliard and Kemp (1999:355) identify the key shortcomings of participatory democracy as follows: it is time-consuming, costly and delays the policy-making and planning processes; it is more suited for diverse and multicultural societies; and it conjures up negativity among citizens who are less enthusiastic about participation. On the other hand, the benefits of participatory democracy include the prevention of the abuse of administrative authority and power; less government intervention in the personal lives of the public; it promotes public expression of diverse opinions; it allows the public to challenge, refute or oppose unfounded claims by politicians; it acts as checks on the activities of government officials and

politicians; it promotes public education about the functions and work of government; it generates a sense of pride and loyalty among citizens; and it promotes a sense of ownership and patriotism among citizens (Hilliard & Kemp, 1999:355; Fioramonti & Fiori, 2010:27).

All the aforementioned benefits constitute good governance mechanisms, which enable the public to hold the state accountable for its actions regarding the use of state resources and the powers entrusted to it by the public. In a nutshell, it could be said that participatory democracy prevents unilateral decision-making by politicians and law-makers. Thus, participatory democracy not only strengthens democracy, but also sustains it (Hilliard & Kemp, 1999:355).

However, Gingerich (2009:2) warns that ideologically divided societies with high levels of polarisation may undermine the survival of democracy. Such ideological divisions among the electorate pose an even greater threat to democracy when it splits the electorate into the majority and the minority, as is the case in South Africa currently. An excessively high level of ideological advantage or disadvantage within the ruling party, which makes the country a single party democracy, renders the ruling party complacent, which then renders the elections less competitive given the electoral hegemony that the ruling party wields. In this situation, the political elite would be tempted to redirect large portions of state resources for their own consumption instead of fulfilling their executive obligation. Alternatively, the ruling elite might curb their personal consumption of state resources and instead direct these resources to electioneering activities with the aim of emphasising or de-emphasising the ideological difference between them (the majority) and the minority, not with the intent to provide improved public services and goods, but rather to court voters (Gingerich, 2009:2).

The practice of participatory democracy is evident in South Africa, for example the making and passing of laws occurs in phases, all of which require public participation; for example, draft bills and Green Papers are made public for public comment before being passed. Also, as an additional measure, these bills and acts are subjected to scrutiny by both houses of parliament, that is, the General Assembly and the NCOP before being assented to by the president. There are many other areas where the government promotes participatory democracy, such as the Public Participation Process (PPP) of local governments in matters of Integrated Development Planning (IDP) and property development where the local government is required by law to invite public comment, written submission or opinion in

these matters before taking its final decision. The ANC (2012:3) argues that accountability at local government level can be enhanced through improving ward committees (Mfene & Taylor, 2015:19) and deepening community participation. Ward committees are public participation forums through which municipal council decisions can be disseminated and community representatives can raise community issues for representation to the council (Masango, Mfene & Henna, 2013:92).

The Constitution and legislation oblige public bodies to encourage and facilitate public participation, yet the existing policy frameworks, institutional mechanisms and programme interventions of these institutions fail to comply with these statutory and constitutional obligations (Buccus *et al.*, 2008:297). Public participation could take place in various avenues including forums, community organisations, business, voluntary organisations and joint planning efforts (Hilliard & Kemp, 1999:355; Buccus *et al.*, 2008:298-299). Waheduzzaman and Mphande (2014:38) argue that participatory good governance at local government level in developing countries maximises outcomes in the implementation of development programmes. “Participatory good governance allows interaction of citizens and government officials to each express their interest, exercise their rights and obligations, work out their differences, and cooperate to produce public goods and services” (Brinkerhoff & Goldsmith in Waheduzzaman & Mphande, 2014:38).

Good governance ensures the efficient use of funds and resources and is thus vital for protection of the rights of citizens and advancement of economic and social development. It comes as no surprise that good governance leads to economic and social development because it promotes accountability, discipline, fairness, integrity, responsibility and transparency, attributes essential for the efficient and effective use of resources. Additionally, good governance attracts investments to a locality and consequently promotes economic growth and poverty reduction. Public participation in government affairs increases the accountability of authorities and transparency of their activities, which in turn promotes good governance and sustainable development. Mafunisa (2004:492) argues that a civil society is a pillar of a mature liberal democracy by limiting state power and providing checks and balances for state functions and powers. For example, civil society organisations represent the needs and views of diverse and sectoral interest groups, thereby widening public participation in public processes and institutions. Civil society organisations and institutions play a

positive role in strengthening democracy and generating good governance and economic growth (Mafunisa, 2004:492).

Therefore, it is necessary for developing countries to institute reforms and decentralisation in their governments to ensure good governance through people's participation. This need for reforms and decentralisation is so needed because participatory democracy is more effective and efficient at the lower levels of government, that is, SNGs, which are close to the people. In summary, the main objective of democracy is public participation in decision-making and thus it limits the abuse of power by authorities. In other words, democracy prevents the abuse of power and arbitrary decision-making by elected government authorities. Further, through elections and the appointment of public representatives in government democracy ensures that the public has a say in how the government is run, that is, how powers are exercised and functions performed (Mafunisa, 2004:492).

The benefit of democracy over and above public participation is the promotion and support for good governance; that is, the promotion of good governance values such as accountability, transparency, efficiency, effectiveness, fairness, integrity, and socio-economic development. The various avenues, that is, mechanisms, procedures, platforms, and structures available for public participation, such as public hearings, written public submissions, makgotla, free media, and public consultation (public participation processes) need to be strengthened, capacitated and made accessible to the public to facilitate and sustain democracy in the country (Msibi & Penzhorn, 2010:226; Nzewi, 2012:38; ANC, 2012:4).

6.5.2 Political transformation

The national policy framework for the transformation of the public service in South Africa is provided in the White Paper on the Transformation of the Public Service (RSA, 1997) (Cameron, 2010:677). This White Paper outlines a set of standards that public managers should maintain and uphold (Kanyane, 2004:3); thus, providing mechanisms to facilitate and promote ethical and professional conduct and practices in the public service. Such practices and conduct are key elements of good governance and should be promoted and enforced. However, Cloete (2013:294) holds a different view about the merits of transformation and argues that it has led to an alarming increase in corruption (the abuse of power or resources for personal gain) in South Africa through such acts as fraud and bribery.

More White Papers, that is, policies and legislation on public administration topics such as affirmative action, service delivery and training, were developed in 1990s in the government's effort to promote transformation in the country. The Employment Equity Act No. 55 of 1998 provides for preferential employment in favour of suitably qualified people from previously marginalised groups through affirmative action to achieve employment equity in the country (Lee, 2010:79; RSA, 1998:9). As part of these reform efforts the government set up a Presidential Review Commission in 1998 to evaluate the public service. Recommendations were made in the reports of the Commission, which laid the conceptual framework for public sector reform in South Africa. Chapter 10 of the Constitution lists the basic values and principles governing public administration in South Africa (Cameron, 2010:677; RSA, 1996:74-77).

These constitutional values and principles are similar to the indicators used globally for measuring good governance, such as the World Governance Indicators (WGI) survey (see paragraph 6.3 above) (McFerson, 2009:260-261; Rotberg, 2014:13; RSA, 1996:74). Moller (2007:190) argues that corruption in government is fuelled by parliamentarians and senior civil servants, that is, politicians who earn high salaries and have become dependent on retaining their positions and political seats to maintain their lavish lifestyles; thus, compromising their oath of office as public representatives to act with integrity and to uphold the Constitution in their duty to serve the public. These high salaries for parliamentarians have only served to increase the level of inequalities and to raise expectations among other sectors of the society for higher salaries. In contrast, other sectors of government, particularly the essential services such as policing, health services and education, remain poorly paid and inadequately equipped to render services. The consequence of this, especially in the health services, has been the emigration of qualified personnel to developed countries in search of greener pastures, a process termed 'brain drain' (Kalipeni, Semu & Mbilizi, 2012:154). This emigration has exacerbated the country's shortage of skills and depressed the levels of services (Moller, 2007:190-191).

The state should promote and enforce the values of good governance regarding Human Resource Management (HRM) best practices to ensure recruitment and retention of adequately skilled personnel. This action will help improve public service delivery and subsequently the lives of all the citizens. To summarise, there is no doubt that political

transformation in South Africa since 1994 has translated into some socio-economic development benefit for the masses of its population. This is evident in the significantly high numbers of people who now have access to basic services, such as housing, running water, sanitation, electricity, basic education, and basic health care (Cloete, 2013:294).

However, these achievements are still negligible in comparison to the inequalities that persist in the country and socio-economic development achievements in other developing countries, especially those in East Asia. It is therefore crucial to assess the measures, means and strategies, such as legislation, policies and mechanisms employed by the government to realise political transformation. Clearly, the strategies used currently and in the recent past to achieve political transformation and its outcomes of socio-economic development are severely limited and restricted, as witnessed with the continued marginalisation of the masses, rampant corruption and widespread abject poverty and unemployment (see page 15, paragraph 1.2.2 in chapter 1 above) (Schwella, 2016:74; Sayed & Motala, 2012:672; Cloete, 2013:294).

The negative consequences of government's failure to address the challenges of poverty, unemployment, lack of basic services and social amenities, socio-economic development, and skills development manifest in the increase in violent crime, public service delivery protests, labour strikes, corruption, and retarded economic growth. However, the response to this failure among the 'born frees' (young people born after 1994 and with 'little if any first-hand experience' of apartheid) is one of apathy and alienation, which manifests itself in the lack of participation in democratic processes such as elections (Wasserman & Garman, 2014:392). "In the most recent local government elections in 2011, 28 per cent of eligible voters aged between 20 and 29 years old turned out to vote, compared to over 60 per cent among older age groups" (Alexander, 2013 in Malila & Oelofsen, 2016:190).

These young people face the same, if not greater, levels of unemployment, poverty, inequality and hopelessness as their parents. For example, more than 26% of black African youth between five and 24 years, measured as a percentage of the black African population, had not attended school at all (Malila & Oelofsen, 2016:190). A serious and intense overhaul of the current legislation and strategy to foster socio-economic transformation is necessary and that starts with a review of the government's political transformation strategy as it informs the principles, policies, strategies and legislation governing socio-economic

development. Such a review needs to place the cultivation and promotion of good governance at its centre to ensure national and subnational coordination, alignment and integration of the efforts of all sectors of government (Mangaliso & Mangaliso, 2013:533; Wenzel, 2007:61; Harrison-Rockey, 1999:170).

In order to achieve sustainable development, the success of transformation must not be measured only in terms of physical service delivery and socio-economic indicators, but also in terms of a more accountable political ethos of democratic governance down to the individual level. The indicators used to measure the success of transformation should be more inclusive so as to improve the acceptability of the governance model and processes to a wider sector of the country's citizens (Wenzel, 2007:61; Du Toit & Forlin, 2009:645).

6.5.3 The New Public Management

Perhaps for South Africa, as a relatively new democracy in the process of experimenting with various models and strategies to achieve uniform and working methods and policies to address the challenges it faces, the New Public Management (NPM) (Bevir, 2011:375) model could be an answer to its transformation challenges. NPM was touted in the 1980s as a universal model of reform and governance in public sector management (see page 139, paragraph 3.2 in chapter 3 above) (Bovis, 2013:187; Pillay, 2008:374; Cameron, 2010:680). According to Pillay (2008:374), NPM has been described as “the means by which the public service is being transformed from a traditional bureaucratic structure to an entrepreneurial, market-driven form of governance that is at arm's length from the state”. NPM was first introduced and embraced in the 1980s by Anglophone countries such as England, Australia and New Zealand to replace the traditional bureaucratic public administration model of Max Weber (Tabi & Verdon, 2014:221; Emery & Giauque, 2001:151; O'Flynn, 2007:353). “NPM strives to make the services provided by government more responsive and accountable to citizens by applying business-like management techniques with a strong focus on competition, customer satisfaction, and measurement of performance” (Bao *et al.*, 2012:445).

However, despite its merits and benefits, NPM's private sector business principles are not suitable for improving performance in government (O'Flynn, 2007:353; Bao *et al.*, 2012:445). NPM was aimed at reducing red tape and the rigidity associated with old style public administration and to increase efficiency in the provision of public services (Cameron,

2010:680). This model was particularly embraced and successful in developed and industrialised countries. However, given the rapidly globalising world and pressures placed on developing countries to catch up with developed countries, this model of public sector reform and governance is pertinent for South Africa. The world economic and political systems have become more and more integrated with the result that developments globally impact on individual countries in both developed and developing worlds in one way or another (Cameron, 2010:680).

Pillay (2008:374) argues that NPM requires complementarities between the reform strategies that are adopted and the cultural characteristics of the country where it is being implemented; that is, reforms and the introduction of NPM must be context sensitive. This consideration is particularly important for a country like South Africa where the economy, national culture and institutions, that is, political and cultural settings differ from those in industrialised countries. The importance of cultural values in adopting new governance models is illustrated by the failure of rural communities in Lesotho to embrace the democratic values of good governance following the first free democratic elections in the country in 1993. Lesotho adopted a constitutional monarchy that complements, rather than competes with the modern state led by a monarch as head of state and a prime minister as head of government (Pillay, 2008:374). However, despite this complementarity at the state and government level, there is a strong cultural alienation toward democracy, resistance to change, and a sense that democracy is to blame for the current societal problems among local communities (Ngozwana, 2014:41).

It should be noted, however, as posited by Pillay (2008:374), that there has been little objective evidence of success in developing countries where NPM has been adopted. The benefits associated with NPM, including economic growth, efficiency and effectiveness, have not been realised in developing countries. Effective service delivery and policy-making and implementation are highly dependent on the social and political environment within which public administration is located. NPM is particularly advocated by the Bretton Woods Institutions, such as the World Bank and the International Monetary Fund, to effect modernisation and efficient service delivery in countries around the world (Massey, 2010:194; Pillay, 2008:374).

Massey (2010) argues that the success of NPM in Africa is rare, with the exception of countries like Kenya where reforms and privatisation of Kenya Airways between 1996 and 2006 is one example of an isolated case of NPM success in Africa. The relationship between politics and civil society has a great influence on the success or failure of NPM, for example, a non-corrupt public administration is essential for successful implementation of NPM. The context, that is, social, economic and political settings are important considerations when instituting modernisation and reforms such as privatisation and restructuring of institutions as required by the NMP and advocated by the Bretton Woods Institutions (Massey, 2010:195).

The United Nations and the Bretton Woods Institutions advocate for good governance to achieve the desired outcomes of efficient and effective service delivery. The Kenya Airways example is an illustration of how privatisation can turn a loss-making, corruption-ridden state enterprise into a profitable modern internationally competitive private company. This example resonates strongly with South African Airways, which has for many years failed to achieve financial sustainability and profitability and has relied on the state for financial bailouts. The lesson to be learnt from the successful privatisation of Kenya Airways highlights the importance of the values of good governance, which include leadership, trust, transparency, competence and honesty (Massey, 2010:195).

6.5.4 Politicisation

Another aspect which could provide answers to the question regarding poor governance in the South Africa government, despite the country's mineral and natural wealth endowments, relates to leadership. This is an issue of politicisation, which Cameron (2010:676) defines as partisan control of bureaucracy. Cameron (2010:676) argues that growing politicisation has contributed to poor service delivery in South Africa. Politicisation of the public service manifests itself in three ways, namely, "politicization as civil servant participation in political decision-making in the definition and implementation of public policy; politicization in political control over the nomination and careers of civil servants; and politicization in the form of political involvement by civil servants as citizens and voters" (Cameron, 2010:677).

The second form of politicisation is what Cameron (2010:676) refers to as partisan control of the bureaucracy, or political involvement in the management of the civil service (Comroff, 2011:103; De Kadt & Simkins, 2013:113; Rotberg, 2014:17). Southall (2014:48) attributes

increased politicisation of the state to South Africa becoming a party-state as a result of the ANC becoming a dominant party assured of successive election victories. Southall (2014:48) argues further that the “ANC now presides over a party-state whose accountability leaves much to be desired, providing opportunity and scope for corrupt and predatory behaviour by significant elements of the party’s elite. Further merging of party and state challenges constitutionalism and threatens the rule of law.” Perhaps linked to politicisation is the issue of cadre deployment, whereby party members are appointed in key government positions based on their loyalty to a political party, rather than on merit (Southall, 2014:48).

The politicisation of civil servants, especially cadre deployment, is not unique to South Africa as it is also practiced in industrialised countries such as the US where over 4000 political appointments are made at federal government level. Politicisation is also on the increase in Britain. Cameron (2010:676) contends that the South African government needs to place greater emphasis on merit as the basis for appointments and promotions. For example, the public broadcaster, the South African Broadcasting Corporation (SABC), has been troubled by political interference and poor management (Harber, 2014:206).

Political appointments and interference in the public bureaucracy has the potential to weaken good governance structures and mechanisms as such practices create public opinion of partisan control and lawlessness. Accountability is the key principle of good governance that is undermined as a result of political appointments and interference. Impartiality, fairness, equitability, good human resource management and career development practices, and responsibility (RSA, 19996:74) are some of the principles of good governance that are undermined as a direct result of cadre deployments. This practice may also erode public confidence in institutions of the state. Cadre deployment poses even greater challenges to the integrity of public entities when such appointments are not made on merit, that is, qualifications, experience, expertise and competence (RSA, 1996:74).

The recent controversy around the appointment of the Chief Operations Officer of the SABC, Hlaudi Motsoeneng, is a case in point. Motsoeneng is alleged to have committed fraud by claiming that he had a matriculation (grade 12) certificate in order to secure appointment at the SABC (RSA, 2014:2; Underhill, 2014:1). However, the view, although valid, somehow conflicts with government legislation and policies such as Broad Based Black Economic Empowerments (BBBEE) and Affirmative Actions (AA), which seek to empower the

previously marginalised groups, that is, youth, women, blacks, and people with disabilities, by affording them equal opportunities for employment and business (Lee, 2010:78-79).

Therefore, even though government appointments and promotions are made according to AA and BBBEE, that is, in favour of previously marginalised groups, merit should still be a minimum requirement. However, the point made by Cameron (2010:676) above bears merit in that the majority of Auditor-General reports indicate that poor governance and service delivery, especially at SNG level, is due to incompetence and poor levels of skills and relevant qualifications. This view is emphasised by Davids and Esau (2012:82), who argue that the shortage of skills has a negative impact on the ability of government to achieve its developmental goals and objectives. The dire situation of a severe skills shortage, especially at local government level, requires urgent and effective policy interventions such as capacity-building and skills retention initiatives, particularly retention of senior government officials (Davids & Esau, 2012:82).

It is also common knowledge that the country has a severe shortage of specialised skills, such as engineering, research and technology, among others. High levels of requisite technical skills both in the public and private sector are necessary to grow the economy and for efficient provision of public goods and services (see the recommendations in chapter 9). This has become increasingly important due to globalisation, technological developments and a global shift from industrial to knowledge-based economies (Davis & Esau, 2010:83; SAPA, 2014; Butler, 2014). The more technical and highly complex tasks involved in various jobs in government, particularly at the local government level, require highly trained people with requisite skills to ensure that public services are delivered adequately and effectively. The appointment of suitably skilled and competent people in government jobs is in line with and promotes the values and principles of good governance, such as accountability, transparency, and Good Human Resource Management and Career Development Practices, as provided for in section 195 of the Constitution (RSA, 1996:74).

Knowledge-based economies are characterised by increased collaboration, innovation, and research and development (Sporer, 2004:40). Given the extreme shortage of technical and specialised skills, in addition to the challenges of corruption, politicisation, lawlessness and crime, among others, it would appear that the shortage of specialised skills and the poor quality of education are the main stumbling blocks in the path of South Africa reaching the

desired levels of governance. Chapter 9 will use this analysis of different governance dimensions and factors to identify the key features required for improved governance in the country.

6.5.5 Corruption

Corruption is one of the major challenges facing the current South African government. Corruption is driven by the free market ideology and leads to individualism and individual gain rather than common good, thereby undermining the goals and objectives of national and community level development (Fraser-Moleketi, 2009:332). Hyslop (2005:774) argues that the current level of corruption can be attributed to both the legacy of the former apartheid regime and the structures of the present political leadership. However, the level of corruption is influenced differently by both factors. Hyslop (2005:775) distinguishes between rent-seeking behaviour, patron-client relationships, and corruption.

In an effort to combat and prevent corruption in government, the government passed an Act of parliament, the Prevention and Combating of Corrupt Activities Act No. 12 of 2004, which provides stronger measures to prevent and combat corruption in government (RSA, 2004:2). Corruption undermines the good governance structures and mechanisms put in place by the state, such as policies, legislation and various oversight structures. In turn, increasing corruption implies that these structures are not effective and therefore further undermines the Constitution, which provides for these structures and mechanism. For example, rampant corruption could imply that state agencies charged with the responsibility of upholding the rule of law are dysfunctional; thus, this brings the credibility of the state and its leadership into question (Southall, 2014:81).

Corruption and lawlessness are key indicators of weakness in the state to uphold the rule of law. The Marikana Massacre (Southall, 2014:81), in which 34 striking miners were killed by the South African Police Service on 16 August 2102 at a platinum mine in Marikana, highlights the lack of government accountability and impunity which threatens the rule of law and democratic legitimacy of the state, which is founded *inter alia* on the supremacy of the Constitution and the rule of law (Adelman, 2015:243).

Examination and analysis of corruption in the country requires a comparative framework, which will make it possible to distinguish the three aforementioned concepts. The lack of a clear definition of corruption creates a situation where all actions perceived to be unfairly benefitting one party or another are labelled as corruption. Corruption in South Africa could refer to any of the above concepts, thus not portraying a true picture about the nature of the actions and practices involved in both public and private organisations with respect to good governance. The current political administration grapples with corruption, which is a legacy of the combined influences from the former apartheid government, the Bantustans, and the liberation movements, which all practiced varying degrees of rent-seeking behaviour, patronage and corruption (see page 321, paragraph 5.4.2 in chapter 5 above) (Cloete, 2013:294; Moon, 2006:258; Ross, 2003:327; Rapatsa, 2015:208; Phago, 2013:113).

The transformation efforts of the state could be undermined by the alarming rate of corruption within state entities; thus, creating the impression that transformation leads to corruption, as argued by Cloete (2013:294) above (see page 404, paragraph 6.5.2 above in this chapter). In the present study that examines provincial governance since 1996, corruption is one of the key issues high on the agenda of all sectors of society in efforts to realise the developmental goals of job creation, poverty eradication, and socio-economic development. The cancer that is corruption in this country has undermined government efforts and those of other supporting local and international structures and organisations providing development aid to the country, such as the World Bank and the International Monetary Fund, to improve socio-economic conditions. Corruption stands in the way of good governance and improved socio-economic conditions because funds meant for development are instead siphoned into personal interests by authorities, individuals and organisations entrusted with managing these funds (Rubin, 2011:479; Hyslop, 2005:773).

Mzilikazi wa Afrika in the Helen Suzman Quarterly Roundtable Series, Corruption, argues that “South Africa has good anti-corruption policies, but these policies are failing the nation, and whistle blowers are especially vulnerable” (www.hsf.org.za retrieved 13 September 2014). The government must demonstrate the will and intent to address corruption. The trend of siphoning funds from donor organisations for personal interests is particularly rife in Africa, where billions of US dollars in government funds are alleged to have been stashed in private bank accounts in European countries, such as Switzerland, largely by senior government officials and politicians (Uneke, 2010:112). Corruption is the misuse of entrusted

power for private gain, that is, the abuse of public office for private benefit and “includes bribery, extortion and other acts of misconduct, including fraud and embezzlement” (Uneke, 2010:111). The level of corruption and existing trade barriers in a market (that is, a country) are the two most crucial elements in strategic decision-making regarding market entry by multi-national firms (Robertson, Gilley & Crittenden, 2008:623).

However, even though the blame is usually placed on officials and politicians of African governments, it takes both the corruptee and the corruptor to practice such acts. In many cases, Western multinational corporations are found to be involved in unethical and corrupt practices, which invariably lead to corruption among African authorities. Therefore, it is necessary to examine both cases when investigating and discussing corruption. By assessing the root causes of corruption, rather than merely examining its impact and extent, it is necessary to understand its causes and how best to address them. Sevüktekin and Nargeleçekenler (2010:140) argue that the lack of transparency and accountability in government agencies exacerbates corruption. Rampant corruption in South Africa takes a number of different forms, including unauthorised, irregular and wasteful expenditure by government officials and politicians. The main causes of corruption include greed, low salaries and poor leadership, which drive the scourge of lawlessness and poor conduct in both public and private sectors (Van Niekerk & Olivier, 2012:132).

The prevalence of corruption within state institutions, and the many different forms it takes, necessitates stern action from all sectors of society led by state authorities. Good governance principles such as public participation and transparency should be promoted and upheld to ensure increased vigilance among all stakeholders. Rubin (2011:480) argues that high levels of corruption, for example, in the housing programme, have been recorded in South Africa. However, various reasons contribute to citizens’ perceptions of corruption; these include “lack of access to the state that most residents experience, its opacity, arbitrariness and distance” (Rubin, 2011:480).

Anti-corruption strategies and programmes should include “the introduction of new and more relevant rules, reform of existing laws and institutions, provision of more effective and relevant incentive structures, and enforcement mechanisms to reduce the profitability of opportunism” (Mbaku, 2008:427). Given the prevalence of corruption, it could be argued that poverty and many years of deprivation and oppression of the black majority could be one of

the major causes of corruption, especially among black political leaders and government officials. On the other hand, the minority white communities and other fairly privileged racial groups who currently occupy senior positions mainly in private sector institutions and business might have embraced a culture of rent-seeking behaviour and patronage, which was a norm in the pre-democracy years of the country. In the present day, with norms and standards such as the King III Codes of Good Practice (Naidoo, 2003:12), such conduct and practices as nepotism, bribery and fraud are considered as unethical and classified as corruption (Mbaku, 2008:427).

Firmer implementation, enforcement and monitoring of good governance mechanisms are necessary to ensure increased compliance with the prescribed policies, legislation and processes. In the first decade of the newly democratically-elected government, the biggest and most controversial corruption scandal was the Strategic Defence Procurement Packages, also known as the arms procurement deal, which involved procurement of military weapons, aircrafts and warships from European, particularly German and French, companies. Senior government officials and members of the ruling ANC, including the former president, Thabo Mbeki, and some Cabinet ministers were implicated in this saga. Allegations of bribery, fraud, self-enrichment and dishonesty were levelled against many government officials who formed part of the arms deal committee. The deal was expected to benefit local small businesses, create jobs and impart skills to thousands of unemployed and poor people in the country and to add impetus to economic growth initiatives through localisation and procurement from and support for local businesses (Arms Procurement Commission, 2014: www.armscomm.org.za retrieved on 8 October 2014; SAPA, 2014: www.news24.com retrieved on 8 October 2014; Brümmer, 2013: www.mg.co.za retrieved on 8 October 2014).

Yet, due to ineffective governance mechanisms and anti-corruption policies, such acts of corruption continue unabated and continue to deprive the poor and disenfranchised the benefits of constitutional provisions and basic human rights. Very little of the arms procurement deal can be shown in terms of its impact on socio-economic conditions in the country. In addition, there were also allegations of inflated prices and the value of the deal. Yet very little redress, if any, has come out in terms of bringing to book those implicated in these acts of corruption (Crawford-Browne, 2004:329; Van der Westhuizen, 2005:277).

Although these actions involved mainly officials at national government level, they have created a bad image and set a precedence, which has now spread to other spheres of government. For example, in the Northern Cape Province senior politicians, that is, Members of the Executive Council, were investigated for fraud and corruption relating to unfair interference with the allocation of government tenders; thus, the misappropriation of state funds. In an effort to uphold the constitutional values and principles of good governance as enshrined in section 195 of the Constitution (RSA, 1996:74), the government developed formal codes of ethics and codes of conduct as a strategy to transform and guide the attitudes of parliamentarians, political executives and public servants towards a more professional democratic ethos in support of good governance (Sing, 1999:597; RSA, 1996:51-75).

5.6.12.1 Corruption in the public sector

Sevuktekin, Nargelecekenler and Giray (2010:140) argue that there is a relationship between corruption and public expenditure. Corruption is a social, political and economic phenomenon that impacts negatively on socio-economic development. However, its impact varies among countries and, in some instances, is believed to promote economic development, particularly in Asian countries. Sevuktekin *et al.* (2010:140) identify a causality relationship between corruption and public expenditure. Factors which influence the extent of corruption include the monopoly power of the state, the discretionary powers of the state, and lack of accountability and transparency. It is easier for government agencies to engage in corrupt activities when accountability and transparency are lacking. The 2007-2008 Global Competitiveness Report based on a survey of 130 countries worldwide, ranks South Africa at 44. Countries with poor rankings in global competitiveness have high levels of corruption. A comparative analysis of global competitiveness among the countries surveyed is shown in the index in Table 6.5 below (Sevuktekin *et al.* 2010:140).

Table 6.5: Global Competitiveness Index 2007-2008

Global Competitiveness Index 2007-2008		
Country/economy	Rank	Score
United States	1	5.67
Sweden	4	5.54
Finland	6	5.49
Singapore	7	5.45
Netherlands	10	5.4
Canada	13	5.34
New Zealand	24	4.98
Chile	26	4.77
Spain	29	4.66
South Africa	44	4.42
Italy	46	4.36
Hungary	47	4.35
Poland	51	4.28
Mexico	52	4.26
Turkey	53	4.25
Indonesia	54	4.24
Russian Federation	58	4.19
Columbia	69	4.04
Philippines	71	3.99
Brazil	72	3.99

Source: World Economic Forum. The Global Competitiveness Report 2007 -2008

The Constitution obligates public institutions, that is, national and provincial parliaments and local government councils and public bodies to uphold and practice high standards of professional ethics (RSA, 1996:74). The measures put in place by the Constitution to prevent corruption include codes of conduct, whistle-blowing policies, and training initiatives as prescribed by national legislation (Ferreira & Bayat, 2005:15). State Institutions Supporting Constitutional Democracy, also known as Chapter 9 institutions, play an important role in combating and curbing corruption and strengthening accountability and good governance in government (see page 281, paragraph 5.2 in chapter 5 and page 386, paragraph 6.4.3 in this chapter above) (Lodge, 1998:163; RSA, 1996:69; Ntlama, 2015:13; Phago, 2013:112).

The Auditor-General, for example, exposed many incidents of maladministration and poor governance in the different spheres of government, particularly in the provinces and municipalities. According to Ferreira and Bayat (2005:16), “The AG is the general watchdog of the government over administrative practices of government departments (agencies)”. Such action has led to increased efforts by government to improve good governance practices in the affected spheres of government and to promote good governance in government in general (Evans, 2013: www.mg.co.za retrieved 8 October 2014). Another good example of work done by Chapter 9 institutions is the Public Protector, whose work covers investigations, reports and recommendations on alleged acts of corruption and abuse of state power and resources by government officials and politicians (Thornhill, 2011:80).

One of the major cases investigated by the Public Protector was the so-called Nkandla gate, whereby the state, that is the Department of Public Works, and the president are alleged to have misappropriated state funds to build and upgrade President Jacob Zuma’s private home in Nkandla, KwaZulu-Natal (RSA, 2014:4). The Standing Committee on Public Accounts also does sterling work to hold public bodies accountable regarding the use of state funds. The work done by various governance structures in addition to such good governance mechanisms as policies and legislation is commendable, yet the collective impact of such work is limited as these structures and mechanisms are not coordinated and integrated. Therefore, there is a need to coordinate and integrate the outcomes of various governance measures so as to maximise their impact (www.mg.co.za retrieved 8 October 2014).

6.6 CONCLUSION

One could argue that good governance is the moral compass of the state that guides the actions and decisions of all public servants and represents the foundation on which public institutions and the Constitution that established them are founded. Good governance is intended to promote and achieve democracy, accountability, transparency, rule of law and most importantly legitimacy of the state through improved provision of public services and a better life for all. The Constitution as the supreme law of the country lays down the values and principles of good governance with which all public entities should comply. The Constitution further makes provision for enactment of legislation that will enforce the values and principles through the establishment of state institutions and the development of policies

and procedures, which serve as implementation and control mechanisms for these values and principles. The collective of these initiatives and mechanisms seek to promote and improve good governance to steer the country into stability, prosperity and equality.

This chapter discussed in detail the dynamics and different factors that are central to attaining a desired state of governance in South Africa, such as the rule of law, ethical conduct, accountability, fairness, public participation and transparency. These factors, if adequately enforced and promoted, collectively bear the potential to drive the state and the society into prosperity and sustainable development. Further, these factors, as discussed in this chapter, provide an opportunity to identify areas of strength, weaknesses, threats and opportunities, which can then be reconfigured to develop an effective and efficient governance framework for the state, particularly the provincial sphere of government (which is the focus of the present study). These factors, as discussed in this chapter (see page 366, paragraph 6.3), together with the findings, analysis (chapter 8 below), and assessment of provincial government performance (chapter 7) provide essential tools and guidance to strengthen governance in the country (see chapter 9 below). Furthermore, these findings could be used to develop an improved governance framework for the state, which takes advantage of the benefits of excellent performance by some sectors of the state and the lessons learnt during the past two decades since the dawn of democracy in South Africa in 1994.

South Africa does not operate in a vacuum. It is a member of the regional, continental and international community of countries, for example SADC and the AU, which are signatories to various conventions and treaties. It is therefore important for the country to align its national and sub-national government policies and strategies with those of its international partners to ensure consistency and coherence. The values and principles of good governance as laid down in the Constitution and embraced by all state entities find resonance in regional and international good governance mechanisms, such as the African Peer Review Mechanism, the Mo Ibrahim Index of African Governance, and other international organisations promoting and supporting development across the globe, for example, Transparency International, the IMF and the World Bank (see section 6.3 above in this chapter on good governance mechanisms).

The South African Constitution is the central pillar of good governance in the state, as discussed above, and together with the parliamentary committees and state institutions

supporting constitutional democracy constitutes the foundation and core internal governance mechanisms of the state by scrutinising and overseeing the executive. The Constitution serves as the primary point of reference in all matters of governance, be it legislation, institutional or procedural. The Constitution further provides the basis for establishing the parliament and its parliamentary committees and the state institutions supporting constitutional democracy (see section 6.3 above on governance in the state).

These structures exercise oversight over state entities and enforce good governance. In other words, they are public watchdogs of the state and their primary role is to ensure that state entities conduct their affairs according to the Constitution and the electoral mandate. This watchdog role is particularly important because the public through their electoral mandate has entrusted the administration and governance of public resources on the state. The state is therefore constitutionally obliged to deliver on this mandate and account for its actions. This relationship between the public and the state is best explained in terms of the principal-agent theory, whereby the public (the principle) entrusts the state (the agent) with the responsibility to manage its resources. The political dynamics and socio-economic factors highlighted in this chapter provide adequate background and useful tools to identify the governance features necessary for a more effective and efficient system of provincial governance, as discussed in Chapter 8 and Chapter 9 below.

“It’s pretty ironic that the so-called ‘least advantaged’ people are the ones taking the lead in trying to protect all of us, while the richest and most powerful among us are the ones who trying to drive the society to destruction” – Noam Chomsky

APPENDIX 6A: BATHO PELE PRINCIPLES IN RELATION TO GOOD GOVERNANCE

Principle	Relation to good governance	Measurability
Consultation	Leads to a people-centred government, services are relevant to the needs of citizens. Relates to Constitutional values and principles – principle 8 (people’s needs must be responded to).	Forms of public participation. Use of Izimbizo, citizen forums, Executive committee meets the people. Resources available for engagement.
Service Standards	Introduces a level of predictability with regards to services, creates certainty and stability, reduces arbitrariness, helps to reduce corruption, produces equality.	Waiting times stipulated clearly stating what are the application requirements turn-around times stipulated. Adhering to service delivery commitments.
Access	Gives substance to the commitment of being responsive to citizens’ needs.	Convenience of operating hours. Ability to contact department telephonically and by other means. Access to building by elderly and disabled.
Courtesy	Basic human relations, indicates that citizens are the central subject of government.	Greetings. Availability of water and toilets. Cleanliness of facilities. Officials work beyond time.
Information	Key way through which citizens can become empowered. Availability of signage. Information desk.	Availability for forms and user-friendliness. Language of documents.
Redress	Allows for recourse to higher order, if dissatisfied, is a check and balance to prevent the abuse of power.	Mechanisms to respond to complaints. Responding to grievances. Suggestion boxes.
Value for Money	Meets the economy, efficiency and effectiveness principles from the Constitutional Values and Principles (principle 2).	Effective services provided. Reasonable costs for services.
Openness and Transparency	A key measure of democratic government (from Constitutional	May be measured through the quality of Annual Reports and

Values and Principles) that relates to transparency. This is a critical means by which good governance can be promoted, as it prevents abuse of power and helps with the scrutiny of decision-making.

adherence of departments to the Promotion of Access to Information Act. It may also be measured at site level, which is where citizens are able to access information on government.

Source: Naidoo, 2011

APPENDIX 6B: THE ROLE AND FUNCTIONS OF PARLIAMENTARY COMMITTEES (SOURCE: WWW.PMG.ORG.ZA ACCESSED ON 22 JUNE 2014)

Oversight Responsibility of the Standing Committee on Public Accounts

The National Assembly Standing Committee on Public Accounts acts as Parliament's watchdog and calls heads of government departments and institutions are regularly called by this committee to report and account for expenditure. The Committee can recommend that the National Assembly takes corrective actions if necessary.

• **THE ROLE AND FUNCTIONS OF COMMITTEES IN PARLIAMENT (provided by Parliament)**

The two houses of Parliament, the National Assembly and the National Council of Provinces, conduct their work in plenary sessions (where Members of a house meet together in one group), in joint sittings (where Members of both houses meet as one group), and in Committees (smaller groups of Members).

• **Working in Committees allows Parliament to:**

- Increase the amount of work that can be done
- Ensure that issues can be debated in more detail than in plenary sessions
- Increase the level of participation of Members of Parliament (MPs) in discussions
- Enable MPs to develop expertise and in-depth knowledge of the specific Committee's area of work
- Provide a platform for the public to present views directly to MPs, something which is not possible in a plenary sitting of Parliament
- Provide an environment for Parliament to hear evidence and collect information related to the work of a specific Committee.
- Committees are, in general, proportionally representative of the parties in Parliament. Committee meetings are open to the public, but may be closed if there is a good reason to do so.

- **The different committees have one or more of the following functions:**
 - They monitor and oversee the work and budgets of national government departments and hold them accountable
 - They consider and amend Bills, and may initiate Bills
 - They consider private members' and provincial legislative proposals and special petitions
 - They consider international treaties and agreements
 - They examine specific areas of public life or matters of public interest
 - They take care of domestic parliamentary issues
 - Committees have the power to summon any person to appear before them, give evidence or produce documents.
 - They may require any person or institution to report to them. Committees may also receive petitions, representations or submissions from the public. Each Committee is headed by a Chairperson.

- **THE DIFFERENT COMMITTEES OF PARLIAMENT**

Portfolio Committees: The National Assembly (NA) appoints from among its members a number of Portfolio Committees to shadow the work of the various national government departments.

- **The role of Portfolio Committees is to:**
 - Consider Bills,
 - Deal with departmental budget votes,
 - Oversee the work of the department they are responsible for, and enquire and make recommendations about any aspect of the department, including its structure, functioning and policy.

The work of Committees is not restricted to government. They may investigate any matter of public interest that falls within their area of responsibility. There is a Portfolio Committee for each national Ministry and its associated government department/s.

- **Select Committees**

The National Council of Provinces (NCOP) appoints from its permanent members a number of Select Committees to shadow the work of the various national government departments and to deal with Bills. Because only 54 of the 90 NCOP Members are permanent delegates compared to the 400 of the NA, the Select Committees oversee the work of more than one national government department.

- **Public Accounts Committees**

The National Assembly Standing Committee on Public Accounts acts as Parliament's watchdog over the way taxpayers' money is spent by the Executive. Every year the Auditor-General tables reports on the accounts and financial management of the various government departments and State institutions. Heads of government departments and institutions are regularly called by this committee to report and account for expenditure. The Committee can recommend that the National Assembly takes corrective actions if necessary.

- **Members' Legislative Proposals and Petitions Committees**

Draft bills can be submitted by individual Members of the National Assembly. These bills are considered by the National Assembly's Standing Committee on Private Member's Legislative Proposals and Special Petitions. If the Committee agrees with the principle of the draft Bill, a Bill will be prepared and dealt with by Parliament. The National Council of Provinces Select Committee on Members' and Provincial Legislative Proposals considers draft Bills from individual NCOP members and provincial legislatures. Petitions may also be tabled in Parliament and referred to the relevant committee that deals with the issue raised in the petition.

- **Internal Committees**

The National Assembly has a number of internal committees that deal with matters affecting the running of Parliament. The Committees normally consist of senior Members of Parliament. The Rules Committee and its sub-committees deal with House rules, the budget

of the House, support for Members, internal arrangements, and powers and privileges of members. Other internal Committees are the Programme Committee that plans the work of the Assembly, the Disciplinary Committee, and the Committee of Chairpersons.

The National Council of Provinces has its own domestic Committees. The Rules Committee and its subcommittees deal with the NCOP rules, the NCOP budget, parliamentary privileges, internal arrangements, international relations and delegated legislation. The Programme Committee plans the work of the NCOP and the Committee of Chairpersons make recommendations about the functioning of Committees and other NCOP forums.

- **Ad hoc Committees**

Parliament or one of its Houses may appoint an ad hoc (temporary) Committee when a special task must be done. When the task is complete, the Committee is dissolved.

- **Joint Committees**

The National Assembly and the National Council of Provinces together appoint a number of joint committees, for example the Constitutional Review Committee. The Joint Standing Committee on Intelligence and the Joint Standing Committee on Defence are statutory Committees. This means that they are established, by the Constitution or by an Act of Parliament, as well as in terms of the rules of Parliament. The committees play a very important role in the process of building democracy and involving the public in the processes and activities of Parliament.

APPENDIX 6C: PRINCIPLES AND VALUES OF THE OFFICE OF THE PUBLIC PROTECTOR

Independence and Impartiality – we perform our constitutional duties without fear or favour, and without deference to any person or institution

Human Dignity – we respect the constitutionally protected dignity of all those we interact with as we deliver services and manage our affairs

Equality – we treat all those we serve, or interact, with equal consideration, taking into account human diversity and related needs

Ubuntu – we serve with humanity, empathy, compassion, understanding and respect for every person's human rights

Redress – we strive to achieve remedial action where wrong has been done

Accountability – we always give an account of our actions and decisions and promote the same within the state

Integrity – we keep our promises and maintain high standards of trustworthiness, mindful of our obligation of confidentiality

Responsiveness – we expeditiously deliver services that equally address the needs of all persons and communities

CHAPTER 7: GOVERNANCE IN PROVINCIAL ADMINISTRATIONS

“The collapse of good conscience and the absence of accountability and public scrutiny have led to crimes against humanity and violations of international law” - Nelson Mandela (1990)

7.1 INTRODUCTION

Chapter seven discusses the performance of the nine provinces of South Africa with respect to good governance in fulfilling their constitutional mandate, as provided for in chapter 6 of the Constitution (RSA, 1996:41). The areas of focus for assessment of provincial government performance, that is, the indicators used to measure good governance in provincial governments include the efficiency and effectiveness of public service delivery, socio-economic development, poverty alleviation, equity, fairness, rule of law, accountability and transparency, that is, the constitutional values and principles of good governance. These values and principles form the basis of the good governance framework in government and serve as the lens through which the performance of provincial administrations is measured with respect to good governance. This governance framework used to assess provincial administration performance is input-based in that the indicators used for assessment measure the extent to which governments comply with and implement these principles in delivering their constitutional mandate; that is, their legislative and executive obligations.

Thus, to ensure that the impact of such actions is being assessed, as well in measuring good governance, the study likewise measures the outcomes, not only the inputs, of government's delivery of public services. This approach is consistent with the assertion by Rotberg (2014:512) who argues that measuring performance can best be done by using publicly available objective (not subjective) data and by examining outputs (results), not inputs. Rotberg (2014:512) argues that proxy results, such as life expectancy for the performance of a government in providing good health outcomes and homicide numbers for safety, indicate the level of delivery of governmental services; that is, governance. Thus, good governance refers to the ability of government to continually uplift the people by producing or delivering abundant political goods; that is, public services. Good governance does not represent what the government desires and defines to be good for the citizens; which would reflect the self-

-serving interests of the political and bureaucratic elites and not the electoral mandate that the citizens entrusts on the government. Thus, governments should not define good governance according to the perceived quality of their operations, their perceived impartiality, the extent of their bureaucratic autonomy, or their capacity to coax or coerce citizens (Rotberg, 2014:512).

The outcomes-based governance doctrine is in line with the performance management doctrine, which in the last decade has challenged the classic rule-based bureaucratic form of governance. The performance management doctrine advocates for the reduction of rule-based constraints associated with the rule-based governance on public service managers and, instead, holds them accountable based on their results. The performance management doctrine prescribes for the application of fewer rules in the work of public officials so as to create an environment less constrained by rules and bureaucratic compliance; thus, improving the effectiveness and efficiency of public service delivery. However, the introduction of the performance management doctrine in the public service has resulted in the increase of rules regarding the implementation of public service policies and programmes. This concept is in line with the New Public Management paradigm, which transforms the public sector from a traditional bureaucratic structure to an entrepreneurial, market-driven form of governance that is independent from the state (see page 407, paragraph 6.5.3 in chapter 6 above) (Jakobsen & Mortensen, 2016:302; Tabi & Verdon, 2014:221; Emery & Giaouque, 2001:151; O'Flynn, 2007:353; Pillay, 2008:374).

The Department of Public Service and Administration (RSA, 2011:3) defines good governance as a process that assures that corruption is minimised and that the interests of the most vulnerable in society are given attention. The Prevention and Combatting of Corrupt Activities Act of 2004 provides a legislative framework for the strengthening of measures to prevent and combat corruption and corrupt activities in the public service (RSA, 2004:1). Corruption in government represents abuse of power and state resources for personal gain, as well as stealing from the public; thus, it constitutes a transgression of the law and undermines the values and principles of the Constitution. Other measures taken by the state to combat corruption include approval by the Cabinet in 2002 of the Public Service Anti-Corruption Strategy and the establishment of the Anti-Corruption Coordinating Committee (ACCC) to coordinate and oversee the implementation of the Strategy. At local government level, the Department of Cooperative Governance and Traditional Affairs (COGTA) rolled out the

Local Government Anti-Corruption Strategy in 2006, which is aligned to the Public Service Anti-Corruption Strategy (see page 412, paragraph 6.5.5 in chapter 6 above) (RSA, 2011:2; Adelman, 2015:243; Southall, 2014:81; Hyslop, 2005:775; Fraser-Moleketi, 2009:332).

Post-war countries, such as Liberia, attempted to combat corruption by focusing more on institution building and formal justice mechanisms without sufficient understanding of accountability dynamics on the ground. Such dynamics include power structures and informal networks developed during the war, which still persist; thus, creating obstacles to anti-corruption efforts (Funaki & Glencorse, 2014:832). Post-war societies are more prone to corruption if in the transition to peace, public institutions and collectively-held norms are not adequately strengthened, thereby creating a favourable environment for informal power and rent-seeking behaviour to flourish (Nystrand, 2014:822). Such challenges are found in other post-war countries, such as Bosnia-Herzegovina and Kosovo, where international peacebuilding organisations have introduced anti-corruption legislation and other legal frameworks modelled on the best practices of Western democracies and successfully built the countries' capacity to fight corruption. However, corruption remains rampant because the internationally assisted transition from socialism and war was based on collusive practices between political and criminal interests, thus establishing formally liberal but substantively hybrid institutions (Belloni & Strazzari, 2014:855).

These hybrid institutions created fertile ground for the spread of corruption because international organisations pressured local parties to accept the formal architecture of good governance, including anti-corruption legislation, while turning a blind eye to those extra-legal structures and practices perceived as functional to political stability. These practices implicitly legitimised corruption and contributed to its proliferation (Belloni & Strazzari, 2014:855). Corruption in other post-conflict countries manifest differently. For example, in Sri Lanka, new resettlement schemes are highly politicised and ethnicised due to corrupt activities related to the access to land, such as land grabs for military, development and commercial purposes (Lindberga & Herathb, 2014:888; Jehling & Hartmann, 2016:99).

Other countries, particularly those endowed with natural resources find themselves in an “inequality-mistrust-corruption” trap whereby resources are more likely to foster inequalities, and thereby increase corruption and distrust (Le Billon, 2014:770). The goal of a post-conflict society is to become democratic, prevent a return to violence, and to reduce systemic

corruption. Reduction of systemic corruption can be achieved by practicing impartiality as the basic norm for the implementation of laws and policies. Yet, such a norm is hard to achieve in post-conflict societies due to the structural problems explained above (Rothstein, 2014:737). In such contexts, international donors played a key role in implementing measures to combat corruption, which have resulted in improvements in the country's rankings on international corruption and governance indices. However, such efforts can be improved further by designing anti-corruption interventions around improving accountability and refocusing international efforts on the importance of public perceptions and of leveraging dynamic social relationships³¹ (Funaki & Glencorse, 2014:832).

The DPSA identifies eight major characteristics of good governance, namely, participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive, and follows the rule of law (RSA, 2011:3). This chapter assesses the performance of provinces against the background of the government's developmental mandate of poverty alleviation and socio-economic development; that is, how effective has the provincial government been in eradicating poverty and accelerating socio-economic development. This mandate is particularly important given the dual nature of our economy, that is, first (formal) and second (informal and marginalised) economies. The second economy is "characterised by underdevelopment, contributes little to GDP, contains a big percentage of our population, incorporates the poorest of our rural and urban poor, is structurally disconnected from both the first and the global economy and is incapable of self-generated growth and development" (Mbeki in Valodia & Devey, 2012:133).

Ayee (2013:259) attributes the failure of many policies and programmes aimed at promoting development across the African continent to a number of factors, including ineffective leadership; poor policy implementation; policy discontinuity; slow industrialisation; and an environment not conducive for private sector growth. Despite the success of these interventions in increasing GDP growth over the years in these countries, poverty and lack of

³¹ The discussion on corruption and the examples cited of post-war and post-conflict countries, as well as resource-rich countries merely illustrate the complexity of the challenges facing countries seeking to address corruption as a major stumbling block in achieving good governance. Thus, the success of any anti-corruption measures will largely depend on the political and legislative framework and context that prevails in a given country, which may either enhance or undermine the objectives of government to improve good governance. Therefore, this discussion provides a contextual background in assessing and analysing governance in South Africa, particularly at the provincial sphere, including the measures and interventions introduced by government to improve good governance. The discussion assists with understanding the contextual challenges that may counteract, undermine or render the good governance measures and interventions being introduced ineffective.

economic transformation persists. Other factors blamed for the failure of these programmes include structural factors (the absence of meaningful diversification and transformation and the lack of a facilitative environment for private sector growth) and political economy vulnerabilities (such as ineffective leadership, weak institutions and corruption), legacies of colonialism, neo-colonialism, and an unjust world economic order. Thus, in search for new and effective development strategies to address development challenges on the African continent, governments in these countries have cast their sights on the rise of China, East Asia and some Latin American countries as newly industrialising countries and the role of the state in the development process and economic growth intervention following the 2008 global economic crisis stemming from market failures. Thus, many countries in Africa consider the role of the state in development as critical for the promotion and facilitation of socio-economic development in their respective countries³² (see page 80, paragraph 2.2 in chapter 2 and page 354, paragraph 6.2 in chapter 6 above) (Borriello & Crespy, 2015:502; Coetzee & Rau, 2017:12; Ayee, 2013:260).

The discussion of governance in provinces is based on the view that South Africa is a decentralised unitary state, that is, despite being a unitary state, it has strong features of a federal state and constitutionally accords executive, legislative and judicial autonomy to SNGs; it is a state that “creates divisions and levels of government and divides power among those divisions and levels” (Ranney, 1996:57) (see page 11, paragraph 1.2.1 in chapter 1 and page 94, paragraph 2.4 in chapter 2 above) (Stângaciu, 2016:109; Simeon & Murray, 2001: 65-66; Dickovick, 2005; Hawker, 2000). Examples of federal states include the US, Germany, India, Canada, Brazil and Mexico. Unitary states, on the other hand, concentrate power at the central or national level (Ranney, 1996:57). Examples of unitary states include the UK, France, China, and Japan. The third form of state is a confederation where power is decentralised and held primarily or exclusively by local (subnational) offices. This form of state has proven to not be a durable and popular means of organising states themselves and is found mainly in some international organisations in which individual states are members, for

³² The government and the ruling ANC has defined its mandate as the construction and advancement of a developmental state that has the legislative and executive capacity to address the triple challenges of abject poverty, inequality and unemployment, which continue to haunt the majority of the country’s population. Thus, this discussion on development articulates the development challenges on the continent and points out the gains made by other countries that have successfully implemented a development programme. This provides some contextual background that would guide the study in assessing the level of governance in provinces and highlight the areas and factors that may pose development challenges and thus influence the level of governance in South African provinces.

example, the EU and the AU. The US was a confederation prior to ratification of its constitution in 1788, whereby the states had supreme power, and a central governing power was virtually non-existent in that there was no central executive, no central judiciary, and only a weak central legislature (Ranney, 1996:56).

According to Ranney (1996:56), “A state is an organisation that has a number of political functions and tasks, including providing security, extracting revenues, and forming rules for resolving disputes and allocating resources within the boundaries of the territory in which it exercises jurisdiction”. This definition emphasises the executive, legislative and judicial branches, which collectively constitute the state. In South Africa, the provinces have both the legislatures and executives (RSA, 1996:41) and thus some degree of independence and authority; hence, the classification as a decentralised unitary state. As a result of this autonomy and authority (legislative, political, judicial and financial – see chapter two for theory on forms of state), provinces thus experience different levels of governance and political developments. The focus on assessing the performance of provinces in the areas of governance mentioned above, that is, constitutional values and principles of good governance, is consistent with the government’s efforts and objective of addressing the triple challenges of poverty, unemployment and inequality facing South Africa. Bernstein (2014:20) argues that unemployment is one of the major challenges facing the country and proposes various policy solutions which include “the relaxation of labour laws, which hinder entry into the labour market, especially for young people; the introduction of special economic zones; the adoption of an open migration regime for skilled migrants; and the establishment of low-fee private schools and private tertiary education providers”.

The NDP also identifies unemployment as one of the key challenges facing the country (RSA, 2011:1). Unemployment in South Africa remains extremely high despite trade liberalisation, which according to economic theory is supposed to increase demand for the one most abundant locally available factor of production, that is, low-skilled labour (Segal & Brawley, 2009:699; Barchiesi, 2007:39). “Instead, production became increasingly skill- and capital-intensive. Surprisingly, labour intensive imports and capital-intensive exports rose after tariffs were reduced” (Segal & Brawley, 2009:699).

Politics play a major role in the achievement and maintenance of good governance because they are inextricably linked to the phenomena of conflict and cooperation. Heywood

(2007:17) defines politics as the activity through which people make, preserve and amend the general rules under which they live. However, various other definitions of politics are found which include “what concerns the state” (Ranney, 1996:26), the study of government, or exercise of authority or the exercise of control within society through the making and enforcement of collective decisions. Ranney (1996:26) defines politics as the process of making government policies. Growing politicisation, that is, partisan control of the bureaucracy, particularly in staffing of management in the public services (commonly known as “cadre deployment”) has negative effects on service delivery (see page 409, paragraph 6.5.4 in chapter 6 above) (Cameron, 2010:676; De Kadt & Simkins, 2013:113; Comroff, 2011:103; Rotberg, 2014:17).

The constitutional values and principles of good governance as entrenched in section 195 of the Constitution are used as criteria, that is, indicators for measuring good governance in government and the public service. They include high standards of professional ethics, orientation towards development, impartiality, fairness, equity, public participation in policy-making, accountability, transparency, good human capital management and development practices, promotion of broad representation, and focus toward redressing the imbalances of the past (RSA, 1996:74).

These values and principles are closely related to those used globally by other countries, international organisations such as the UN, the World Bank, and the IMF, and various international governance monitoring surveys or mechanisms. These governance monitoring mechanisms include the African Peer Review Mechanism, the World Governance Index, Transparency International, and the Ibrahim Index of African Governance. The indicators of good governance used by these governance monitoring mechanisms include legitimacy and voice (public participation and consensus orientation), direction (strategic vision), performance (responsiveness, effectiveness and efficiency), accountability, transparency, and fairness (equity and rule of law) (Cloete & Auriacombe, 2007:194) (see chapter 6 for a detailed discussion on governance monitoring mechanisms).

The South African Constitution places a huge responsibility on the government to promote good governance through the provisions of legislation and ethos supporting and fostering the values and principles of good governance. Such practice is expected to yield positive and lasting benefits of socio-economic development, public participation, coherence in

government, legitimacy, economic and political stability, the rule of law, democracy, poverty eradication, reduced crime, responsiveness, and the effectiveness and efficiency of public services. The chapter draws lessons from the successful implementation of good governance structures, policies, processes and mechanisms by some provinces and the challenges experienced by those provinces that struggle to deliver on their mandate in accordance with good governance principles (see page 168, paragraph 3.5 in chapter 3 for a discussion on different configurations of governance). The objective of this chapter is to identify and highlight the gaps and weaknesses in the current governance framework and to determine the level of governance in the provincial sphere of government with the intent to use these findings to develop an effective governance framework for provinces.

This chapter focuses on the performance of provinces in relation to the extent to which they facilitate and promote the constitutional values and principles of governance (democratic values and principles governing public administration as enshrined in section 195 of the Constitution), which are the key indicators of good governance. Such a process draws from the standards and measures provided by various good governance mechanisms and interventions, including government policies, legislation and regulation, which all seek to ensure compliance and the promotion of good governance in the state, which is expected to translate into sustainable development and political and socio-economic stability in a country. Poor performance by provincial departments and state organs in implementing and upholding constitutional values and the principles of good governance emanates from the poor enforcement of regulations and legislation and inadequate remedial action to sanction poor performance or non-compliance. These gaps in institutions, policy, legislation and regulation intended to promote ethical conduct and good governance in the public sector are expected to provide sufficient interventions and measures to strengthen the current framework of governance in the state, particularly as it relates to provincial governments.

7.2 PROVINCIAL GOVERNANCE IN SOUTH AFRICA – A PERFORMANCE OVERVIEW

The current chapter employs the Public Service Commission's (PSC) reports, such as the Consolidated Annual Monitoring and Evaluation (M&E) reports on the Offices of the Premier (OTP) and other reports focussing on the performance of provinces to analyse and evaluate the performance of provinces with respect to the degree to which they promote and

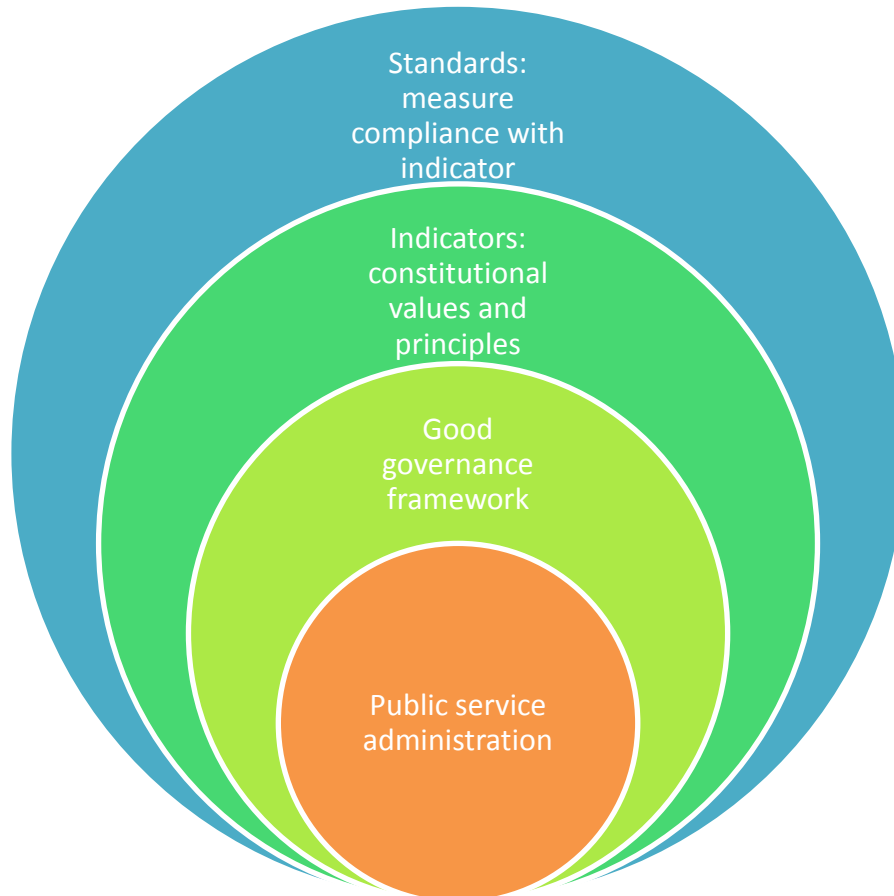
uphold the constitutional values and principles of good governance. The study analyses reports ranging from 1996 to 2012. The reason for using the reports of the PSC is that it is the only public body created by an act of parliament (Public Service Commission Act No. 46 of 1997) as provided in section 196 of the Constitution to ensure the promotion of excellence in governance and the delivery of affordable and sustainable quality public services through research and assessment (RSA, 2012).

Further, the PSC is tasked with the promotion of constitutionally enshrined values and principles of public administration, as set out in section 195 of the Constitution by investigating, monitoring, evaluating, communicating and reporting on public administration. Thus, the outcomes and findings of these evaluation reports provide a clear and detailed assessment of the level of good governance in the provinces, which then provide the data and insight that the present study will investigate and analyse, among a number of other sources of information and findings to develop a coherent and detailed understanding of the status and role of provincial governance in the South Africa constitutional dispensation during the period 1996 to 2012 (RSA, 2012). These findings and the analysis thereof will then enable to study to propose a provincial governance framework that will lead to stronger and effective provincial governance by incorporating different structures, processes, mechanisms and structures in this framework (see page 168, paragraph 3.5 in chapter 3 above and both chapter 8 and 9 below for the findings, analysis, conclusions and recommendations of the study).

According to Cloete and Auriacombe (2007:194), governance is more than just government. Governance is the exercise of political, economic, administrative and legal authority in the management of the nation's affairs and finds expression in the search for new ways to improve the relationship between the state and its people. In addition, governance is about the quality and performance of government and public administration (Cloete & Auriacombe, 2007:194). Good governance indicators being evaluated are the constitutional values and principles (CVPs) of the public service as provided for in section 195, chapter 10 of the Constitution. These values and principles are the following: professional ethics, efficiency, economy and effectiveness, development orientation, impartiality and fairness, public participation in policy-making, accountability, transparency, good human resources management and career development practices, and representivity (Appendix A provides a summary of the relationship between CVPs and good governance).

The CVPs form the basis, that is, governance indicators upon which the performance of government in promoting and upholding good governance is assessed and comprise of standards and sub-standards for thorough evaluation (see Figure 7.1 below).

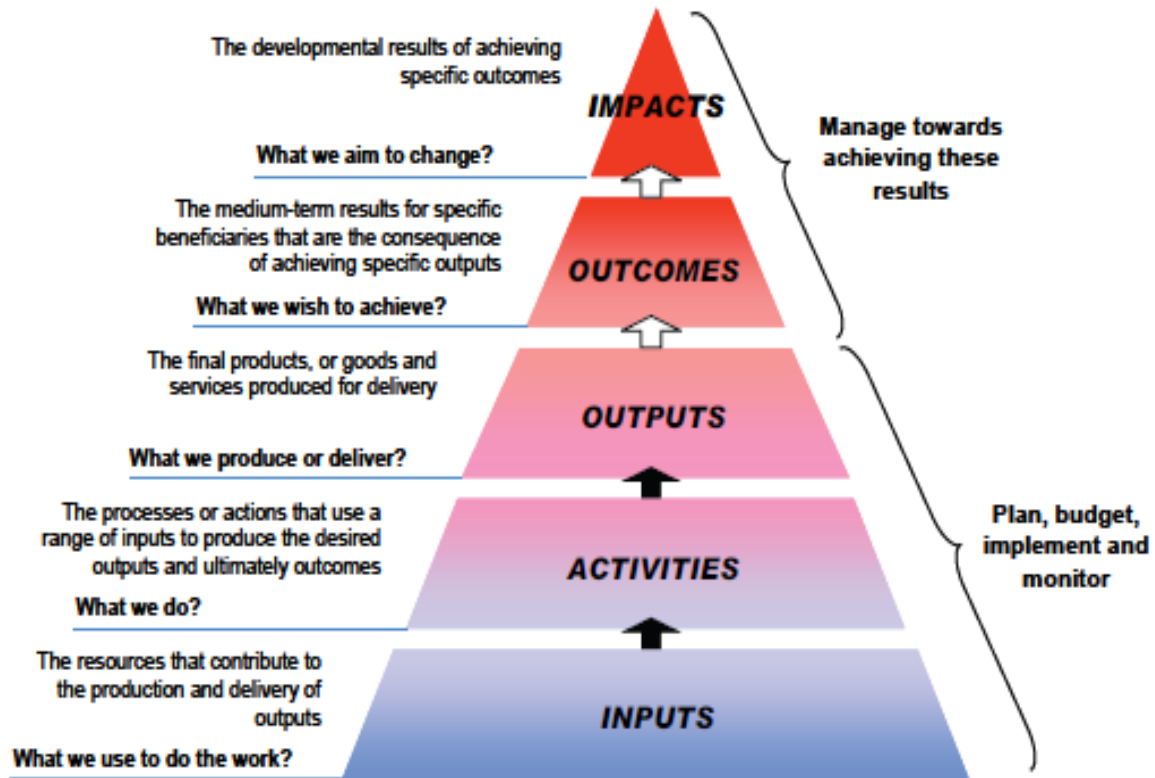
Figure 7.1: Good governance model in the South African public service



Source: Own construction – Constructed from analysis of elements of the good governance framework used by the Public Service Commission

Other governance indicators and mechanisms used globally closely resemble those used by the PSC's Public Service Monitoring and Evaluation System. Therefore, for the sake of consistency and relevance to the current study, the assessment of the provincial administrations' performance on good governance will focus on the PSC's Public Service Monitoring and Evaluation System. However, findings and recommendations from other governance surveys and evaluation systems, such as the APRM, IIAG, WGI, and TI, will be cited to develop a comprehensive assessment and understanding of governance at the provincial sphere of government in South Africa.

Figure 7.2: Key performance information concepts



Source: RSA (2010:6)

Therefore, government departments and institutions at all levels of government are required to focus their actions, that is, activities, on the achievement of outcomes as set out in their respective strategic and annual performance plans (APP) and to report on their performance in this regard, that is, to compile and submit annual performance reports (APR) to relevant monitoring and evaluation structures. Identified development needs and desired results are the basis for developing outcomes-oriented plans, that is, they inform the nature of the desired outcomes. The resulting plans will then entail the design of programmes, which seek to improve the lives of the citizens through service delivery (RSA, 2010). The Premier is the executive authority, that is, political head of the province and is responsible for appointing the political heads of the different departments in the province, known as the Members of the Executive Council (MEC). The Premier together with the Executive Council is required by the Constitution to “initiate and implement provincial policy, ensure alignment with national policy, and ensure integration across the different spheres of government” (RSA, 2012:viii) (see page 27, paragraph 1.2.8 in chapter 1 and page 341, paragraph 5.4.5 in chapter 5 above).

The main functions of the Office of the Premier (OTP) are policy direction, central coordination, facilitation, and strategic leadership. The OTP is the nerve centre of the provincial government and plays a central role in managing the implementation of the electoral mandate. The current study applies the findings of the PSC assessment of the Offices of the Premier in all nine provinces to determine the performance of the provincial administrations in each province against the CVPs of good governance in the South African public service. The current study assumes that these findings will reflect the overall performance of the entire provincial administration, that is, all provincial departments in each province as the OTP is the highest office in the province and its performance is a close reflection or representation of the performance of the entire provincial administration. Table 7.1 below depicts the overall performance of each province against all indicators for the 2010/2011 financial year:

Table 7.1: Overall performance per Office (OTP) for the 2010/2011 assessment

Average	WC	GP	NC	NW	MP	FS	LP	KZN	EC
61%	82%	77%	64%	59%	59%	56%	54%	54%	47%

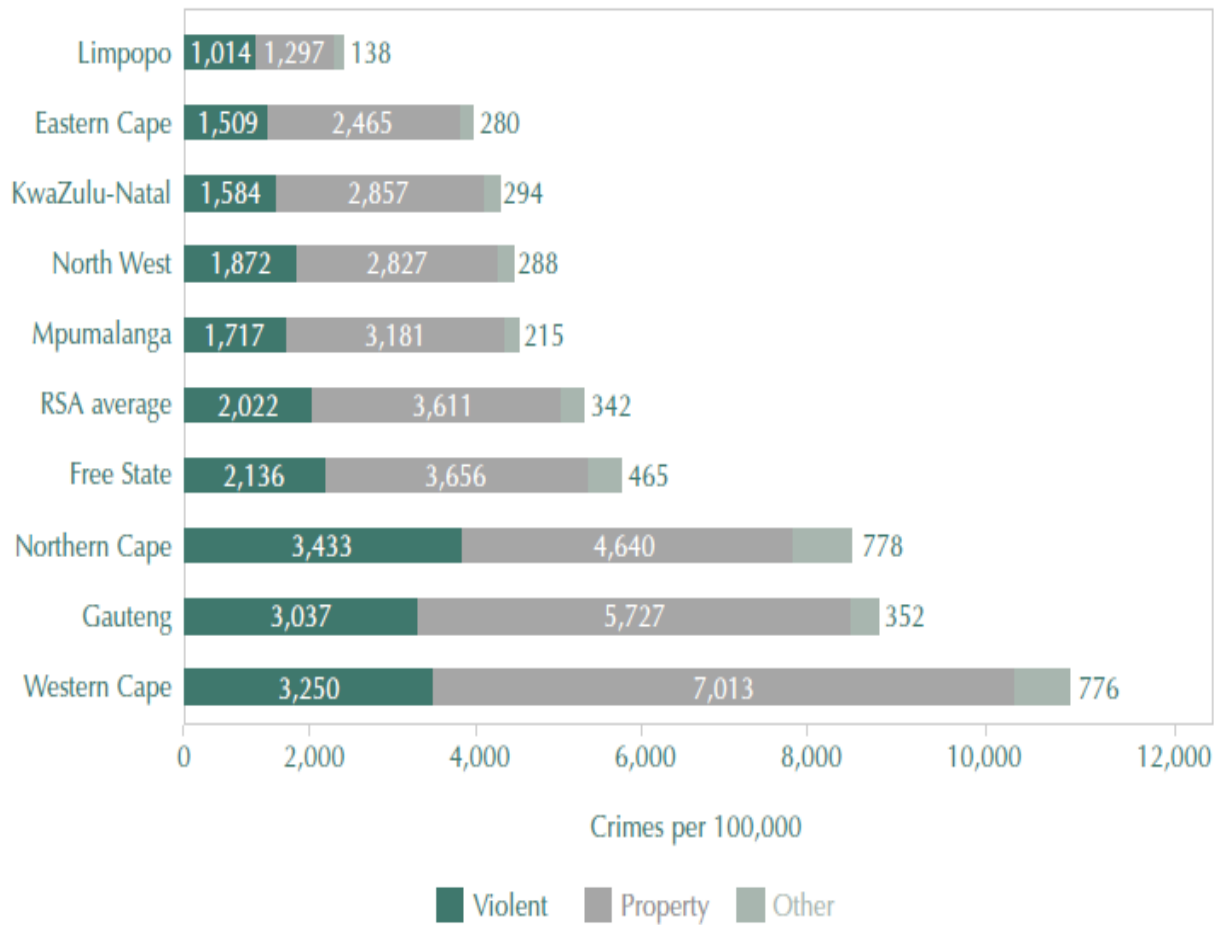
Source: PSC (2012)

The results of the 2010/ 2011 financial year assessment indicate that the performance of the Western Cape was the highest (82%) in the country, whereas that of the Eastern Cape was the lowest (47%); that is, nearly half the performance of the Western Cape. This is a disturbing picture on the level of governance in the majority of provinces, including North West, Mpumalanga, the Free State, Limpopo and KwaZulu-Natal, which all have scored below the national average of 61%.

The poor performance of provinces such as Limpopo and Eastern Cape is not surprising as these provinces were in 2012 riddled with reports of corruption and lack of accountability, which led to national government intervention; that is, they were placed under national administration through provisions of section 100 of the Constitution (see page 11, paragraph

1.2.1 in chapter 1 above) (RSA, 1996:40; www.hsrc.ac.za viewed on 16 August 2017). The Western Cape is not the only province that scored high, Gauteng also received a relatively high rating of 77%, which implies that its performance regarding good governance is relatively high. The exception in Gauteng recently was the Isidimeni saga involving poor administration in the Department of Health regarding the management of mental health patients (www.ewn.co.za viewed on 31 March 2017).

The high scores for Western Cape and Gauteng are also evident in the high scores achieved for several indicators of good governance, such as the effectiveness and efficiency of public services, poverty alleviation, the rule of law, socio-economic development, public participation in policy-making, good human resources management and career development, transparency, redressing the past imbalances, accountability, representation and transparency. However, the Western Cape, on the other hand, is known to have high levels of inequality and poverty (two of the triple challenges, which include unemployment as the third), crime and lawlessness, and poor representation. According to the South African Police Services (SAPS), “the Western Cape has by far the worst overall crime problem in the country and in many crime categories, the fastest growing crime problem” (Legget, 2004:15) (see Figure 7.3 below and Table 7.1 above).

Figure 7.3: Crime rates by province, 2002/3

SAPS Crime Information Analysis Centre

Source: Legget (2004:16)

Figure 7.3 above indicates that the Western Cape has by far the highest number of crimes per 1000 crimes in all categories of crime, except violent crime. The Northern Cape has the highest prevalence of violent crime in the country. Table 7.2 below shows that the percentage of the number of reported crimes in the Western Cape between 1994 and 2003 surpasses the national average in categories of crime, that is, murder, aggravated robbery, carjacking and theft of motor vehicles.

Table 7.2: Changes in numbers of recorded crimes between 1994/5 and 2002/3

	Western Cape	South Africa
Murder	+34%	-17%
Aggravated robbery	+121%	+50%
Carjacking	+254%	+14%
Theft of motor vehicle	+56%	-12%

SAPS Crime Information Analysis Centre

Source: Legget (2004:16)

The Western Cape remains the most racially divided province in the country in all sectors of the society, that is, politically, economically and socially, and thus falls short of achieving the desired level of good governance with regards to the indicator for redressing the imbalances of the past. Although the apartheid political regime was transformed into a democracy in 1994 following the general elections, spatial patterns and practices of apartheid which classified people according to their racial groups and structured cities along racial lines still remain intact (see page 41, paragraph 1.2.12 in chapter 1 above) (Robinson, 2015:962; Houssay-Holzschuch & Teppo, 2009:351). This inequality and racial segregation is evident in the social character of the province, particularly in the City of Cape Town, whereby largely white areas are still relatively affluent whereas black communities are characterised by abject poverty, crime, lack of municipal services, and high unemployment levels. In Cape Town, “institutional practices and market forces are tending to reinforce spatial divisions, with costly consequences for the poor majority of the population and for the wider urban economy and society” (Turok, 2001:2349).

Even though most of the poor levels of social services and amenities mentioned above are the functional competencies of local government, as listed in schedules 4B and 5B of the Constitution (RSA, 1996), the provincial government still has a responsibility to support the local government to ensure maintenance of national service delivery standards and economic and political stability, as stipulated in section 100 of the Constitution. It is also worth noting that representation in the economy and politics of the Western Cape is very low and racially

biased, that is, it does not reflect national demographics, but is instead biased towards the white communities. This view is echoed by McLaughlin (2007:435), who argues that in South Africa race contestation for political office is organised around race with political parties tending to canvass for votes along racial lines. Another poignant manifestation of the racially-biased character and lack of transformation in the Western Cape is in its employment statistics, where the vast majority of the unemployed and poor are predominantly black (Dupper, Macewen & Louw, 2006:192).

A different view to this notion posits that “persistent racial inequality in Cape Town is caused by deindustrialization, which has led to high unemployment among blacks (Africans, Coloureds and Indians) and the polarisation of the occupational structure into a class of mostly white, highly paid managers and professionals and a class of mostly black, low-paid service-sector workers” (Crankshaw, 2012:836). Industrialisation instead produced a professionalising occupational structure alongside unemployment, and although whites benefited from the growth of professional and managerial jobs, these occupations have been substantially deracialised. Therefore, the Western Cape still lags far behind other provinces in achieving the national standards of transformation in employment, economic participation, public participation and socio-economic development (Jensen, 2004:179).

Jensen (2004:179) argues that the local state bureaucrats and policy-makers continue to marginalise the townships in Cape Town; thus, further explaining the skewed development patterns in the Western Cape. However, as alluded to above, the trend of high inequality in employment, socio-economic status, and representation could also be attributed to relatively high socio-economic standards; that is, standards of living in this province. This is the case particularly in the City of Cape Town, which acts as a magnet for potential socio-economic immigrants from poorer and less developed provinces, such as the Eastern Cape, to the Western Cape in search for better living conditions and socio-economic opportunities, thus further exacerbating the socio-economic challenges facing the province, such as poverty and unemployment (RSA, 2012:ix).

However, the overall performance of provinces against all indicators (9 CVPs) shows a drastic improvement for the majority of the provinces, which increased by an average of nine percent from the first assessment (59%) to the second assessment (68%). During this period of assessment, the Western Cape increased its performance by 40%, whereas Limpopo

declined by 35%. The PSC attributes the difference in performance among provinces in the second assessment of the 2010/2011 evaluation cycle to the degree to which the provinces implemented the recommendations made by the PSC during the first assessment. The second assessment found that the provinces which have achieved the highest increase in performance, for example the Western Cape, had implemented most of these recommendations (69%), whereas those which achieved the lowest increase in performance, for example, Limpopo, implemented the least of the recommendations (24%) (RSA, 2012:ix).

The PSC also found that on average the provinces increased their performance, that is, compliance against each CVP, and that the overall performance per CVP increased by nine percent from 59% to 68%. For example, performance against the principles of accountability and good human resource management and career development practices both increased by seven percent and by 30% against the principle of impartiality and fairness. An improvement in performance against these principles is an indication of increased compliance with the policy and reporting requirements by provinces (RSA, 2013:ix). The overall performance of provinces against each principle is depicted in Table 7.3 below:

Table 7.3: Overall performance against each CVP in the 2010/11 assessment

Average	1	2	3	4	5	6	7	8	9
61%	69%	57%	50%	51%	60%	76%	71%	58%	49%

Source: PSC (2012)

7.2.1 Professional ethics

The principle of professional ethics requires a public entity to maintain high standards of professional ethics and to carry out its duties with integrity to attain a clean administration and professional ethical conduct. Integrity means steadfast adherence to a strict moral or ethical code, policy or legal instruments and preceding codes, whereas ethics refers to the standards of right and wrong that prescribe people's rights, obligations and benefits to

society. The Department of Public Service and Administration (DPSA) introduced the Public-Sector Integrity Management Framework to help protect the integrity of government and foster public confidence in institutions of the state. The objectives of this Integrity Framework include strengthening existing measures regulating probity in the public service; strengthening capacity to prevent corruption; monitoring and evaluation to ensure compliance; and enforcement as a deterrent (RSA, 2011).

The Comptroller General of the US (the US equivalent of the Auditor-General in South Africa) gave a simple definition of ethics and ethical conduct when he delivered the Elliot Richardson lecture at the American Society for Public Administration's National Conference in Milwaukee, Wisconsin, in 2005 with reference to ethics, when he said (Walker, 2005:10):

Any organisation is only as good as the people who comprise it. You want people in public service who are not only capable but who have a well-developed sense of right and wrong. You want people with energy and empathy for others. And you want people who are more concerned about the public good than personal gain.

The principle of professional ethics is assessed by establishing how a public entity (the Office of the Premier and Departments in this study) deals with misconduct. The PSC believes that if a public entity deals effectively with cases of misconduct it is likely to deal effectively with other ethical issues and thus maintain a high standard of professional ethics. The PSC applies five standards in its Monitoring and Evaluation System to establish if public bodies in fact deal effectively with misconduct. These standards are as follows: a policy of misconduct in place; management reporting; finalising cases of misconduct promptly; adequate capacity to handle cases of misconduct; and provision of training. These standards are shown in Figure 7.4 below:

Figure 7.4: Five standards applied to establish whether Offices do in fact deal effectively with misconduct



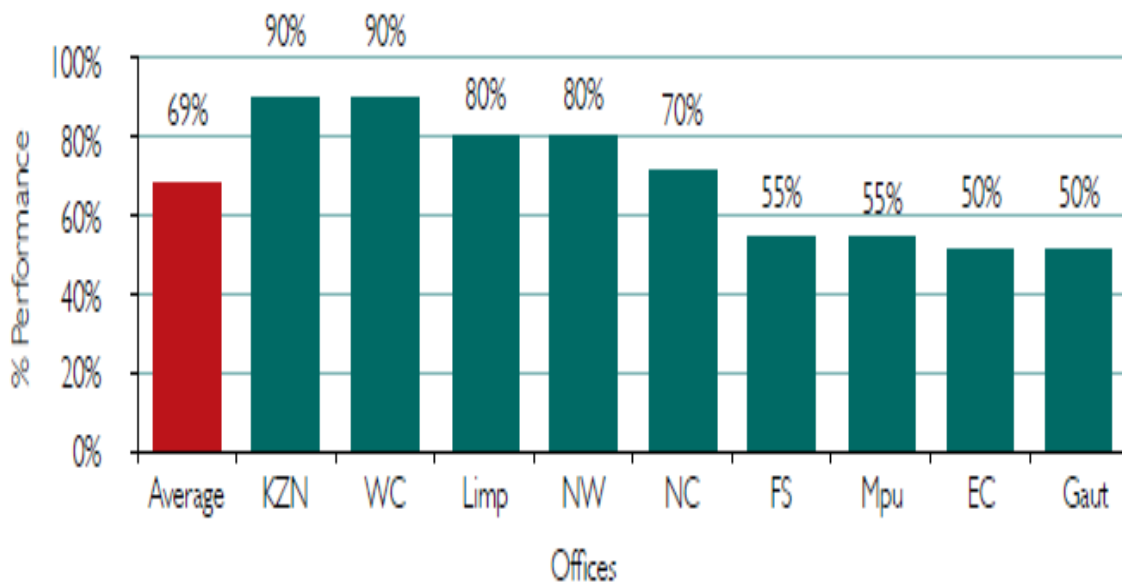
Source: PSC (2012)

The majority of provinces, namely, KwaZulu-Natal (KZN), Western Cape (WC), Limpopo (LP), North West (NW), and Northern Cape (NC) achieved a minimum of good performance in their ratings, while the other four provinces attained adequate performance (as indicated in Figure 7.5 below). It could therefore be argued that the provinces that attained adequate performance, namely, Free State (FS), Mpumalanga (MP), Eastern Cape (EC), and Gauteng (GP) still need to improve the effectiveness and efficiency of their level of compliance in dealing with cases of misconduct.

However, it should be borne in mind that low ratings in dealing with cases of misconduct do not necessarily imply that these provinces have the highest levels of cases of misconduct. It simply means that their efficiency and effectiveness in handling such cases is low. For example, by making reference to the five standards used to evaluate the effectiveness of dealing with such cases, a low rating could imply that proper policies on misconduct are not in place, such cases are not reported to management, such cases are handled in a sluggish manner, and a department or public entity in that province lacks sufficient capacity to handle cases of misconduct (PSC, 2012). Capacity refers to whether a subnational or national government can effectively and efficiently perform its institutional functions and to what extent it can do so with regards to the principles of good governance (Ryan & Woods, 2015:225; Reddy, Nemeć & De Vries, 2015:160).

In other words, a sphere of government might be able to deliver a public service, such as housing to the citizens, but if that housing is not delivered efficiently, economically and fairly, as an example, that sphere of government would be considered to lack adequate capacity to deliver housing. So, capacity is not only about the ability to deliver a public service, but also about the compliance of that process of delivery with good governance principles. At individual level, capacity refers to skills and knowledge, whereas at organisational or institutional level it refers to the quality of leadership and management of the public institution (Reddy & Kauzya, 2015:200). Reddy and Kauzya (2015:200) argue that the level of public governance in many countries of the Southern African Development Community (SADC) region is still too weak to make a significant impact in terms of accelerating the pace to reach the Millennium Development Goals (MDGs). Weak governance in these countries is attributed to the lack of adequate capacity in interventions aimed at attaining the MDGs and other national development goals.

Figure 7.5: Average performance against principle 1 (professional ethics) per Office for the 2010/11 assessment cycle



Source: PSC (2012)

As Figure 7.5 above shows, the results of the evaluation of performance against principle 1 using the standards for measures used to handle cases of misconduct indicates that all departments had policies in place to deal with such cases. A policy dealing with misconduct

in the public service is called the Disciplinary Code and Procedures for the Public Service (Resolution 2 of 1999, as amended, of the Public Service Coordinating Bargaining Council (PSCBC)). Provinces also scored high on managers' knowledge of the system, management reporting, and training and awareness. The lowest rating was for managers' response to reports of misconduct, as shown in Table 7.4 below. This finding implies that the policy and system on misconduct does work and the challenge lies with management, who do not respond adequately to reports of misconduct (PSC, 2012).

Such conduct by management has the potential to discourage reporting of cases of misconduct as it creates an impression among employees that such cases do not receive attention from management and thus reporting does not yield the expected results. An example of a case given by the PSC is that of a senior legal advisor whose case was never followed up after the official was transferred to another department. The PSC argues that cases of misconduct should be pursued and finalised even if an official being investigated resigns or is transferred to another employer. Otherwise, officials will always get away with cases of misconduct by resigning or securing employment in another department. It is therefore the responsibility of management to ensure that such cases are finalised. Furthermore, adequate capacity must be created through training and awareness to investigate misconduct and corruption.

Table 7.4: Offices' average score against the specific standards of principle 1

Standards	Policy/ guideline on managing cases of misconduct	Sampled managers have a working knowledge of the system	Time to resolve cases	Management reporting	Management's response on reports	Capacity to handle misconduct cases	Training and awareness
% Average Compliance	100%	78%	53%	89%	34%	64%	78%

Source: PSC (2012)

7.2.2 Efficiency, economy and effectiveness

The principle of efficiency (Burkhart, Manow & Ziblatt, 2008:522; Lindaman & Thurmaier, 2002:916; Woodbury, Dollery & Rao, 2003:77), economy and effectiveness requires public bodies to utilise state financial resources in a manner that achieves value for money. Such action will ensure that the outcomes and outputs of government, that is, public services and products, are cost-effective and of high quality. One of the ways of achieving efficiency, economy and effectiveness in the public service is through the introduction of service delivery improvement programmes. South Africa inherited and adopted public administrative systems from the apartheid regime that were incapable of meeting the service delivery needs of the masses of its people. These systems were characterised by traditional and hierarchical public administrative systems based on theories and descriptions of bureaucratic structures developed by Max Weber and Woodrow Wilson (Kariuki & Tshandu, 2014:796).

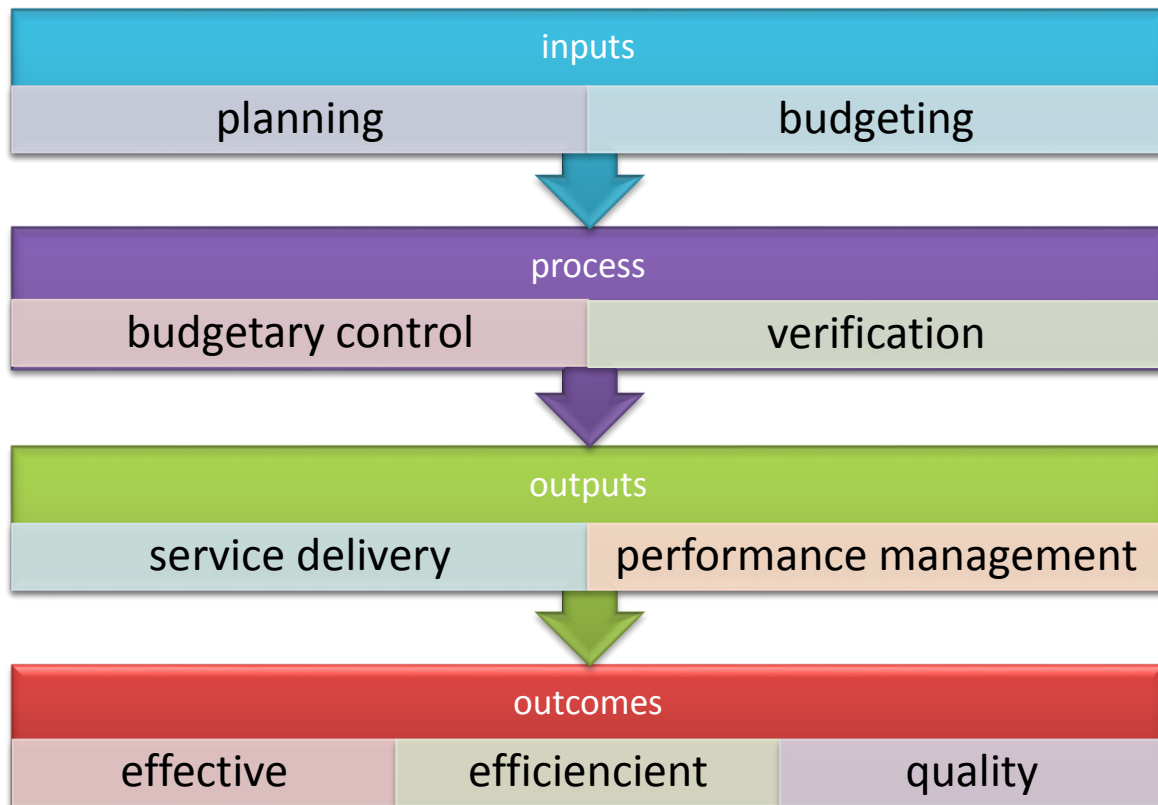
The government undertook to reform these systems as part of its public service reforms in the 1990s by introducing the *Batho Pele* (people first) service delivery improvement framework. The reforms also coincided with global reforms on public administration systems influenced by the New Public Management (NPM) framework, which advocates for the application of private-sector ideas in the public sector, such as individual accountability. This process led to the replacement of traditional models of organisation and delivery of public services based on the principles of bureaucratic hierarchy, planning, centralisation, direct control and self-sufficiency with a market-based public service management approach. The main components of NPM include hands-on professional management, clearly defined standards and measures for performance, increased emphasis on output controls, greater competition in the public sector, more prudent use of resources, and disaggregation of units in the public sector and private-sector models of management practice. This ensures improvements and efficiency in the delivery of public services to the citizens who are treated as clients or customers (Hood, 1991 in Kariuki & Tshandu, 2014:797).

Similar reforms were undertaken in the 1990s by countries in East Africa, such as Kenya, Tanzania and Uganda, which practiced a centralised system of governance for more than three decades after independence from their former colonial masters. Centralisation weakened SNGs, particularly local governments, and rendered them incapable to deliver public services due to the lack of autonomy in decision-making, financial resources and

staffing capacity constraints. Decentralisation reforms in the last decade of the last century (the 1990s) were informed by the NPM policies of restructuring public institutions and implementing MDGs. Despite their inability to adequately reduce poverty, these countries have made major improvements in public service delivery since the introduction of public service reforms (Mutahaba & Pastory, 2015:268).

Performance reporting, that is, providing information on the economy, efficiency and effectiveness of actions by the public administration is a key component of accountability and decision-making mechanisms. Many countries, especially in Southern Europe, introduced performance reporting at SNG level as a mechanism to control local government activities in order to enhance performance. The importance of performance reporting is even greater in countries facing austerity and financial constraints and thus devising strategies to reduce costs in government (Brusca & Montesinos, 2016:506). Budgetary control and verification systems which link service delivery and performance management to planning and budgeting must be measured against outputs to ensure that the outcomes are effective and efficient, as shown in Figure 7.6 below.

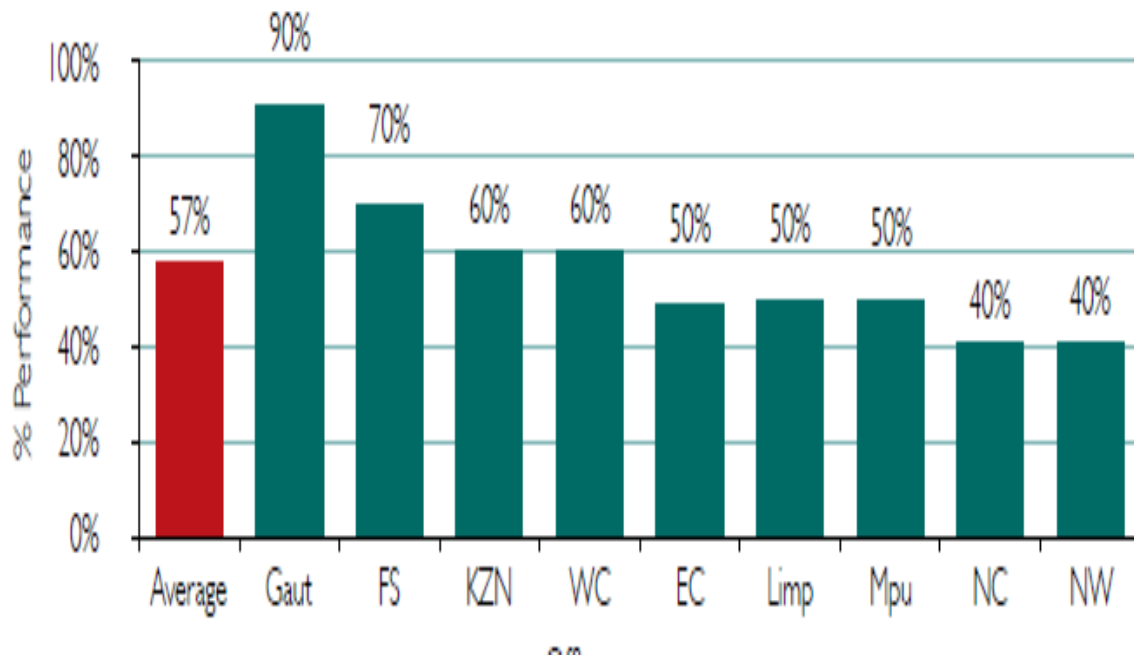
Figure 7.6: Good financial management systems: ensuring good governance



Source: Constructed from an analysis of public financial management systems and processes (Own construction)

The PSC uses three standards, namely, expenditure is budgeted for, that is, planned versus actual expenditure; performance indicators (PI) are measurable; and programmes are implemented as planned to establish whether public entities promote effectiveness, economy and efficiency in managing state financial resources. Van Wyk (2003:vii) identifies three key prerequisites to achieve the effective and efficient measurement of financial performance in provincial governments, namely, committed and competent line managers; outcomes-based budgeting; and accruals-based reporting. Van Wyk (2003:vii) points out that a balanced score card is a useful tool to document the strategies and the performance measures of outputs. In the 2010/11 PSC assessment of provinces mentioned above, Gauteng achieved excellent performance against all standards of the second principle (efficiency, economy, and effectiveness), whereby 100% of its PI were measurable and 84% of its planned outputs were achieved. In contrast, the North West and Northern Cape achieved poor performance, as shown in Figure 7.7 below.

Figure 7.7: Average performance against principle 2 (efficiency, economy and effectiveness) per Office for the 2010/11 assessment cycle



Source: PSC (2012)

Excellent achievement by the Gauteng government means that the province receives value for money, that is, public financial resources are used efficiently, economically and effectively as a result of good financial management systems in the province, as shown in Figure 7.7 above. The evaluation standard of “expenditure budgeted for” requires that material variances between planned and actual expenditure are explained and that a clear linkage between targets, performance indicators (PI) and outcomes is defined.

Management tools used to measure performance indicators include time, quality and quantity regarding production or provision of public services and products. These management tools are also used to monitor progress in the achievement of outputs and to institute timeous corrective measures. The targets, performance indicators and outcomes of the public bodies must be reflected in their strategic plans, annual performance plans, budgets, and annual reports (RSA, 2012:17). The Public Finance Management Act of 1999 (PFMA) provides guidelines for financial management within the public sector (RSA, 1999), for example, section 39 (1) (a) compels Accounting Officers (Heads of Department) to ensure that the expenditure of their departments is in accordance with the budget vote of the department and the main divisions within a vote.

Also, the PFMA makes provision for departments to exceed or underspend their budgets by a 2% margin. A department will be considered to be not complying with good financial management practices in the following cases: if its expenditure exceeds the 2% margin and it exhausts its budget without achieving all its planned outputs. Such a scenario could arise if there are problems with the budgeting process or the monitoring of expenditure and associated outputs. Stronger performance management systems are crucial in ensuring that all targets and outputs are achieved in accordance with the department's budget (RSA, 2012:20).

7.2.3 Development orientation

The transition to democracy in South Africa, which was marked by the country's first non-racial democratic elections in 1994, was expected to dismantle "racial and class-based inequalities that had been systematically spatialised into distinctive legally structured urban forms by the apartheid regime" (Swilling, 2013:1). However, the policy intentions of this democracy were contradicted by aggressive neo-liberalisation of the global economy that effectively redefined development pathways and governmentalities. South Africa as a new and fragile democratic state is experiencing large-scale poverty and unemployment. Most of the development challenges of South Africa, like many developing countries, are due to the impact of globalisation, neo-liberal policies and the accompanying Structural Adjustment Programmes (SAPs), which have inevitable consequences for national policies and identities³³ (Triegaardt, 2008:480).

Globalisation has a negative impact on the poor and unemployed in South Africa in that it squeezes systems of social protection, that is, it forces a reduction in public social welfare

³³ The discussion and analysis of development orientation (also see footnote 2 above) presented here provides a broad analytical overview from a national perspective rather than a provincial perspective. This is due to the unavailability of data on this indicator as a result of the Offices of the Premier throughout the country not being directly responsible for direct involvement in poverty reduction projects at the project level and thus not being assessed on this principle. Development and poverty reduction is largely a national government competence (the Department of Rural Development and Land Reform) that is usually implemented at the project level by appointed private service providers and not directly applicable to the functions of the Offices of the Premier. The competency of development orientation is not clearly defined and spelt out in the Constitution with respect to functional areas of the different spheres of government and their legislative competence in these areas. However, Schedule 4A seems to suggest that this competence is concurrent to both national and provincial governments. The following functional areas that are related to the principle of development orientation are listed in Schedule 4A: Population development, Regional planning and development, and Urban and rural development. Thus, this competence is likely to reside with the national government to alleviate challenges of incapacity in the provinces.

services. This is done by setting priorities that reduce deficits and debts and lowering taxation as key public policy objectives (Triegaardt, 2008:481). Since the transition to democracy in 1994 the South African government has placed substantial emphasis on poverty reduction and related policy initiatives, which have resulted in a substantial increase in social spending. Yet money-metric (income) poverty has continued to increase. Various statistics confirming the increase in poverty include an increase in income poverty between 1993 and 2000, with a marginal decline since 2000, a 3.8 million increment in the number of people categorised as poor (below R515 per person per month in 2008 prices) between 1993 and 2008, and a steady increase in levels of income inequality with the Gini coefficient growing from 0.66 in 1993 to reach 0.70 in 2008.

Anaemic economic growth, stubbornly high unemployment and poor educational outcomes have reversed the gains of poverty reduction since 2011 as more South Africans are slumping back into poverty, according to Statistics South Africa's *Poverty trends in South Africa: An examination of absolute poverty between 2006 and 2015*. The number of people living in poverty, that is, below the upper poverty line of R992 per person per month has increased by three million to 30.4-million, thus, 55.3% out of South Africa's 55-million population between 2011 and 2015 (RSA, 2017:1; www.dailymaverick.co.za viewed on 25 August 2017). A number of arguments about the causes of poverty and underdevelopment in South Africa are discussed in the paragraphs below. However, the State Capacity Research Project (CSRP) under the auspices of the Public Affairs Research Institute (PARI) highlights the recent (2016-2017) developments in government that link president Zuma and his power elite to plundering of state resources (state capture) for personal gain. The CSRP posits that the president and his cronies are deliberately repurposing state institutions to redirect state funds away from development and into the hands of these power elite by means of complex extra-legal and anti-constitutional activities (www.pari.org.za viewed on 26 August 2017).

A series of short-, medium- and long-term historical legacies, such as the 1913 Land Act, the creation of separate homelands and the dual economic policy, have influenced the high levels of rural poverty, income inequality, corruption, poor service delivery, and household stability, particularly among the rural poor communities. The HIV/Aids epidemic has recently become one of the major contributing factors in the reduction of household stability and growing poverty. These historical legacies have also influenced household characteristics, such as their geographic location, initial asset status, family size, education, health, mortality,

outmigration and employment, which collectively force and trap rural communities into poverty (Sartorius, Sartorius, Collinson & Tollman, 2014:776; Mbonigaba, 2013:183).

In contrast, May and Timæus (2014:761) posit that alternative approaches to measuring well-being and inequality show a more positive trend on pro-poor improvements in child welfare. These alternative approaches, instead of using income as a measure of poverty, use such variables as child malnutrition, per-capita household expenditure as a proxy for household income was used as the indicator of socio-economic status, and children's heights and weights. The study found significant improvements in these measurements since 1994, thus confirming the notion that there has been some decline in deprivation. This improvement is attributed to substantial improvements in the coverage of social protection in South Africa, the provision of a range of free services often referred to as a "social wage", and the growing allocation made by the national budget to social services. These improvements in social protection include the introduction of the Child Support Grant since 1998 and improvements in healthcare and the education of women. Other improvements in poverty reduction include a decline by 12.5% between 1993 and 2008 in the Poverty Gap, which measures the average shortfall of those lying below the poverty line, and a 13.6% decline in Poverty Severity, which measures the level of deprivation of those furthest from the poverty line (May & Timæus, 2014:761).

The principle of development orientation requires departments to drive development projects and programmes within their respective mandates by initiating and implementing programmes and projects that will promote development and eradicate poverty. The PSC uses five standards which are applied at the project level to establish whether departments in fact promote development and poverty reduction. These standards are: beneficiaries participated in 50% of the projects; 50% of project plans are of an acceptable standard; IDPs are considered in 50% of the projects; a system for lessons learnt is in place; and half the projects reached 50% of their objectives. Since these standards are applied at the project level, they are deemed not suitable to assess the administrative and political authorities of the departments, which are more responsible for policy direction and coordination, facilitation, and monitoring and evaluation roles, for example, development of provincial growth and development strategies (RSA, 2012).

Another area of development that the South African government has focussed on is with respect to land reform and property rights. Property rights are a legal and constitutional protection of an individual possessing the right to property from expropriation. The features and benefits of property rights are summarised as follows (Schirmer, 2017:2):

Property rights provide individuals with protection from expropriation, the right to buy and sell the thing that is owned at a time of their own choosing, an asset that can be used to secure loans, the right to enjoy and enhance the benefits of that which is owned and the ability to exclude others from sharing those benefits.

De Soto (2006, in Schirmer, 2017:1) describes the South African economic framework as one that consists of two separate economies, one for the rich under the dome-like protection of an integrated property rights system, and the other outside of that protection and for the poor in what he calls the “bell-jar effect”. De Soto (2006) argued that the solution to this challenge lay in “legalising” the poor so that they could be assimilated into the mainstream economy, that is, integrating the poor in the property rights system where they too can have protection of assets. The Department of Human Settlements supported this view of extending property rights to the poor with the belief that it would reduce their dependence on government. However, this process has been hopelessly sluggish with only 1.44 million (50%) of the estimated 2.94 million subsidised housing units that had been delivered by 2010 recorded on the (property) title deeds registry.

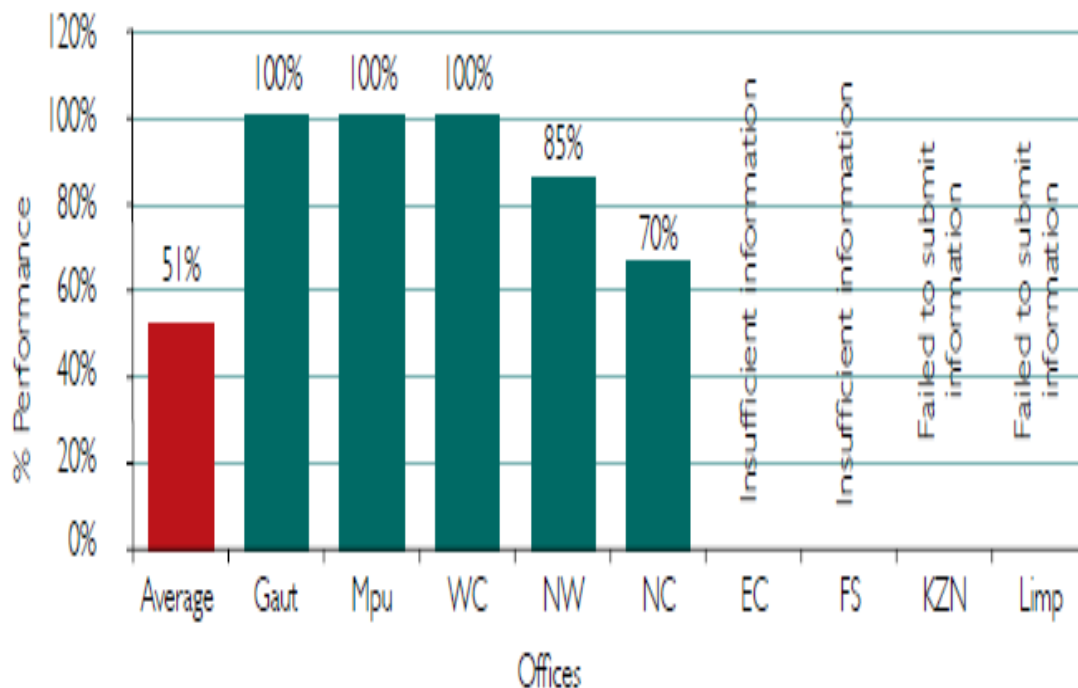
Schirmer (2017:2) concurs that those improvements in the property rights system will strengthen the prospects for development and expand the opportunities available for the poor. However, he believes that the solution proposed by De Soto (2006) requires extremely complex institutional changes, which are likely to be path dependent and can only emerge as a result of political shifts within all levels of the state. In comparison to other regions and continents, local democracy dimensions of local government capacity and local government performance rank Europe among the most developed regions in the world. The factors explaining high local democracy in Europe have a multidimensional character and these dimensions include core positive factors such as relative economic wealth, high human development, the long historical tradition of the subsidiarity principle in most parts of Europe, and the regulatory function of the Council of Europe.

The principles of the European Charter of Local Self Government form the basis and framework for strong development of local and regional democracy in Europe. However, despite such remarkable performance, the recent financial crisis in such countries as Greece indicates structural challenges and weaknesses, which threaten the stability of local democracy in Europe. These threats manifest in discussions about fragmentation versus amalgamation and trend towards re-centralisation across Europe, both in established and emerging democracies. Local democracy is weaker in emerging economies, particularly post-Communist countries where local democracy does not have a long tradition and still needs to be revitalised (Nemec & De Vries, 2015:249). It appears that initiatives such as NEPAD and the APRM of the AU are modelled on such structures as the European Charter of Local Self Government with the aim to achieve similar positive developments and levels of local democracy in African countries.

7.2.4 Impartiality and fairness

The principle of impartiality and fairness requires that public bodies provide services impartially, fairly, equitably and without bias. The South African government ensures compliance with this principle through the Promotion of Administrative Justice Act No. 3 of 2000 (PAJA). “The PAJA ensures procedurally fair administrative actions, gives people the right to request reasons for actions, and also gives them the right to have such actions reviewed in a court or tribunal, which can be instituted by any person who is convinced that his/her rights were negatively affected by an authority’s administrative action(s)” (RSA, 2012:21). The PSC uses compliance with PAJA as an indicator for the principle of impartiality and fairness. Standards used to establish whether departments in fact take fair decisions are: decisions are taken in terms of legislation; decisions are taken in terms of delegation; decisions are just and fair; and communicate administrative decisions. The average performance of OTPs against the indicator of impartiality and fairness is depicted in Figure 7.8 below (RSA, 2012).

Figure 7.8: Average performance against principle 4 (impartiality and fairness) per Office for the 2010/11 assessment cycle



Source, PSC, 2012

Figure 7.8 above shows that the performance of the five provincial offices assessed was excellent, indicating that decisions regarding the provision of public services were made impartially and fairly in accordance with legislation (PAJA). This implies that the decisions taken were fair in terms of content, reasons for decisions, procedures prescribed by legislation and by duly delegated officials, action taken, and by communicating proposed administrative action prior to the action to affected parties with adequate notice of the right to appeal or review or right to request reasons for the decisions. Those provinces that did not submit the required documentation, that is, EC, FS, KZN and NC were not assessed (RSA, 2012:22).

7.2.5 Public participation in policy-making

The Constitution makes provision for public participation in policy-making in section 195 (e) chapter 10 (RSA, 1996:57). The principle of public participation in policy-making requires public entities to involve the public in all spheres of public administration, including the conceptualisation, design, implementation and Monitoring and Evaluation (M&E) of projects

(see Appendix B). Public participation gives the people a voice and choice in development and governance and thus is likely to produce sustainable solutions (RSA, 2012:24). Mafunisa (2004:489) argues that civil society participation in decision-making processes on political, social and economic matters is critical to improve good governance and to rid the country of social challenges such as illiteracy and poverty. Non-governmental organisations (NGOs) and Community Based Organisations (CBOs) are common vehicles for civil society participation in state decision-making processes.

The Royal Bafokeng and Bakgatla Ba Kgafela, the two prominent, platinum-rich traditional communities in the North West Province provide a good example. In these platinum-endowed communities, mineral wealth is reportedly distributed “in the name of morafe” (community in Setswana); that is, on behalf of the community by traditional leaders through customary-derived spaces of local engagement. However, direct community participation in such settings is inadequate and thus produces polarised local priorities and tensions (conflict and exclusion) at grassroots level. In extreme cases, the absence of direct community control and meaningful community participation in natural resource-endowed regions may lead to communal resistance and socio-political conflict, as witnessed in such countries as Nigeria, Ecuador, Sierra Leone and the Democratic Republic of the Congo. For example, in the oil-rich Niger Delta region of Nigeria a long history of grievance and demand for self-determination and control of the resources of the region by the local ethnic minority group has now turned into violent war against the oil companies and the state (Mnwana, 2014:826). Lack of community engagement and rampant corruption in Nigeria has led to the revival of Igbo nationalism (Igbo is the ethnic minority group in the Niger Delta region) and resentment over perceived marginalisation, thus fuelling ethnic conflict and socio-political instability in the country (Smith, 2014:787).

Provinces can increase their performance by decentralising some of the public services and social policy programmes, such as health to local governments where local politics are competitive and thus local elections create incentives for elected local authorities to deliver satisfactory public services to the local communities and expand access to the poor (Fossati, 2016:307). Decentralisation is more efficient than centralisation when regions are different because no policy spill-overs (economies of scale) can be achieved by the central government. This principle of subsidiarity was introduced by Oates (1972), who posits that local governments can tailor their choices to the particular conditions of each jurisdiction and

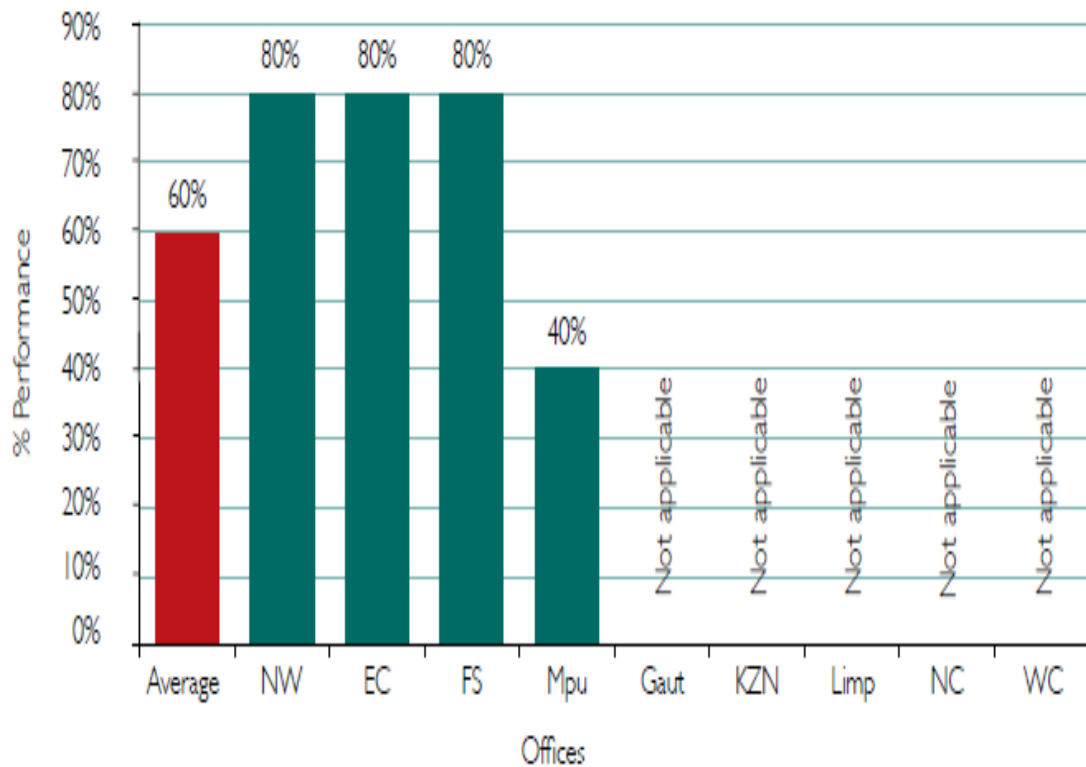
thus provide higher social welfare than a single policy adopted by a common government. Political-economy frictions among regions create an unfavourable climate in central government to match local preferences, thus favouring the decentralisation and fiscal autonomy of regions. In contrast, more informed voters (citizens) engage more in public policy participation and thus increase accountability by discouraging government authorities from engaging in rent-seeking behaviour, that is, corruption. This in turn discourages politicians from running for local government office, thus leading to centralisation (Boffa, Piolatto & Ponzetto, 2016:381).

McLaverty (in Bevir, 2011:405) argues that traditional public participation mechanisms used in the past quarter of a century have been of a consultative nature; that is, the outcomes of these mechanisms do not result directly in the making or implementation of public policy. New public participation mechanisms should not be seen as threatening or as an alternative to traditional participation mechanisms, but rather as a supplement to traditional forms of political representation. Some of these new public participation mechanisms, such as citizens' assemblies and referendums, give the public control over policy-making. Other forms of new public participation mechanisms or innovations include electoral innovations, consultation innovations, deliberative innovations, co-governance innovations, direct democracy innovations, and e-democracy innovations. Examples of these innovations include postal ballots, public opinion surveys, compulsory voting and reducing the voting age (McLaverty in Bevir, 2011:405)

Civil society participation in decision-making processes is necessary to keep the government accountable for how they use state resources (Phago, 2013:111). Public bodies that have public participation policies in place and implement systems that promote public participation in policy-making processes are responsive and likely to comply with this principle. Standards applied to establish whether public bodies in fact comply with the principle of public participation in policy-making are as follows: a policy/ guideline is in place; a system for participation is in place; and inputs are responded to and used. The overall average performance for provinces that were assessed was 60%, which is considered adequate against all standards. The NW, EC and FS each attained a good score of 80%, whereas Mpumalanga

attained the lowest performance rating of 40%, as shown in Figure 7.9³⁴ below (RSA, 2012:24).

Figure 7.9: Average performance against principle 5 (public participation in policy-making) per Office for the 2010/11 assessment cycle



Source: PSC, 2012

Figure 7.9 above shows that the Offices assessed were found to have the procedures and systems in place to solicit inputs from the public, even though these procedures were not formalised in a policy document or guideline. It was further established that the process for soliciting public inputs was a mere compliance exercise as there was no proof to show how public inputs influenced policy-making. Thus, the compliance exercise was such that the policy-making process did not consider public inputs in the planning and formulation of policy and no feedback was given to the public about the outcome of the policy-making process. Common platforms used by public bodies for public participation include the Izimbizos, Executive Council Outreach Programmes, and Thusong Service Centres (RSA, 2012:24). At the local government level, the government introduced ward committees (see

³⁴ Data not available for principle 5 (public participation in policy-making) in the following provinces: GP, KZN, LP, NC and NC. The data collection methodology deliberately chose a sample of provinces for assessment and excluded others, as mentioned above.

Figures 5.9 and 5.10 below) in 2004 as intermediary structures used to encourage meaningful public participation by local communities in the policy and decision-making processes of the state (Esau, 2008:355).

7.2.6 Accountability

The principle of accountability (Bowen & Rose-Ackerman, 2003:157; Moncrieff, 2001; Chattopadhyay, 2012) requires public entities and officials charged with the governance of the department to be accountable; that is, these public officials are obliged to account for their performance against deliverables and commit to be subjected to public scrutiny so that their decisions and processes can be evaluated and assessed. The traditional conception of accountability has been associated with calling an individual ‘to account’ for their actions to some higher authority, with an emphasis on external scrutiny and the threat of potential sanctions. Latest conceptions emphasise the two-way relationship between the agent and the principal, whereby the agent is accountable to the principal for his/her actions. A closer definition to the one above also places huge responsibility on public representatives to use the public resources entrusted to them by the public in a manner that is ethical, professional, effective, economical and efficient. It defines accountability as “the obligation to present an account of and answer for the execution of responsibilities to those who entrusted those responsibilities” (Gray & Jenkins, 1993 in Conteh, 2016:225).

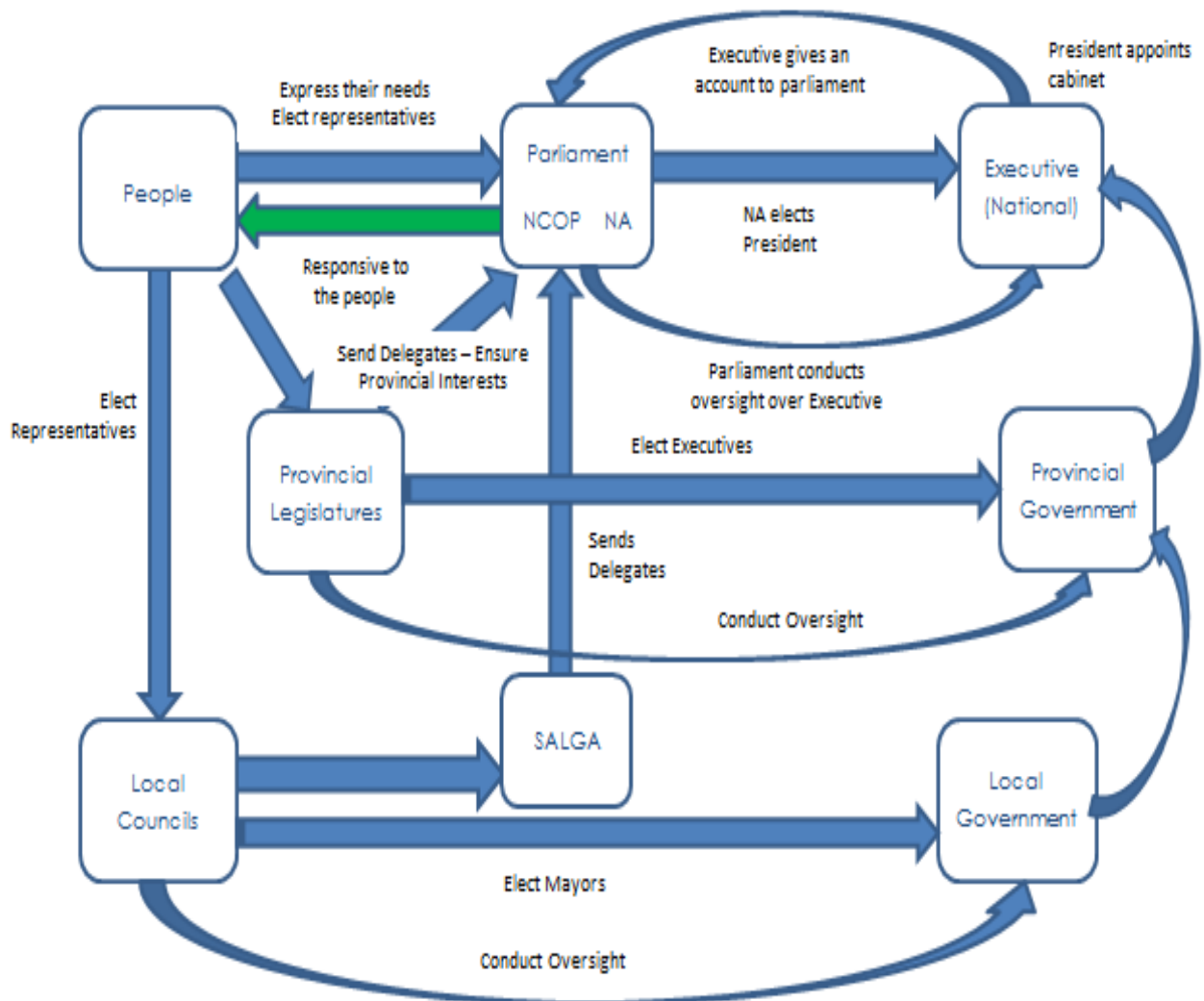
Furthermore, accountability in public administration emphasises regulatory, financial and democratic instruments of answerability or liability. The strong ethical and moral undertones attached to accountability are rooted in the philosophical foundations of a legitimate exercise of authority in a democratic society. The direction of accountability depends on the identity of the principal. It may be upwards (to a higher authority), downwards (to citizens or a community), or sideways (as part of a contract that has been agreed on for mutual benefit). For example, public accountability implies that the public officials are answerable to the general public as the principal. The benefit of public accountability includes ensuring democratic control of public institutions, preventing corruption and the abuse of power, and improving public confidence in governance arrangements (Ferry, Eckersley & Zakaria, 2015:348).

Accountability places a responsibility upon public officials charged with the governance of a department, that is, accounting officers (the head of a department) to establish a financial control environment, maintain policies and procedures, implement them, and ensure the continued operation of accounting and internal control systems. The Parliament defines accountability as “institutionalised practices of giving account of how assigned responsibilities are carried out” (www.parliament.gov.za retrieved 20 July 2014).

In Ontario, Canada, new approaches to public accountability in the public health system feature an increased emphasis on performance measurement, management and improvement. These innovative approaches seek to improve government performance in public service delivery, while still maintaining linkages to traditional forms of compliance-based public accountability; that is, accountability measures that emphasise compliance with regulatory norms and financial prudence. Price *et al.* (2016:246) argue that the reinforcement of compliance-based accountability structures diminishes performance improvement in public administration.

The South African Constitution places the people, that is, the electorate at the centre of the accountability model, where the parliament (both chambers of parliament: The National Assembly and the National Council of Provinces and representatives of local government) as an agent is accountable to the people (principal), as shown in Figure 7.10 below.

Figure 7.10: Accountability Framework of the South African Government



Source: www.parliament.gov.za retrieved 20 July 2014

Figure 7.10 above illustrates the principal-agent relationship (Cloete, 2013:95; Stein, 1990; Clucas, 2001; Atlas, 2007; Mabbett & Bolderson, 1998) between the parliament and the people. According to the principal-agent model or theory, the parliament is responsive to the people while the bureaucrats, that is, government officials are responsive to the elected officials, including the president, provincial legislatures and local councils (www.parliament.gov.za; Hedge, Scicchitano & Metz, 1991:1055).

Accountability and transparency enable citizens to exercise their democratic right to keep public institutions to the highest ethical standards (PSC, 2012). Cavill and Sohail (2004:157) use two fictitious actors 'A' and 'B' to define accountability:

A is accountable to B when A is obliged to **inform** B about A's (past or future) actions and decisions, to **justify** them and to suffer **punishment** in the case of eventual misconduct.

Phago (2013:111) argues that accountability and transparency are essential for the promotion of a legitimate government and administration. The civil society and public institutions, which act as public watchdogs, are not the only structures holding the government accountable. Harber (2014:208) highlights the important role played by the media, particularly private print media, in holding the government to account. The media, particularly print media, as an independent institution of democracy in South Africa remains outspoken and critical in exposing and reporting incidents of corruption and abuse of power, for example, the arms procurement deal and the maladministration and embezzlement of public funds by provincial government officials and politicians (Harber, 2014:208).

The most recent case of the media and civil society organisations exposing government corruption and maladministration was the death of more than 100 mental illness patients in the Gauteng province. The Gauteng provincial government moved these patients to less equipped and resourced service providers in an attempt to cut expenses, but there were reports of corruption and maladministration in the whole saga, which eventually led to the resignation of the MEC for Health, Ms Qedani Mahlangu, following the release of the report by the health ombudsman's commission of inquiry into this matter (www.news24.co.za). Nelson Mandela emphasised the importance of the media in holding the state to account and protecting democracy when he spoke at the International Press Institute Congress in 1994 (www.constitutionallyspeaking.co.za viewed on 2 August 2014):

A critical, independent and investigative press is the lifeblood of any democracy. The press must be free from state interference. It must have the economic strength to stand up to the blandishments of government officials. It must have sufficient independence from vested interests to be bold and inquiring without fear or favour. It must enjoy the protection of the constitution, so that it can protect our rights as citizens.

Lindberg (2013:202) argues that different types of accountability are found in different disciplines, such as finance, accounting and political science. All subtypes of accountability have different characteristics and actors, uphold different values and face different challenges. However, all subtypes of accountability seek to constrain the (mis-) use of power. The key principle of accountability is to delegate some authority, evaluate performance, and apply sanctions. Lindberg's (2013:202) definition of accountability borrows from Locke's theory of the superiority of representational democracy, which builds on the notion that accountability is only possible when the governed are separated from the governors. This definition further borrows from the American Constitution, which is based on the central idea that "when decision-making power is transferred from a principal (e.g. the citizens) to an agent (e.g. government), there must be a mechanism in place for holding the agent accountable for their decisions and tools for sanction" (Lindberg, 2013:203).

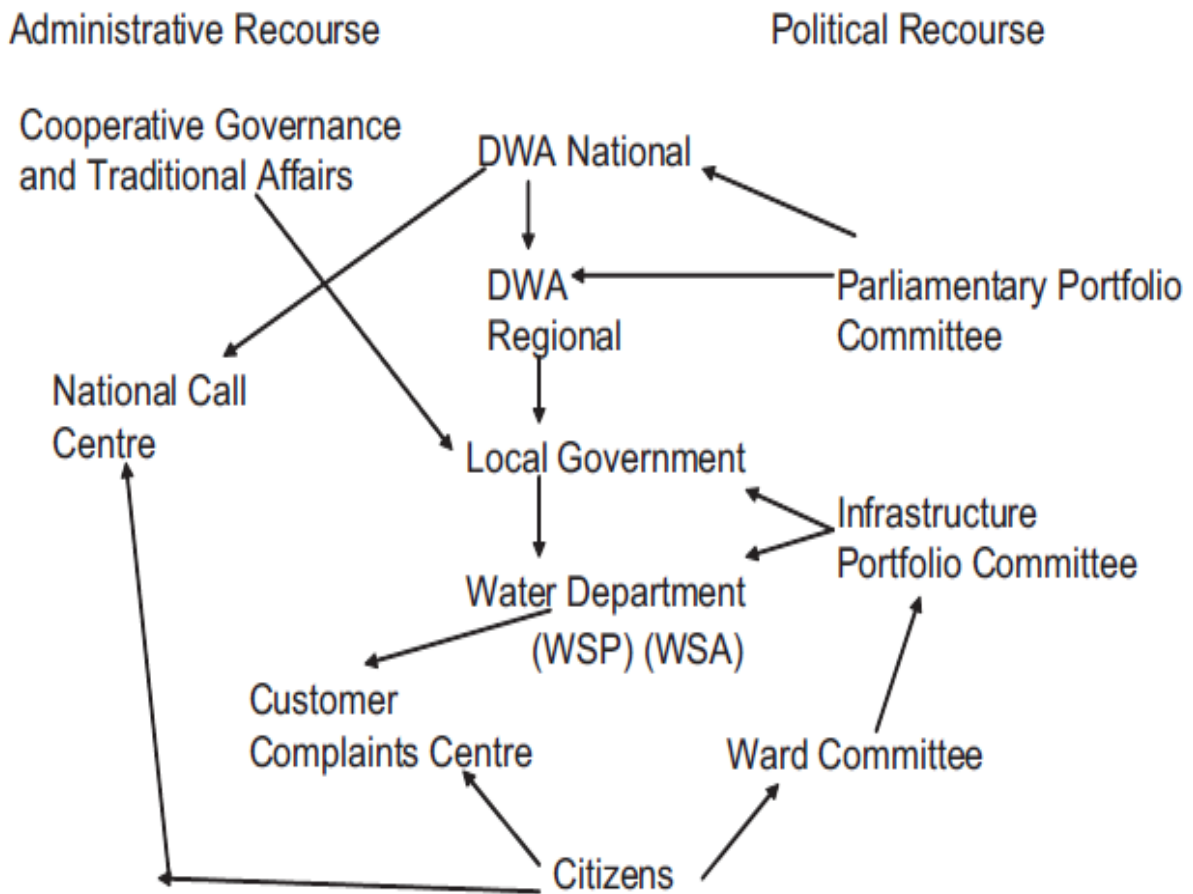
This view is consistent with one of the cornerstones of the republican democratic theory that citizens will hold the representatives accountable for their performance in office (Orth, 2001:412). Smith (2011:505) argues that local government should promote and facilitate strategic public engagement, that is, public participation as a means to strengthen the public oversight role in the delivery of public services. Such an initiative by local government is an essential dimension of building public accountability in local government (Smith, 2011:505). The state uses "invited spaces" as the means of institutionalising public input in contrast to "invented spaces" where there is greater public participation (Smith, 2011:505; Miraftab & Wills, 2005:200).

The need to routinise and regularise public participation, that is, increase the invited spaces instead of the invented spaces is perceived to reduce the plurality of public voices at a strategic level, thereby leading to co-option. The challenge therefore is to transfer public participation from invented to invited spaces, which are recognised and promoted by the state. Smith (2011:505) argues that the numerous invited spaces available for public participation are less effective in addressing citizens' service delivery concerns. These inefficient invited spaces have become tokenistic exercises that reassert partisan control of local resources, rather than opening the space for public engagement on how best to use public resources for service delivery. The ability of citizens to hold their local authorities accountable varies according to class and racial divides. Low income communities that have historically been disenfranchised and received low quality services fail to understand their

rights in relation to public service delivery standards or how to enact them. According to Smith (2011:505), “The inability of the public to effectively utilize the existing legislation weakens accountability mechanisms at the local government level, as the public is unable to find the levers to apply public pressure”.

The government has made significant efforts to put public participation mechanisms in place (see Figure 7.11 below), yet the absence of recourse mechanisms available to the general public limits the impact of the state’s efforts to strengthen local regulation in service delivery. Ethical codes of conduct and the promulgation of legislation are some of the mechanisms government and the public use to promote and enforce accountability and ethical conduct in public service delivery. In the UK, the Nolan Committee identified *Seven Principles of Public Life* for public servants, which are aimed at promoting ethical behaviour in public service delivery. These principles are selflessness, integrity, objectivity, accountability, openness, honesty and leadership (see Appendix C and D) (Raga & Taylor, 2005:22).

Figure 7.11: Vertical accountability structures in the water sector



Source: Smith (2011)

Figure 7.11 above illustrates an ideal accountability system (using public water services as an example), which includes checks and balances that enable both vertical (across spheres of government) and horizontal (amongst non-state actors within civil society) forms of accountability. Likewise, Cavill and Sohail (2004:157) argue that accountability operates in different directions by distinguishing between “vertical accountability (the capacity of state institutions to check abuses by other public agencies and branches of government) and horizontal accountability (the means through which citizens, mass media and civil associations seek to enforce standards of good performance on officials)”.

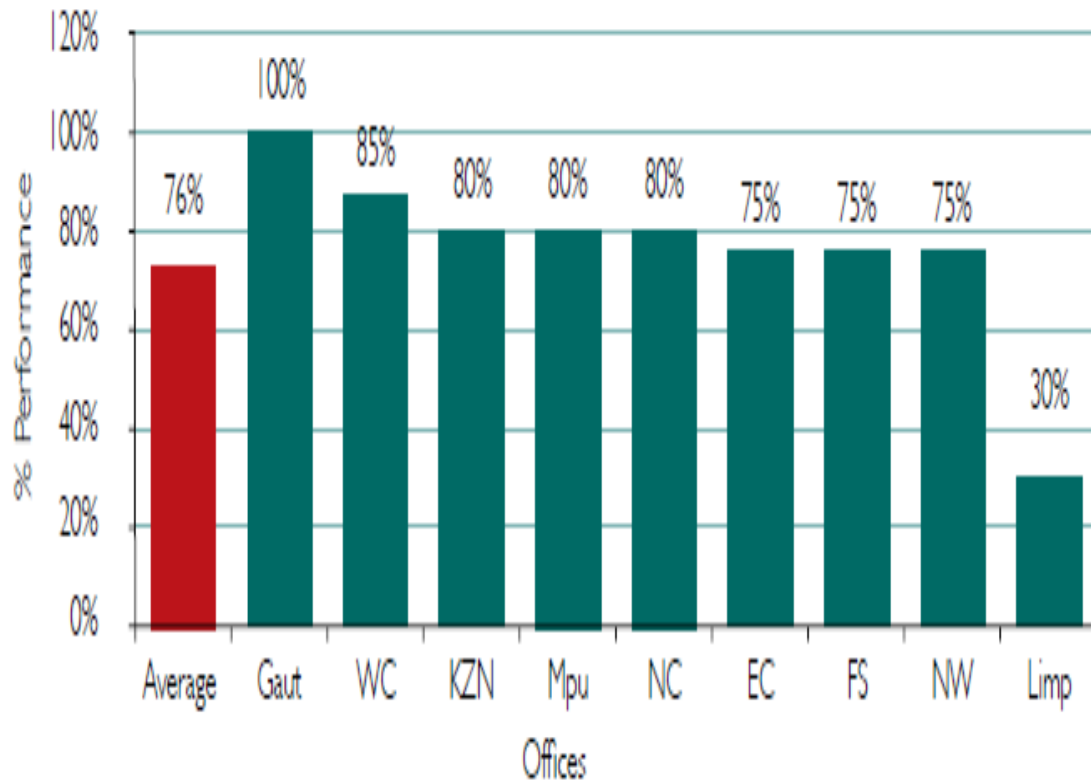
The general public uses horizontal accountability through CSOs or business associations to apply pressure on local authorities to address local public problems. A particular set of power relations emerge as a result of the right of the public to demand public services and the capacity and the willingness, that is, obligation of the state to respond to calls for

accountability (Smith, 2011:505). Departments can achieve accountability by implementing internal financial controls, exerting performance management over all delivery programmes, exercising oversight through risk assessment, and preparing and implementing fraud prevention plans. The PSC uses five standards to establish whether departments in fact promote accountability, namely, internal financial controls; a performance management system; risk assessment/management; a fraud prevention plan (FPP); and implementation of the FPP (RSA, 2012:26).

Examples of mechanisms used to operationalise internal financial controls and performance management systems include internal audit committees, corruption committees, anti-corruption forums, fraud and corruption databases, capacity building programmes, a security and records management directorate, internal audit functions, annual financial statements, external audit recommendations, and SCOPA resolutions. Increasing demands for democratic accountability in governments and public officials, leading to a number of reforms in public administration, have increased over the last decades. However, there is a lack of universal consensus about the best practice and accountability mechanisms, that is, what is involved in demanding, rendering, assessing, and responding to accounts; what are effective accountability institutions; and how accountability regimes emerge and change. Accountability promotes and creates an enabling environment for a democratic government, but pervasive accountability is likely to reduce performance and erode public trust in a democratic government (Olsen, 2015:426).

However, Schillemans and Van Twist (2017:258) argue that “traditional” forms of centralised accountability and control are no longer feasible due to the increasing complexity of analyses in public administration. Yet, internal audit in government as a form of centralised accountability and control is expanding its scope. The performance of OTPs against the indicator of accountability is depicted in Figure 7.12 below (RSA, 2012).

Figure 7.12: Average performance against principle 6 (accountability) per Office for the 2010/11 assessment cycle



Source: PSC (2012)

Figure 7.12 above shows that all the provinces performed well against the indicator of accountability against all standards, with the exception of Limpopo, which attained a poor rating of 30%. In addition, seven of the provinces (the Offices of the Premier), except the Free State and Limpopo received unqualified opinions of the Auditor-General, which attests to their good performance against accountability. However, it was found that even though most offices conducted risks assessments and had FPPs in place, they did not implement these strategies; that is, they did not have implementation plans for their fraud prevention strategies. The main challenge facing OTPs is the lack of capacity; that is, well-qualified officials with enough experience to conduct fraud investigations. The shortage of skills has a negative impact on the ability of the state to meet its goals and objectives; that is, to provide public services (Davids & Esau, 2012:82; Mouton, 2013; Nevin, 2014). Performance management systems are used by all departments in the public service; that is, national transversal systems, including BAS, LOGIS and PERSAL. On the other hand, conventional performance management systems used in the public service include the Performance

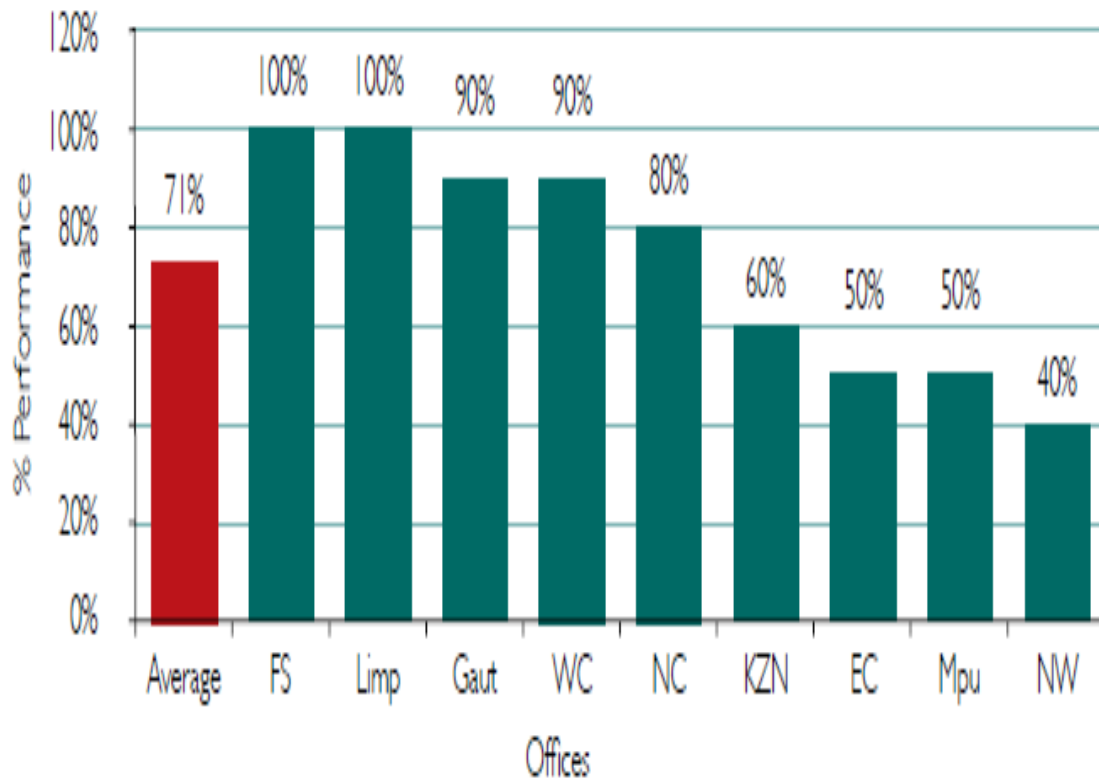
Management and Developments System (PMDS), annual performance plans, departmental annual reports and AG reports (RSA, 2012:27-28).

7.2.7 Transparency

Good governance requires *inter alia* that government activities are accessible and transparent in the spirit of evidence-based policy assessment (Cloete & Auriacombe, 2007:193). Lindstedt and Naurin (2010:301) define transparency as the release of information about institutions that is relevant for evaluating those institutions. The principle of transparency is achieved by providing the public with timely, accessible and accurate information. A common method of fostering transparency in the public service is by producing annual reports (AR), which report on the actual performance of departments against predetermined objectives as stated in their strategic plans and in their estimates of expenditure (budgets). The availability of ARs to the public enables them to access departmental information as required by the Promotion of Access to Information Act No 2 of 2000 (PAIA) and to assess the performance of a department (RSA, 2012).

The PSC applies two standards, each with three sub-standards, to establish whether public bodies in fact promote transparency. The first standard is departmental ARs with its sub-standards: presentation, content, and reporting. The second standard is access to information and its sub-standards are capacity, manual, and systems (RSA, 2012). The performance of Offices of the Premier in all nine provinces against the principle of transparency in the 2012 PSC assessment is shown in Figure 7.13 below (RSA, 2012).

Figure 7.13: Average performance against principle 7 per Office for the 2010/11 assessment cycle



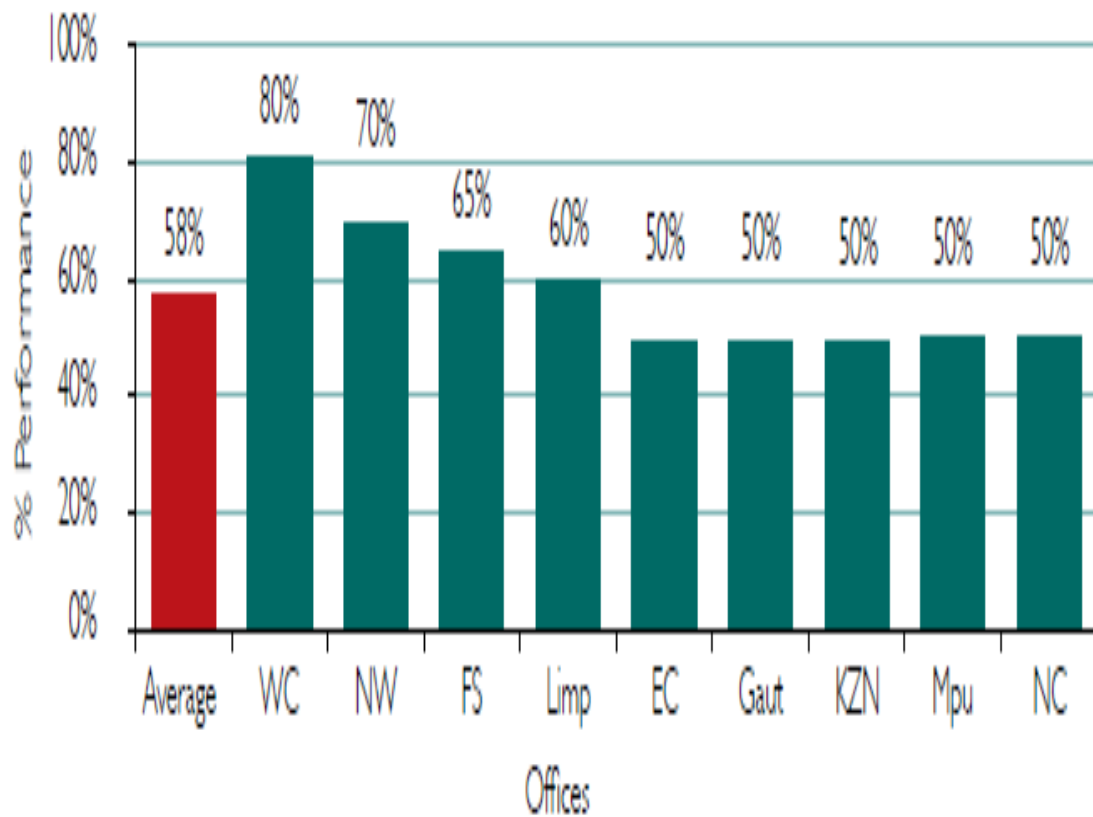
Source: PSC (2012)

Figure 7.13 above illustrates that the average performance of OTPs against the standard of transparency is good, with only the North West attaining a poor rating. With regards to the sub-standards, the OTPs scored low against the sub-standard of content of AR, implying that the OTPs did not adequately capture their performance against the set indicators or reporting guidelines, as determined by the National Treasury (NT) and the Department of Public Service and Administration (DPSA). The main areas to be covered, that is, the content in the AR according to NT and DPSA guidelines include general information, programme performance, audit reports, financial statements and other financial information, and human resource oversight report. In addition, OTPs performed poorly against the sub-standard of Manual of Access to Information (MAI), which was in most provinces found to be incomplete; that is, they did not fully comply with the requirements set out in section 14 of the Promotion of Access to Information Act No 2 of 2000 (RSA, 2012).

7.2.8 Good human resources management and career development practices

Good human resources management (Muller, 1999:126) and career development practices must be cultivated in the public service to maximise human capital. which in turn is necessary to ensure implementation of government policies. The White Paper on Human Resources Management in the Public Service provides a policy framework to accomplish a shift from personnel administration to human resource management. This policy shift is intended to ensure that strategic and effective human resource management becomes the cornerstone of the wider transformation of the Public Service in South Africa (RSA, 1997:9). In order to ensure compliance with this principle, departments should continuously assess employment policies, management practices and the working environment. The PSC applies two standards and a total of five sub-standards to establish whether OTPs in fact promote good human resources management and career development practices. The first standard is recruitment and its sub-standards are: availability of a human resources (HR) policy, recruitment time, and management reporting. The second standard is skills development and its sub-standards are: a plan is in place, and plans are implemented, as depicted in Figure 7.14 below (RSA, 2012).

Figure 7.14: Average performance against principle 8 per Office for the Premier 2010/11 assessment cycle



Source: PSC (2012)

Figure 7.14 above shows that four of the nine OTPs, that is WC, NW, FS and Limpopo recorded good performance against this indicator, while the other five recorded adequate performance. The performance of OTPs against good governance standards yielded varied results. Excellent performance was recorded against the sub-standards of availability of policy on recruitment, the existence of skills development plans, and management reporting on recruitment. However, OTPs recorded poor performance against the sub-standards of recruitment times and management's response to progress reports on recruitment. The study further found that all offices had put in place a recruitment policy that complied with good practice standards and a skills development plan, which is mostly based on a skills needs analysis (RSA, 2012:34). The main challenge facing OTPs was the inability to fill vacancies within the set standard of three months or 90 calendar days.

The number of unemployed graduates in South Africa is an estimated 255 000 despite a ten percent vacancy rate in many public institutions, begging the question regarding the capacity

or willingness of the institutions to fill these vacancies (Fredriksen & Kagia, 2013:299). Such a high unemployment rate among graduates is due to a problem of a skills mismatch, whereby there is a critical shortage of qualified individuals to fill vacancies despite the high number of unemployed graduates (Fredriksen & Kagia, 2013:299; Sing, 2012:384). This skills mismatch is caused by the very slow response by the education and training system to the rapid change in the labour market demand for skills. Jobs that have high skills-intensity require candidates with high levels of skills (Fredriksen & Kagia, 2013:299). Reasons for high vacancy rates vary; for example, “some developing countries do not have the resources necessary to invest in nursing compensation and careers”, and as a result nurses migrate to other countries or sectors in search for better educational and career opportunities and for more secure environments (Kalipeni, Semu & Mbilizi, 2012:154).

The worst reported case of failure to comply with the standard of filling vacancies within three months was the OTP in KZN, which took more than 12 years to fill a vacancy of a Parliamentary Officer. The PSC found that most OTPs merely complied with the requirements of the principle, but did not produce effective and efficient administrative processes. Management did not respond adequately; that is, they did not take appropriate action on the management reports on recruitment. Also, it is noteworthy that all OTPs had skills development plans in place and implemented them, yet most training consisted of short courses and the impact assessment of these courses on performance and service delivery was not conducted (RSA, 2012).

It is therefore necessary for OTPs to review their recruitment processes in their policies and to specify timeframes for each process, for example, ten days for conducting interviews after the closing date of applications and 20 days between the date of interviews and the date on which a decision for appointment is made, as per guidelines of the PSC’s Toolkit on Recruitment and Selection. Management must monitor and intervene in the recruitment process by instituting corrective measures where there are challenges. The impact of training on performance and service delivery must be assessed annually. The requisite skills and competencies in correct quantities; that is, sufficient employees are crucial for effective and efficient service delivery and therefore vacancies must be filled timeously with competent people (RSA, 2012:38).

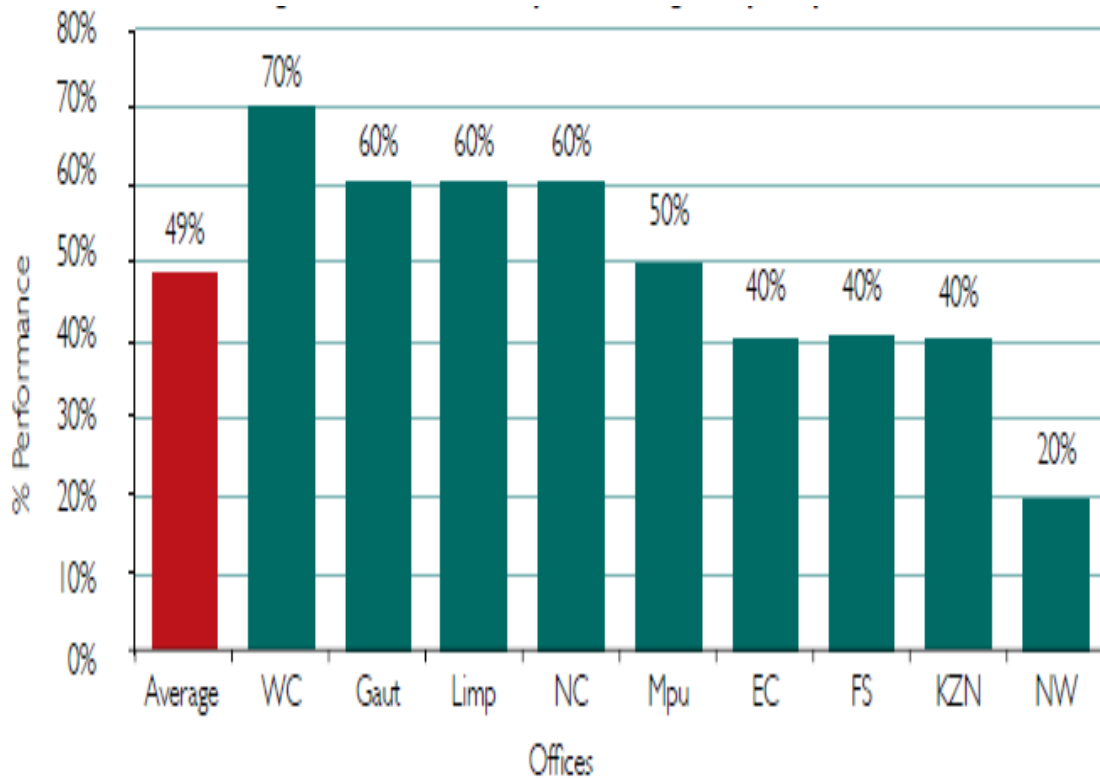
The current largely white and male character of the South African workforce is the result of the discriminatory policies of the former apartheid regime. The Employment Equity Act (EEA) No. 55 of 1998 was introduced to transform the character of the workforce in South Africa. Dupper, Nacewen and Louw (2006:191) argue that the tertiary education sector in the Western Cape displays an absence of ambition in target setting and inadequate performance to improve the current employment situation.

7.2.9 Representivity

The apartheid social and legal system was squarely based on inequality and discrimination and denied the majority of South Africans their fundamental dignity. The Employment Equity Act of 1998 seeks to address the continuing imbalances in representation of designated groups, that is, females, black persons and people with disabilities (Dupper, Nacewen & Louw, 2006:191; Groenmeyer, 2011:259).

The principle of representivity requires that the workforce in the public service is broadly representative of the people of South Africa in their potential and diversity. Representivity is therefore addressed by attending to both representivity targets and diversity management in the public service. The PSC applies two standards and five sub-standards to establish whether public bodies in fact promote representivity. The first standard is employment equity (EE) and its sub-standards are: an EE policy and plan are in place; progress on EE plan is reported; and, all representivity targets are met. The second standard is diversity management and its sub-standards are: comprehensive measures are implemented; and, some measures are implemented. The average performance of OTPs against representivity is depicted in Figure 7.15 below (RSA, 2012):

Figure 7.15: Average performance against indicator 9 (representivity) per Office for the 2010/11 assessment cycle



Source: PSC (2012)

Figure 7.15 above shows that the WC, GP, LP, NC and MP recorded good performance against this indicator. The performance of the EC, FS, KZN and NW was poor. The WC recorded the highest performance against this indicator, which is not consistent with general assumptions that the Western Cape is less transformed and less representative of the diversity of the country's population. The inconsistent findings with general perceptions and assumptions could perhaps be attributed to the types of standards used which focus largely on administrative processes and procedures, that is, administrative compliance measures rather than the actual representivity figures (RSA, 2012).

Therefore, it follows that a province or OTP may still record a high performance by having policies and administrative processes in place, while not necessarily reaching representivity and diversity targets. It is therefore necessary to review the standards and criteria for assessing this indicator to ensure a true reflection of representivity and diversity targets from assessment of OTPs. In fact, as results of the assessment indicate in Table 7.5 below, OTPs generally score high on reporting on representivity and diversity management and dismally

on actually achieving representivity targets and having EE policies in place. This implies that OTPs concentrate on reporting, rather than the actual process of increasing representivity and diversity in the workplace (RSA, 2012).

However, a true picture regarding representivity emerges when focusing on the individual standard of representivity, which shows that during the 2010/11 PSC assessment cycle the FS achieved 68% and the WC 57% against the standard of “75% Blacks at senior management level”. None of the provinces achieved the target against standard of “50% women at senior management level”. However, MP and the WC exceeded the target against the standard of “2% people with disabilities”. The Public Service had set a target of 2% representation of people with disabilities by 2010 within its workforce (Sing, 2012:161).

Table 7.5: OTPs' overall compliance against the specific standards of indicator 9 (representivity) per Office for the 2010/11 assessment cycle

Standards	Existence of an EE		Achievement of representivity targets	Management reporting on representivity		Diversity management
	Policy	Plan		Done	Response	
% Average Compliance	34%	78%	31%	88%	22%	72%

Source: PSC (2012)

The PSC uses the nine requirements for an EE plan as set out in section 20 (2) (a) – (i) of the Employment Equity Act No. 55 of 1998 to measure compliance against the standard of “existence of an EE plan” (RSA, 1998:10-11; RSA, 2012:40). The national representivity targets are set as follows: 75% blacks at senior management level by end of April 2005, 50% of women at senior management level by 31 March 2009, and 2% people with disabilities by 31 March 2010 (RSA, 2012).

7.2.10 Summary of provincial governance in South Africa

The CVPs form the basis, that is, criteria upon which the performance of government in promoting and upholding good governance is assessed. These CVPs are indicators of good governance in the public service and also comprise standards and sub-standards against which government performance is evaluated (See Figure 7.5 for a graphic representation of the governance framework in the South African public service and Appendix A, which provides an outline of the contribution of CVPs to good governance in the South African government).

Table 7.6 below presents a summary of the performance of OTPs against all nine CVPs and their governance characteristics with reference to the 2010/11 PSC assessment.

Table 7.6: Standards and indicators used to assess good governance performance in provincial departments (government)

#	Governance indicator	Standards and sub-standards	Overall performance
1.	Professional ethics: <i>A public entity must maintain high standards of professional ethics and carry out its duties with integrity to attain clean administration and professional ethical conduct.</i>	(1) a policy of misconduct in place, (2) management reporting, (3) finalising cases of misconduct promptly, (4) adequate capacity to handle cases of misconduct, and (5) provision of training	<ul style="list-style-type: none"> • KZN, WC, LP, NW, and NC achieved a minimum of good performance in their ratings • FS, MP, EC, and GP attained adequate performance
	Characteristics	<ul style="list-style-type: none"> • Integrity means steadfast adherence to a strict moral or ethical code, policy or legal 	<ul style="list-style-type: none"> • Ethics refers to the standards of right and wrong that prescribe people's rights,

		instruments and preceding codes	obligations and benefits to society.
2.	Efficiency, economy and effectiveness: <i>Public bodies must utilise state financial resources in the manner that achieves value for money.</i>	(1) expenditure is budgeted for, that is, planned vs. actual expenditure, (2) performance indicators (PI) are measurable, and (3) programmes are implemented as planned	<ul style="list-style-type: none"> • The GP scored the highest. In GP, public financial resources are used efficiently, economically, and effectively as a result of good financial management systems in place. • NC and NW scored the lowest, that is, poor performance.
	Characteristics	<ul style="list-style-type: none"> • Budgetary control and verification systems, which link service delivery and performance management to planning and budgeting must be measured against outputs to ensure that the outcomes are effective and efficient. 	<ul style="list-style-type: none"> • Management tools used to measure performance indicators include time, quality, and quantity regarding production or provision of public services and products. • Management tools are also used to monitor progress in the achievement of outputs and to institute timeous corrective measures.
3.	Development orientation: <i>Public bodies are required to initiate and implement programmes and projects that will promote development and eradicate poverty.</i>	(1) beneficiaries participated in 50% of the projects, (2) 50% of project plans are of an acceptable standard, (3) IDPs (Integrated Development Plan) are considered in 50% of the projects, (4) a system for lessons learnt is in place, and (5) half the projects received 50% of their objectives	<ul style="list-style-type: none"> • These standards are applied at the project level and therefore are deemed not suitable to assess the administrative and political authorities of the departments.

	Characteristics	<ul style="list-style-type: none"> Development and poverty eradication or alleviation initiatives are initiated and implemented at programme and project level. 	
4.	Impartiality and fairness: <i>Public bodies are required to provide services impartially, fairly, equitably and without bias.</i>	<p>(1) Decisions are taken in terms of legislation, (2) decisions are taken in terms of delegation, (3) decisions are just and fair, and (4) administrative decisions are communicated.</p>	<ul style="list-style-type: none"> GP, MP, WC, NW and NC performed excellently. EC, FS, KZN and Limpopo did not submit the required documentation and hence were not assessed.
	Characteristics	<ul style="list-style-type: none"> The South African government enforces impartiality and fairness by public bodies through the Promotion of Administrative Justice Act No. 3 of 2000 (PAJA). 	<ul style="list-style-type: none"> PAJA ensures procedurally fair administrative actions, gives people the right to request reasons for actions, and also gives them the right to have such actions reviewed in a court or tribunal, which can be instituted by any person who is convinced that his/her rights were negatively affected by an authority's administrative action(s).
5.	Public participation in policy making: <i>Public entities are required to involve the public in all spheres of public administration including the conceptualisation, design, implementation and Monitoring and Evaluation (M&E) of projects.</i>	<p>(1) A policy/guideline is in place, (2) a system for participation is in place, and (3) inputs are responded to and used.</p>	<ul style="list-style-type: none"> The NW attained the highest performance with a score of 80%, whereas Mpumalanga attained the lowest performance rating of 40%. The overall average performance for provinces that were assessed was 60%, that is, adequate.

	Characteristics	<ul style="list-style-type: none"> • Civil society participation in decision-making processes keeps the government accountable and improves good governance. • Public participation gives the people a voice and choice in development and governance and thus is likely to produce sustainable solutions. 	<ul style="list-style-type: none"> • Public bodies that have public participation policies in place and implement systems that promote public participation in policy-making processes are responsive to civil society needs.
6.	<p>Accountability: <i>public entities and officials charged with the governance of the department are obliged to account for their performance against deliverables and commit to be subjected to public scrutiny so that their decisions and processes can be evaluated and assessed.</i></p>	<p>(1) internal financial controls, (2) performance management system, (3) risk assessment/management, (4) fraud prevention plan (FPP), and (5) implementation of the FPP</p>	<ul style="list-style-type: none"> • All provinces performed well against this indicator, except Limpopo, which performed poorly and scored 30%. • The GP achieved the highest score of 100%.
	Characteristics	<ul style="list-style-type: none"> • Accountability and transparency are essential for the promotion of a legitimate government and administration. • Accountability seeks to constrain the (mis-)use of power. • Public participation serves as a means to strengthen the public oversight role in the 	<ul style="list-style-type: none"> • Accountability and transparency enable citizens to exercise their democratic right to keep public institutions to the highest ethical standards. • The key principle of accountability is to delegate some authority, evaluate performance and apply sanctions.

		<p>delivery of public services.</p> <ul style="list-style-type: none"> • Government accountability mechanisms include implementing internal financial controls, exerting performance management over all delivery programmes, exercising oversight through risk assessment, and preparing and implementing fraud prevention plans. 	<ul style="list-style-type: none"> • Ethical codes of conduct and promulgation of legislation are some of the mechanisms government and the public use to promote and enforce accountability and ethical conduct in public service delivery. • Examples of mechanisms used to operationalise internal financial controls and performance management systems include internal audit committees, corruption committees, anti-corruption forums, a fraud and corruption database, capacity building programmes, a security and records management directorate, an internal audit functions, annual financial statements, external audit recommendations and SCOPA resolutions.
7.	<p>Transparency: <i>The release of information about institutions that is relevant for evaluating those institutions.</i></p>	<p>(A) Departmental annual reports: sub-standards: (1) presentation, (2) content, and (3) reporting</p> <p>(B) Access to information: sub-standards: (1) capacity, (2) manual, and (3) systems</p>	<ul style="list-style-type: none"> • The FS, LP, GP, WC and NC performed well against this indicator. • KZN, EC and MP achieved good performances. • The NW performed poorly and received a score of 40% against this indicator.
	Characteristics	<ul style="list-style-type: none"> • Transparency in the public service is 	

		fostered mainly by producing annual reports (AR), which report the actual performance of departments against predetermined objectives as stated in their strategic plans and in their estimates of expenditure (budgets).	
8.	Good HRM and Career Development Practices: <i>Maximising human capital to ensure implementation of government policies.</i>	(A) Recruitment: sub-standards: (1) availability of human resources (HR) policy, (2) recruitment time, and (3) management reporting (B) Skills development: sub-standards: (1) a plan is in place and (2) plans are implemented	<ul style="list-style-type: none"> • Four of the nine OTPs, that is, the WC, NW, FS and LP recorded good performances against this indicator. • The other five provinces, that is, EC, GP, KZN, MP and NC recorded adequate performance.
	Characteristics	<ul style="list-style-type: none"> • Departments should continuously assess employment policies, management practices and the working environment to ensure compliance. 	
9.	Representivity: <i>Workforce in the public service is broadly representative of the people of South Africa in their potential and diversity.</i>	(A) Employment equity (EE): sub-standards: (1) EE policy and plan are in place, (2) progress on EE plan is reported, and (3) all representivity targets are met. (B) Diversity management: sub-standards: (1) comprehensive measures are implemented and (2) some measures	<ul style="list-style-type: none"> • The WC, GP, LP, NC and MP recorded good performances against this indicator. • The performance of the EC, FS, KZN and NW was poor. • The WC recorded the highest performance against this indicator.

		are implemented.	
	Characteristics	<ul style="list-style-type: none">• Representivity is therefore addressed by attending to both representivity targets and diversity management in the public service.	

Source: Own Construction

7.3 CONCLUSION

Provincial government as one of the three spheres of government that are interconnected, interrelated and interdependent (see chapter 3 and 6 of the Constitution) has a crucial role to play in fulfilling the constitutional mandate of the state (RSA, 1996). Good governance is a central pillar of any state or sphere of government and requires state entities to conduct their affairs in an ethical, transparent, effective and efficient manner, and with integrity (see paragraph 7.2 above). The Constitution provides for the establishment of various structures, processes, strategies and mechanisms through an Act of Parliament to enforce and promote good governance in government (see page 164, paragraph 3.4 and page 168, paragraph 3.5 in chapter 3 above). These structures and mechanisms include state institutions supporting constitutional democracy, such as the Public Protector, the Auditor-General and the South African Human Rights Commission, among others (see Chapter 9 of the Constitution) (RSA, 1996:69) (see page 386, paragraph 6.4.3 in chapter 6 above).

Lodge (2005:737) argues that public authority within provincial administrations has become more effective despite the legacies of patrimonial government in the apartheid era. Provincial legislators are becoming more willing to exercise their oversight functions over provincial administration (departments) and to engage with the public and stakeholders in their jurisdictions more effectively when compared to the apartheid era. This development has had a positive impact on the effectiveness of provincial administrations (see page 462, paragraph 7.2.6 above) (Lodge, 2005:737). The Constitution further provides for the establishment of the Public Service Commission (PSC) (section 196, chapter 10 of the Constitution) as another mechanism or structure responsible for promoting good governance in the public sector. The Constitution requires the PSC to promote the constitutional values and principles of public administration throughout the public service, as set out in section 195 of the Constitution. Further, the Constitution enjoins the PSC to be “independent and must be impartial, and must exercise its powers and perform its functions without fear, favour or prejudice in the interest of the maintenance of effective and efficient public administration and a high standard of professional ethics in the public service” (RSA, 1996:75) (see page 435, paragraph 7.2 above). In addition, the Constitution mandates the provinces through chapters 3 and 6 to carry out functions and responsibilities, which will ensure good governance in the provision of public services; that is, in the exercise of their powers and the performance of their functions. The work of the PSC through exercising its powers and performing its functions, which include

the promotion of the constitutional values and principles and investigating, monitoring and evaluating the performance of the public service (that is, enforcing and promoting good governance in the public service), provides the basis for critically analysing and assessing the performance of the provincial government in upholding the democratic values of good governance in the public administration, as entrenched in the Constitution (see paragraph 7.1 above in this chapter).

Specifically, this study employed the findings of the 2010/2011 financial year assessment of the Offices of the Premier (OTP) in all nine provinces of the country against the constitutional values and principles of governance in public administration (RSA, 2012). As discussed in the preceding sections (paragraphs 7.1 and 7.2 above), these constitutional values and principles serve as indicators of good governance in the public service. Thus, the assessment of the public service against these values and principles essentially assesses the level of good governance in the public sector. The performance of the nine OTPs against the indicators of good governance was found to be uneven and inconsistent throughout the country. The PSC assessment found that the OTPs performance could be linked to the extent to which they implemented the recommendations of the PSC in the previous assessment cycle. Provinces (OTPs) which implemented the PSC's recommendations performed very well against those indicators (including standards and sub-standards) (see paragraph 7.2 above).

The assessment further found that OTPs focus more on compliance, which is putting policies and procedures in place, rather than actual implementation of those policies (see page 458, paragraph 7.2.5 above). The OTP is responsible for providing strategic direction and coordination of the activities of the provincial government and therefore plays an important role in ensuring and enforcing good governance practice in the province. Therefore, the study concludes that the performance of the OTP against the PSC's good governance assessment criteria is a direct reflection of the extent to which all provincial departments and state entities uphold good governance in executing their mandate, duties and responsibilities (that is, exercising powers and performing functions to fulfil their constitutional legislative and executive obligations) (see page 435, paragraph 7.2 above). These findings therefore provide a tool to identify the strengths and weaknesses of the provincial sphere of government with respect to good governance.

The Constitution makes provision for the enactment of a plethora of legislation that is aimed at promoting good governance and guiding the actions of public entities towards the achievement of good governance. This legislation that serves as a basis for developing good governance policies and procedures includes the Executive Members' Ethics Act, the Promotion of Access to Information Act (PAIA), the Promotion of Access to Administrative Justice Act (PAJA), the Prevention and Combatting of Corrupt Activities Act, the Auditor-General Act, the Public Service Commission Act, the Public Protector Act, and the Public Finance Management Act, among others (see page 457, paragraph 7.2.4 above).

It is therefore important for provincial governments or administrations to put measures in place that will enforce and ensure compliance with these policies and protocols. These measures include Annual Performance Plans, Budgets, Annual Performance Reports, Internal Audit Units, policies (e.g. procurement, human resource management and a code of conduct) and skills development plans, among others. The Human Resources Management policy is one of the most important governance mechanisms as it ensures that competent and adequately skilled and qualified officials are appointed in the public service, particularly given the severe shortage of skilled government officials to deliver effective and efficient public services (see page 449, paragraph 7.2.2 above).

"As we express our gratitude, we must never forget that the highest appreciation is not to utter words, but to live by them"

– John F. Kennedy

APPENDIX 7A: CONSTITUTIONAL VALUES AND PRINCIPLES AND CONTRIBUTION TO GOOD GOVERNANCE

Constitutional value and principle	Contribution to good governance	Other contributions
<p>1. A high standard of professional ethics must be maintained</p> <p><i>Ethical performance</i></p>	<p>This is a personal attribute that must be promoted. There is the expectation that public servants will not abuse their office for personal interest. The intersecting values between ethics and governance are being efficient, transparent, accountable and honest. The broader question asked of departments within which public servants operate would be how well the environment promotes and presents ethical conduct.</p>	<p>Foreign sentiment, political and economic, is influenced by perception of the quality of a country's Public Service, which is the key interface between development actors and partners. Corruption indices are indicative of the state of ethics in the Public Service, and the large number of conventions signed by the country is an indication of a need to comply with international ethical standards thus positively enhancing international image.</p>
<p>2. Efficient, economic and effective use of resources must be promoted</p> <p><i>Financial performance</i></p>	<p>Given that the Public Service disburses public (citizens) funds, it should do so with prudence and ensure that there is sufficient probity which is necessary to meet the standards of good governance. This requires systems that allocate and track expenditure, and curb wastage. It also requires systems that lead to more efficient use of scarce public resources, and which report back to the citizens on how its funds have been disbursed. It is clearly a good governance issue.</p>	<p>The financial size of Public Service makes it necessary that systems ensure efficiency, as problems in individual units that lead to wastage, when aggregated upwards can be quite significant. Good financial management does require a degree of micro-management, and systems from the NT and other M&E instruments ensure this. More broadly, private sector investment is influenced by the macro-economic policy and general fiscal performance of government. This principle also links to the principle (1) above, as corruption is a key factor that can negate this principle being realised.</p>

<p>3. Public administration must be development-oriented</p>	<p>The governance implications are more long term, as a stable and economically sound country is more likely to enjoy better levels of stability and democracy. Policies that seek to reduce inequality and reduce the Gini coefficient are meant to contribute to good governance.</p>	<p>Service delivery is a part of good governance, not only in South Africa where there is a need to redress apartheid legacies. The development focus of government provides the impetus for other investment. This may be seen in private-public sector partnerships, those that support specific socio-economic improvements, such as the poverty reduction programme, increasing educational access, etc. It also links to efforts to meet the Millennium Development Goals (MGDs).</p>
<p>4. Services must be provided impartially, fairly, equitably and without bias</p>	<p>This is also “contextually specific”, although it is universal. In South Africa it is particularly meant to drive rights – thus ensuring that citizens are treated equally and fairly, and this is a good governance driver. The Public Service is seen as a lever to entrench and deliver these rights, and thus enhance human dignity, which allows for democratic benefit to be experienced more fully. It is a norm that can be measured from the perspective of citizens, and in many instances would be their main evidence of whether government is working for them.</p>	<p>As a member of the global community the country subscribes to international conventions on human rights. This is most evident from the Public Service point of view through the Promotion of Administrative Justice Act, which seeks to prevent unfairness in administrative decisions. Most citizens experience some form of administrative decisions and from their point of view this is telling of how well government is working.</p>
<p>5. People’s needs must be responded to, and the public must be encouraged to participate in policy-making</p>	<p>This is also a “contextually specific” principle, but links more broadly to issues of democratic engagement by citizens. It is</p>	<p>Ensuring that this principle does in fact work is a challenge. The main value of an engaged citizenry is to hold government accountable,</p>

	<p>privileged due to the quest to move from the old, autocratic order to a new democratic one, and seeks to make the Public Service accountable to the citizens themselves. From a good governance perspective it offers the potential for checks and balances to corruption or the abuse of power, and seeks to prevent the Public Service from becoming a self-perpetuating and non-accountable institution.</p>	<p>which means that citizens must have information and opportunities to participate. This is a cornerstone of good governance.</p>
<p>6. Public administration must be accountable</p>	<p>At the apex of democracy is an accountable Public Service, wherein all its public actions are subject to review and scrutiny. The effectiveness of institutions of democracy (Parliament, legislatures, specific bodies empowered to oversee government), will be the true test of whether accountability, and thus democracy is working, which in turn is an indicator of good governance.</p>	<p>The data from the institutions of democracy (Chapter 9 and 10) in the Constitution, together with the media, clearly indicate how accountable a government is. This in turn influences sentiment, and translates into public perception, voting, investment, etc.</p>
<p>7. Transparency must be fostered by providing the public with timely, accessible and accurate information</p> <p><i>Considered under MME: public administration</i></p>	<p>A precursor to accountability, this value has particular importance in South Africa, due to its apartheid past. The extent to which word is translated into deed, and the extent to which performance information is actually used, is indicative of the quality of governance. The main value would be that citizens can use such information to hold government to</p>	<p>The Public Service is obliged to be explicit about what its policies and procedures are. This allows for monitoring of its compliance, and through the media and civic engagement, it helps accountability. The extent to which the country is “open”, produces further effects in terms of sentiment, confidence, investment, etc.</p>

	account.	
8. Good human resource management and career development practices, to maximise human potential, must be cultivated	This is also a good governance issue, in that a competent public sector should translate into better benefits for citizens. Given that the South African Public Service is the largest employer in the country (1,1 million public servants), it stands to reason that this capacity must be well managed.	The effect of good human resource management can be seen in how citizens experience service delivery. This takes various forms, and it should be noted that there are many faces to the public sector, given the vast range of services provided.
9. Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness and the need to redress the imbalances of the past to achieve broad representation	This is very much a “contextually specific” issue in that achieving representivity is necessary for better service delivery and demonstrating democratic achievement in practice. It seeks to reverse racial stereotypes around competence and helps promote a more inclusive Public Service to meet the needs of a democratic country.	Data indicates that large-scale absorption of Previously Disadvantaged Individuals has contributed to the emerging black middle class, which in itself serves to improve the overall socio-economic profile of citizens.

Source: Naidoo, 2011

APPENDIX 7B: FOCAL AREAS SUBJECT TO MANDATORY M&E AND ITS RELATIONSHIP TO GOOD GOVERNANCE

FOCAL AREA	INSTITUTIONAL RESPONSIBILITY	METHODS	PRODUCTS AND INFLUENCES	RELATIONSHIP TO GOOD GOVERNANCE
1. Financial propriety	NT AG	M (in-year reporting) E (Annual reports) AG reports	Expenditure reports, budget presentations, budget votes, Standing Committee on Public Accounts (SCOPA)	Promotes some of the 9 Constitutional Values and Principles, such as: Efficiency Economy Effectiveness Accountability Transparency
2. Good governance standards	PSC As custodian of nine Constitutional Values and Principles	Various, depends on issue and scale	Departmental M&E reports, Consolidated M&E reports Thematic reports	Points directly to how well departments comply with indicators for the nine Constitutional Values and Principles
3. Public sector policy	DPSA, specific policies also evaluated by PSC and others	Impact assessments and monitoring data on different policy areas	Compliance reports and assessment to the Governance and Administration M&E reports on public administration policy	Policy assessment is necessary to test the appropriateness of interventionist policies, and would support the mandate of the developmental State
4. Political commitments Constitutional	Presidency, PoA	PoA on government website	Findings made directly to department and placed in the public domain	Shows alignment between promises and actual service delivery

5. Democratic principles, rights	Department of Justice and Constitutional Development (PAJA) Human Rights Commission (PAIA)	Reports submitted to the HRC on PAJA and PAIA	Finding made public, support provided to build implementation capacity Reports tabled to HRC in terms of provisions for access to information	Accountability Transparency Professional ethics
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Source: Naidoo, 2011

APPENDIX 7C: THE NOLAN COMMITTEE'S SEVEN PRINCIPLES OF PUBLIC LIFE

Table 2. Seven Principles of Public Life	
Selflessness	Public officials should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends
Integrity	Holders of public office should not place themselves under any financial or other obligation to outside individuals or organizations that might influence them in the performance of their official duties.
Objectivity	In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make their choices on merit.
Accountability	Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
Openness	Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest demands it.
Honesty	Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
Leadership	Holders of public office should promote and support these principles by leadership and example.

Source: Raga and Taylor (2005)

APPENDIX 7D: NORMATIVE CRITERIA FOR EFFECTIVE AND EFFICIENT PUBLIC SERVICE DELIVERY

Table 3. Normative Criteria for Effective and Efficient Public Service Delivery		
Values	Attitudes	Aptitudes
<ul style="list-style-type: none"> ■ Integrity ■ Transparency ■ Publicity ■ Accountability ■ Equity ■ Nondiscrimination ■ Quality ■ Professionalism ■ Reliability ■ General interest 	<ul style="list-style-type: none"> ■ Transparency ■ Responsibility ■ Quality awareness ■ Legibility ■ Clarity ■ Simplicity ■ Inquisitiveness ■ Adaptability ■ Listening ability ■ Involvement ■ Speed ■ Effectiveness ■ Efficiency 	<ul style="list-style-type: none"> ■ Knowledge ■ Acceptance and comprehension of goals and functioning of administrative institutions ■ Leadership qualities ■ Communication skills ■ Social skills ■ Independence ■ Ability to use experience ■ Ability to further education and training ■ Analytical capability ■ Sense of renewal

Source: Raga and Taylor (2005)

CHAPTER 8: ANALYSIS AND FINDINGS

“Our constitution rests on three fundamental pillars: Parliament, the Government, and the Constitutional Court. Each has its specific role to play. Take away or undermine any, and you weaken the whole structure” – Nelson Mandela (1995)

8.1 INTRODUCTION

The current study discusses and analyses the political environment in South Africa and the constitutional developments since the ratification of the Union of South Africa in 1910 (Suttner, 2004:770; Hyslop, 2005:780; Seo, 2010:128). The background study on the various constitutional dispensations provided a chronological and longitudinal account of the development and transformation of the political and socio-economic landscape in the country. The deliberations of these different epochs in the political history and transformation of South Africa provided the basis for critically assessing and analysing the current constitutional dispensation, which began with the negotiated political settlement that was achieved through political negotiations (largely between the NP, ANC and the IFP) between 1990, when Nelson Mandela was released from prison, and 1994, when the first non-racial general elections were held in the country. Thus, the historical account and ensuing analysis of political developments across different constitutional dispensations during this period provide the basis and background necessary to understand the developments and reasons for the adoption of the resultant constitution dispensations and the configuration of government and how it impacted on provincial governance.

The South African Constitution of 1996 is regarded by many across the world as the most progressive constitution in the history of the world. Oechsli (2015:19) describes it as a rich confluence of history, culture, the rule of law, ethics, human rights, and the themes of democracy. A constitution is a single embodiment of what individuals, communities and nations aspire to, a single embodiment of the social contract we establish to live together as a people, and a bulwark to protect us as individuals and society from authoritarian rule and tyranny (Oechsli, 2015:19). The people of South Africa had great expectations from the social order that was to emerge from the newly-crafted Constitution in 1996. These

expectations included the desire to end an authoritarian regime, to transcend its arbitrary and brutal nature, and replace it with a society based on the principles of accountability, transparency, fairness, respect for human rights, integrity, and the rule of law (see page 308, paragraph 5.4 in chapter 5 above) (Davis, 2016:40; Garcia-Rivero, 2006:57; Badat & Sayed, 2014:130; Lyman, 1996:105; Ferreira & Henk, 2008:505).

This new social order would entail carefully crafting a modest, incremental journey toward the legitimacy of the legal system, particularly the Constitutional Court. The main role of the Constitutional Court was to undo the egregious damage caused by the impulse and brutality of apartheid by dissenting the new *Grundnorm* - the rule of law. The Constitution was drafted in response to a history of institutionalised racial oppression and arbitrary and capricious rule. Thus, the basis for crafting this Constitution was an understanding of the important role played by the law during apartheid's long history and the manner in which it privileged a racial minority. Hence, with this as the basis for its crafting, the Constitution was to be a transformative document as opposed to a conservative or "preservative" one (see page 308, paragraph 5.4 in chapter 5 above) (Davis, 2016:40; Mamdani, 2014:63; Piombo, 2005:448).

Michelman (2013 in Davis, 2016:41) describes a transformative constitution as:

[F]orward-looking, a charter of direction to a good and a just society that is not here - not now, not yet, perhaps not fully and perfectly ever - but rather is to be pursued by political and other means under the Constitution's guidance and control. But then of course the Constitution speaks not only as a declaration and expression of a national commitment to social transformation but as a legal charter for a constitutional state, meaning a state that pursues its aims - here, it's socially transformative aims - by and under laws made and applied in accordance with constitutional supreme law.

Klare (1998 in Davis, 2016:41) describes a transformative constitution differently:

[A] long-term project of constitutional enactment, interpretation, and enforcement committed (not in isolation, of course, but in a historical context of conducive political developments) to transforming a country's political and social institutions and power relationships in a democratic, participatory, and egalitarian direction. Transformative

constitutionalism connotes an enterprise of inducing large-scale social change through nonviolent political processes grounded in law.

The negotiated overthrow of apartheid and the adoption of the new Constitution not only abolished many deep, discriminatory injustices, but also established the rule of law in the new, post-apartheid country. The first section of the Constitution declares that among the founding values of the nation are the supremacy of the constitution and the rule of law. Despite establishing these founding values, the country more than 23 years later still faces the challenges of economic inequalities between blacks and whites, left over from the past, largely perpetuated by the constitutional provision of what is known as the sunset clause that safeguards white minority economic privilege. The constitutional provision to safeguard white privilege is reiterated by Inman and Rubinfeld (2013:1), who praise the success of South Africa's transition from apartheid to democracy based on the ability of the federal governance architecture to provide protection for the economic elite from maximal redistributive taxation (see page 289, paragraph 5.3.2 in chapter 5 above) (Phago, 2013:112; Rubinfeld, 2013:1).

According to Inman and Rubinfeld (2013:1), "Federal governance creates a "hostage game" in which the majority central government controls tax rates, while elite-run provinces control redistributive services". This view makes reference to the demands for the economic safeguard and control of public resources at provincial government level by the IFP and the NP during the Codesa negotiations and drafting of both the 1993 Interim Constitution and the final 1996 Constitution. This federal political system architecture created an equilibrium that has improved the welfare of the white minority and the black majority, albeit unequally. This balance with regards to the safeguards and control of public resource is provided in chapter 3 of the country's Constitution that defines the architecture and composition of the government as consisting of national, provincial and local spheres, which are distinctive, interdependent and interrelated (see page 1, paragraph 1.1 in chapter 1 above) (RSA, 1996; Van Niekerk, 2012:621; Oechsli, 2015:19; Schwella, 2016:73).

The Constitution further allocates legislative competencies to all constituent units in different functional areas, which define their powers and functions within their jurisdictions and with respect to each other (see Schedule 4 and 5 of the Constitution and page 36, paragraph 1.2.10 in chapter 1 above on the future of provinces). In addition, the revenue collection powers of

the constituent units (see section 227 of the Constitution) are further elaborated on in the Constitution, thus granting some degree of fiscal control and autonomy to all spheres of government in certain areas. However, this equilibrium depends on the patience of the black majority and suppression of their demands for redistributive public services. Thus, an impatient and more radical majority party threatens the current equilibrium (Inman & Rubinfeld, 2013:1). Perhaps a party like the newcomer, the Economic Freedom Fighters (EFF), labelled as radical and pro-poor represents a threat to this equilibrium.

In addition to profound social policy challenges, South Africa now faces a political system sapped by endemic corruption and arbitrariness, which threaten to undermine democratic rule and the rule of law. This threat is exacerbated by the country becoming a “dominant party democracy”, one in which a single party, the ANC, wins every national election and almost all provincial elections as well. The threat posed by a dominant party democracy is the gradual erosion of all checks on the dominant party’s power, which then threatens the rule of law, accountability, democracy and constitutionalism; the very essence and pillars of democracy and good governance in a constitutional democracy (see page 397, paragraph 6.5.1 above) (Southall, 2014:48; Butler, 2005:719; Ellmann, 2016:59; Shepperd, 2009:289; Kende, 2016:184). This democratic and legal erosion of democratic values is demonstrated by South Africa’s courts who find themselves increasingly called upon to preserve the rule of law without the support of the government as a whole (Ellmann, 2016:59). The most recent example was the saga involving the Minister of Social Development, which had to be mediated by the Constitutional Court (www.news24.com viewed on 25 March 2017).

Kende (2016:184) describes the role and decisions of the courts, largely the South African Constitutional Court, the Supreme Court of Appeal, and several High Courts, in fighting corruption as important yet risky in a “dominant party democracy” in which the ANC’s dominance is one source of corruption. Examples of such cases where the courts served as anti-corruption fighters include (1) the *Glenister v. President of South Africa (Glenister II)* case in which the Constitutional Court invalidated the existence of an independent government entity designed to fight corruption because the entity was too weak; (2) the *Democratic All. v. President of the Republic of S. Afr.* case in which the Constitutional Court decision nullified a presidential appointment of Adv. Menzi Simelane to a national prosecuting position because of the President’s unwillingness to pay heed to the appointee’s integrity problems; (3) *Nkabinde v. Judicial Service Commission* case, and the (4)

Democratic Alliance v. Acting National Director of Public Prosecutions (the so-called “Spy Tapes” case) (Kende, 2016:184).

Thus, the procedural laws available in the administrative machinery of government and entrenched in both the legal framework and Constitution should countervail the wide discretionary powers of the executive and ensure accountability for their actions. The judicial review of administrative (executive) action by higher and superior courts, such as the High Courts and the Constitutional Court, provides for good governance and helps to formulate a uniform policy; that is, ensures that the executive acts within the law and that it does not abuse the power vested in it by the electorate through the provisions of the Constitution. Therefore, judicial decisions grant judicial backing to the constitutional provisions (see paragraph 3.7.2 in chapter 3 above) (Ahmed, 2015:9).

The most important element of this constitutional dispensation, which is the focus of the present study, is the political developments at the provincial sphere of government, which bring into question the status and role of this sphere of government with respect to its constitutional mandate of legislative and executive functions. Thus, this concern and the political developments raised above, which led to intervention by the courts in executive functions, render the autonomy and functional discretion of provinces a compelling subject of inquiry to investigate governance in this sphere of government. Hence, the assessment and analysis of the capacity, autonomy and functional discretion of provinces with respect to their powers and functions sits right at the center of the present study. The governance of provinces has for the past two decades been a bone of contention among politicians, scholars and the media alike (see page 41, paragraph 1.2.12 in chapter 1 above). This debate regarding the provinces presents a case for an analysis of the organisation and configuration of the system of governance in South Africa with respect to the allocation of powers and functions to the constituent units and their capacity to affirm their autonomy and fulfil their mandate as provided in the Constitution (see page 323 paragraph 5.4.3 and page 335, paragraph 5.4.4 in chapter 5 above).

8.2 OVERVIEW OF PROVINCIAL GOVERNANCE

The provinces are intermediates between the policy-making national government and the policy-implementing local government. Therefore, provinces play a crucial role in

overseeing, coordinating and providing strategic direction in the implementation of national government priorities in localities. The hierarchy in terms of the powers, roles and functions of the different spheres of government is entrenched in the country's constitution, which gives national government precedence in legislative authority, competence (that is, powers and functions) and policy matters. This hierarchy is illustrated by the authority bestowed upon the national and provincial governments to intervene in the functions of the SNGs within their jurisdictions with respect to passing legislation by national government (see paragraph 1.2.1) and failure to fulfil executive obligations (see paragraphs 1.1 and 1.2.10 in chapter 1 above) (RSA, 1996).

The interplay between the Constitutional powers and functions allocated to the three spheres of government and their autonomy in exercising these competencies blurs the borders of the three jurisdictions, particularly the SNGs. This uncertainty creates a fluid situation with respect to the autonomy and capacity of SNGs to exercise their legislative authority and fulfil their executive obligations. The overlap in functions and powers promotes a culture of interdependence and lack of accountability, thus exonerating the respective levels of government from failure to fulfil their respective legislative and executive obligations. The result is abuse of state resources for personal gain, that is, corruption and impunity due to the inability of the system and authorities to define the jurisdiction of the respective spheres of government and identify the culprits responsible for poor performance or failure to fulfil their respective obligations (see page 412, paragraph 6.5.5 in chapter 6 above).

Subsequently, the propensity to act in an accountable, transparent and efficient manner in executing executive functions is undermined, thus undermining the effective governance of SNGS and the Constitution that makes provisions for the existence of these structures and the accompanying processes and mechanisms. Furthermore, this blurriness and uncertainty regarding the legislative and executive jurisdiction, that is, a clear delineation and definition of the nature and extent of the autonomy of SNGs is exacerbated by the Constitutional provision (section 40 chapter 3 of the Constitution - co-operative government) that constitutes government in the Republic of South Africa as the national, provincial and local spheres of government, which are distinctive, interdependent and interrelate (see paragraph 1.2.8 in chapter 1 above).

Thus, this provision effectively renders the Republic of South Africa a unitary state, with the result that SNGs do not enjoy any form of autonomy since the national government and provincial government (in relation to local government) possess overlapping and overriding powers over the Constitutionally entrenched powers and functions of SNGs. The Constitutional provision for national and provincial governments to intervene in the legislative and executive (administrative) functional areas of SNGs (section 100 of the Constitution) (see page 11, paragraph 1.2.1 in chapter 1) (RSA, 1996:40) (and page 435, paragraph 7.2 in chapter 7 above), effectively replaces the competencies allocated to them by the Constitution (see chapter six section 104 (legislative authority of provinces), section 125 (executive authority of provinces), chapter 7 (local government) section 151 (status of municipalities), section 156 (powers and functions of municipalities), and Schedule 4 (functional areas of concurrent national and provincial legislative competence) and Schedule 5 (functional areas of exclusive provincial legislative competence)) (RSA, 1996).

The above-stated constitutional provisions create a legislative and executive dilemma for SNGs, in particular for provinces, which are both the political and executive platforms for policy implementation in the country. Furthermore, this predicament paralyses the provinces in their capacity and ability to effectively develop and implement policy that reflects the needs and interests of their constituencies; thus, severely constraining their capacity to realise the benefits attributed to federalism and decentralisation. The benefits include effective decision-making, innovation, efficiency and improved expenditure discipline, competition, tailor-made policies in alignment with the needs of their constituencies, diversity, public participation, deterring tyranny, and cultivating and strengthening democracy.

Thus, the key characteristics of federations of a strong disposition to democracy, political decentralisation, open political bargaining in decision-making, the operation of checks and balances to prevent concentration of political power, and respect for constitutionalism are being compromised and undermined by the provisions of the South African Constitution that allows national government interference in subnational legislative competencies and functional matters (see page 80, paragraph 2.2 in chapter 2 above) (Watts, 2006:14; Rodden, 2004:488; Cameron & Falleti, 2005:246; Erk, 2006). This overlap and concurrency of functional areas with respect to the legislative competencies of national and provincial governments has since 1996 severely eroded the legislative, administrative and fiscal autonomy of provinces and effectively rendered South Africa a *de facto* unitary state

characterised by a highly fiscally and politically centralised government (see page 34, paragraph 1.2.9 in chapter 1 above) (Calitz & Essop, 2012).

The debate about the governance of provinces extends as far back as the 1980s, for example, the 1986 KwaZulu/Natal Indaba led by the then Chief Minister Mangosuthu Gatsha Buthulezi, both a hereditary monarch and an elected chief minister of the KwaZulu homeland, who pushed for a federal model in which the provinces and homelands would have had some degree of autonomy from the central government (see page 1, paragraph 1.1; page 20, paragraph 1.2.4 in chapter 1 and paragraph 4.4.1 in chapter 4 above) (Lynch, 1986:231; Van Niekerk, 2012:621; Oechsli, 2015:19; Dollery, 1998; Schwella, 2016:73). For example, in the second term of the current political dispensation, the then president Thabo Mvuyelwa Mbeki (a successor of the former president Nelson Mandela and the son of one of the Rivonia trialists and ANC stalwart Govan Mbeki) undertook to rid the provincial sphere of government of premiers who underperformed or whose performance was unsatisfactory. The challenges of governance were not unique to the provinces as they came from all fronts; that is, national, provincial and local government level and state-owned entities (see page 27, paragraph 1.2.8 in chapter 1 above) (Simeon & Murray, 2001:65; Wehner, 2000).

The need for politicians and government officials to conduct themselves in accordance with the prescripts of the constitution and the law is adequately expressed in the Australian Chartered Institute of Public Finance and Accountancy's (CIPFA) definition of governance which it defines as arrangements put in place to ensure that the intended outcomes for stakeholders are defined and achieved, and includes political, economic, social, environmental, administrative, legal and other arrangements (CIPFA, 2013:8). According to CIPFA (2013:6), "effective governance in the public sector encourages better decision making and the efficient use of resources and strengthens accountability for the stewardship of those resources". The politicians and government officials entrusted with state resources should account for their actions in accordance with the law; that is, they must ensure accountability and compliance in the execution of their duties and how they use public resources.

The law provides norms and standards for good governance, ethical conduct and integrity by politicians and government officials. Robust scrutiny is one of the key characteristics of effective governance and provides important pressures for improving public sector

performance and tackling corruption. A number of institutions and parliamentary committees provide oversight and scrutiny of government and its agencies to ensure accountability, performance, compliance and lawfulness in their conduct; that is, these institutions are required to scrutinise and exercise oversight over the different spheres of government with respect to the degree to which they fulfil their legislative and executive obligations (see page 380, paragraph 6.4.2 in chapter 6 above) (RSA, 1996:23).

Such structures include Chapter 9 institutions and parliamentary committees, such as the Standing Committee on Public Accounts (SCOPA). The six Chapter 9 institutions, namely, the Public Protector (PP), the South African Human Rights Commission (SAHRC), the Commission for Gender Equality (CGE), the Independent Electoral Commission (IEC), the Auditor-General (AG) and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CPPRCRLC) have a collective constitutional mandate to support and strengthen constitutional democracy in South Africa (the PP, SAHRC, CGE, IEC and AG were already recognised by the 1993 Interim Constitution, while the CPPRCRLC was introduced in the 1996 Constitution) (see page 386, paragraph 6.4.3; page 281, paragraph 5.2 and page 323, paragraph 5.4.3 in chapter 5 above) (RSA, 1996:69; RSA, 2013:1; RSA, 2014:86; Ntlama, 2015:13; Phago, 2013:112; RSA, 1996; RSA, 2000; Thipanyane, 2016:126).

Chapter 9 institutions were initially established with the intent to support the inexperienced ANC in governing the country and dealing with possible recalcitrance from apartheid civil servants who were retained in the new administration, including the feared and brutal apartheid security forces. These structures would be expected to serve as independent state institutions that would support the new government in the transformation of the apartheid state and help to strengthen constitutional democracy and the promotion and protection of human rights (Thipanyane, 2016:126). In South Africa, corruption has been criminalised in recognition of the detrimental and distorting effect that the misuse of public resources for personal gain have on the social and economic development of the country. The effects of corruption are pronounced and more acute in countries undergoing rapid political system transition. These governments are under pressure to combat corruption and do so by enhancing the monitoring and oversight of public institutions through stringent intra- and inter-institutional checks (see page 412, paragraph 6.5.5 in chapter 6 above) (Fraser-Moleketi, 2009:332; Naidoo, 2013:523; Hyslop, 2005:775; Southall, 2014:81; RSA, 2004:2).

South Africa introduced concrete incremental anti-corruption measures since its democratic transition to regulate malfeasance in the public sector. These anti-corruption measures include heightened monitoring and prevention, investigation and prosecution measures. However, the integrity of this approach that is informed by principle-agent accountability arrangements can be compromised by collective action efforts that undermine the effectiveness of anti-corruption mechanisms. Naidoo (2013:523) argues that this collective effort to undermine anti-corruption mechanisms reflects a politicisation of anti-corruption enforcement. Such institutional multiplicity and the overlap of investigative functions among various governmental entities has strengthened good governance outcomes by allowing institutions to collaborate, to complement one another, or to compensate for one another's deficiencies or oversights. In Brazil, pursuing alternative institutional approaches, including institutional multiplicity combined with institutional malleability in developing anti-corruption strategies, has been very effective (Prado & Carson, 2016:34).

Citizen-centred anticorruption mechanisms, which put the citizen at the centre of attempts to tackle corruption, are increasingly being advocated. However, such mechanisms require buy-in not only from citizens but also from government and external agencies to become effective. Otherwise, they become too limited, potentially irrelevant or even damaging as citizen apathy and frustration increases (Verdenicci & Hough, 2015:23). In Australia, Victorian public bodies focus more on fraud prevention than anti-corruption mechanisms. Van der Wal, Graycar and Kelly (2016:3) identify three pillars of international best practices of integrity management and inculcation of public service ethos in developed countries that combine both the values and compliance based approaches to anti-corruption efforts. These pillars are as follows: specific corruption prevention programmes and strategies that are additional to but complement existing anti-fraud programmes; targeted anti-corruption training, both for employees and for the public; and, effective leadership engagement and commitment to an ethical culture. The benefits of effective governance include improved management, which leads to more effective implementation of the chosen interventions, better service delivery, and ultimately, better outcomes, thereby improving the lives of the people (CIPFA, 2013:6).

The constitutional values and principles of the public service, as set out in section 195 of the Constitution, are emphasised by Chowdhury and Skarstedt (2005:4) who define governance as a normative principle of administrative law, which obliges the State to perform its

functions in a manner that promotes the values of efficiency, non-corruptibility, and responsiveness to civil society. Democracy and bureaucracy are associated with good governance, while bureaucracy refers to the structure and functioning of public institutions. Thus, bureaucracy promotes efficiency and effectiveness (see page 174, paragraph 3.7 in chapter 3 above) (Rothstein, 2012:146; Vigoda-Gadot, Shoham & Vashdi, 2010:290).

Good governance requires government to identify and deliver public goods and services that are tailor-made for the needs of the public, ensuring transparency in allocating resources and the equitable distribution of goods and services (Chowdhury & Skarstedt, 2005:4). However, Lauridsen (2014:427) holds a different view and posits that orthodox good governance has failed to provide an adequate, feasible and evidence-based reform agenda. The best practice model of good governance needs to be replaced with an approach that incrementally improves what already exists, particularly in matters of development and economic transformation in developing countries. Informality in governance is widespread and is not necessarily bad for governance. Thus, informal institutional arrangements and personalised relationships could potentially improve productive developmental outcomes in poor countries in the short and medium term in the same way formal institutional arrangements advocated by good governance thinking are expected to improve development in poorer countries. These informal approaches which challenge the “one-size-fits-all” view of good governance include an emphasis on contextuality, softer modes of governance, institutional pluralism, collective learning, and local political settlements (Lauridsen, 2014:427).

The Australian Public Service Commission (2007:1) defines governance as the way public servants take decisions and implement policies. Good governance is about both performance and conformance. Performance refers to how an entity uses governance arrangements to contribute to its overall performance and the delivery of goods, services or programmes, whereas conformance refers to how an entity uses governance arrangements in accordance with the requirements of the law, regulations, published standards and community expectations of probity, accountability and openness (Australian Public Service Commission, 2007:1). The adoption of performance management and measurement at SNG levels is to increase the benefits of accountability and transparency. Performance management includes the two distinct stages of adoption (development of measures) and implementation (actual use of measures) that promote the actual use of performance data for decision-making and service improvement (Rivenbark, Fasiello & Adamo, 2016:764).

Compliance as one of the mechanisms to promote and engender good governance within the state is entrenched in the South African Constitution, which is the supreme law of the country (RSA, 1996:3), that makes provision for enacting legislation that will give effect to the provisions made in it (see Appendix C for a list of legislation aimed at promoting and enforcing good governance as discussed in this study). Botchway (2000:783) identifies the benchmarks of good governance as transparency, accountability, public sector reform, effective bureaucracy, democratic competition for public office, the rule of law, judicious exercise of discretion, and the prevalence of freedom of speech, press and association. Some of the major challenges which good governance and democracy seek to address include development, poverty reduction and economic development. As a member of NEPAD, South Africa commits itself to the values and objectives of good governance, democracy and human rights, while working to prevent and resolve situations of conflict and instability on the continent (see page 366, paragraph 6.3 in chapter 6 above for a discussion on NEPAD and various good governance mechanisms, including the IIAG and APRM) (Chabal, 2002:447; Chikwanha, 2007:5; Dang, Visseren-Hamakers & Arts, 2015:1; Jiboku & Okeke-Uzodike, 2014:1).

Bigdon (2006:17) argues that deepening democracy is an effective strategy to address the challenges of governance. The benefits of widening and deepening democracy include the promotion of human development and safeguarding the freedom and dignity of the people by political institutions (see page 397, paragraph 6.5.1 in chapter 6 above) (Bigdon, 2006:17; McLaverty, 2011:413). In South Africa, governance challenges emerged right from the inception of a democratically elected government in 1994 because the new state was built from elements of the old apartheid government and, as a result, entrenched powers and habits were carried into the new government, thus heightening fears that the new state might face a recalcitrant bureaucracy, military and judiciary (Hawker, 2000:632).

Political expediency by the then president, Thabo Mbeki, marked the beginning of concerted efforts to restructure and reorganise the provincial sphere of government, that is, to improve governance within provinces. Thus, a strong culture of good governance in the state is crucial for safeguarding and sustaining democracy in the country, strengthening state legitimacy and to uphold the values and principles enshrined in the Constitution. Such developments further questioned the legitimacy and the role of the provinces. Despite being constitutionally established structures (see chapter 6 of the Constitution), the role of provinces was

increasingly being subjected to political deliberations and scrutiny (see page 27, paragraph 1.2.8 in chapter 1 above) (Simeon & Murray, 2001). The preceding chapters highlighted key governance concerns and strategic considerations which have a direct bearing on the integrity (that is, political stability and economic viability) and bureaucratic efficiency of provinces in relation to their constitutional, legislative and executive functions. An in-depth discussion and analysis of these issues provided key focus points and the tools to identify avenues of governance that could be harnessed and exploited to develop a more effective and efficient framework of provincial governance. Panday and Rabbani (2011:293) argue that good governance is directly linked to the effectiveness of SNGs.

Chapter 8 therefore employs these findings and lessons to make deductions, recommendations and conclusions (see chapter 9 below), which seek to contribute to the efforts of strengthening good governance and efficiency in the provincial sphere of government. Such recommendations are informed by the findings of the study and are guided by the values and principles of good governance as enshrined in the Constitution (section 195 – chapter 10), which is the basis of our democracy and the supreme law of the country. Further, these findings are informed by the theory of federalism and decentralisation that identifies the benefits of devolution of power to SNGs as efficiency, innovation, strong democracy and competition among SNGs. The importance of good governance was emphasised by the former Secretary General of the UN, Kofi Annan, who stated that “good governance is perhaps the single most important factor in eradicating poverty and promoting development” (Graham, Amos & Plumtre, 2003:1).

8.3 OVERVIEW OF FINDINGS

The findings of the present study on the level of governance in the provincial sphere of government provide useful hints about areas of governance in this sphere of government which need to be revised, that is, improved, and those where performance is exemplary, and therefore need to be encouraged and promoted. The findings of the study place particular emphasis and focus specifically on the performance of provinces with regards to their legislative and executive obligations; that is, practicing, promoting and protecting (legislating, policy development and implementation) in line with the constitutional values and principles of the public service, thus, good governance as assessed and discussed in Chapter 7 above.

The lessons derived from other chapters of the study provide a more general perspective on the theory and practice of governance and the developments internationally; for example, historical and theoretical perspectives and developments in politics both in the international and South African contexts. The study used the theory of federalism as an analytical framework for assessing the status and role of provincial governance in the South African constitutional dispensation 1996 to 2012. These findings provided further insight into the recent and current political developments in South Africa regarding good governance in the state. Thus, a prelude discussion in this chapter bridges the findings of the study with key lessons from existing literature to augment the discourse on good governance and performance in the provincial administration. Thus, this background study and theoretical perspective on good governance substantiate and support the findings derived from the study in an effort to provide a clear and well-defined governance framework that explains and outlines provincial governance in the South Africa constitutional dispensation 1996 to 2012, and thus provides recommendations about the framework and mechanisms that would be effective in engendering and improving good governance in provinces.

The findings further highlight areas of challenge and strife within the state which need immediate serious attention to prevent further weakening of governance in the state. On the other hand, areas of excellence in good governance should be promoted and encouraged to serve as best practice examples and benchmarks for areas where performance is lacking. The ethics and governance measures put in place by the government and many other state entities and institutions are commendable. However, the current governance framework is faced with many challenges which could undermine state efforts to facilitate and promote political and bureaucratic effectiveness and efficiency in the public service. Therefore, the present study seeks to improve and strengthen the current governance framework by addressing these challenges and closing the gaps that render the current framework vulnerable to manipulation and corrupt activities.

The constitutional values and principles of the public service, as provided in section 195 of the Constitution, constitute the basis for all public service ethic codes and norms and standards of good governance; hence, the particular assessment by the Public Service Commission (PSC) on the performance of public entities with respect to these values and principles (see chapter 7 above). The constitutional values and principles are but one set of a

range of indicators, measures and mechanisms put in place by the state to cultivate and promote good governance in the public service. Other governance mechanisms seeking to promote good governance include the promulgation of legislation (see appendix B for a list of anti-corruption acts), the establishment of institutions which protect and promote good governance in the public sector, for example, state institutions supporting constitutional democracy and peer review mechanisms and indices (see page 366, paragraph 6.3 in chapter 6 above) (Chikwanha, 2007:3; Masterson, 2005:2; Nzewi, 2012:37; Dang, Visseren-Hamakers & Arts, 2015:1; Jiboku & Okeke-Uzodike, 2014:1; Adkisson & McFerrin, 2014:441; Aggad, 2008:29; Mathoho, 2007:9).

Therefore, the focus of this study on the constitutional values and principles as an assessment framework for good governance is an attempt to strengthen one of the many mechanisms of good governance in the public service, particularly at the provincial government level. This assessment is conducted against the analytical framework of the theory of federalism and the typology of decentralisation, as posited by Dickovick (2005) (see page 15, paragraph 1.2.2 in chapter 1 above). Table 8.1 below presents a summary of the findings of the study on the performance of the Offices of the Premier throughout the country. These findings form the basis of the recommendations, made in Chapter 9, in an effort to improve good governance in provincial government as they provide insight into the level of governance within provincial administrations across the country.

Thus, in analysing the data gathered from the present study, these findings provide substantive insight in support of the recommendations derived from the findings of the study to present a framework for a system of governance that would improve, facilitate, promote and strengthen good governance in the provinces. The findings of the study and the governance mechanisms discussed above and in Chapter 6 (see page 366, paragraph 6.3) are components and elements of the governance framework that is proposed in Chapter 9 below (see page 609, paragraph 9.2.2); thus, emphasising the broader conceptualisation of governance as a structure, process, mechanism and strategy (see page 168, paragraph 3.5 in chapter 3) above (Levi-Faur, 2012:8; Rosenau, 1995:13). As discussed in Chapter 9 below, the constitutional and policy reforms with respect to the legislative authority and functional discretion of provinces constitutes the basis and architecture on which the entire proposed governance framework is hinges (page 609, paragraph 9.2.2 in chapter below).

Table 8.1: Provincial government performance overview - 2010/11 assessment of Offices of the Premier

#	Governance indicator	Overall governance performance findings
10.	Professional ethics	<p>The current crop of public officials and politicians in the main lack professional ethics. This lack of professional ethics is evident in the widespread corruption in government and state entities.</p> <p>The biggest challenge regarding good governance is the lack of effective sanctions (accountability and consequences) for those found guilty of misconduct or found to be breaking the law or contravening the set professional ethics codes and norms and standards.</p> <p>Compliance mechanisms in place do not have powers to hold those in power accountable; that is, there are no or limited consequences for those breaking the law or found to be involved in corrupt activities.</p> <p>Compliance with applicable legislation is largely not enforced.</p>
11.	Efficiency, economy and effectiveness	<p>There appears to be an increased focus on the performance and financial expenditure of the more developed, industrialised and economically stronger provinces than on rural and less developed provinces by the public and other non-state organisations, such as the Public Protector and the Auditor-General.</p> <p>As a result, the more developed provinces are under pressure to perform more effectively and efficiently in the manner they manage and spent their resources.</p> <p>Increased public scrutiny of developed provinces, like Gauteng and the Western Cape, therefore promotes and encourages accountability and improved public service delivery and performance in these provinces, as compared to less developed provinces like the Eastern Cape, the Free State, North West and the Northern Cape, where incidents of corruption, maladministration, inefficiency and bureaucratic inefficiency abound.</p> <p>Good financial management systems and effective political leadership and management are key prerequisites for improved financial management performance in a province (see 7.2.6 in chapter 7)</p>
12.	Development	This principle requires public entities to drive programmes and

orientation	<p>projects within their respective mandates, which will promote development and reduce poverty.</p> <p>This indicator also addresses challenges of inequality and unemployment, which contribute to poverty and collectively the three are called the “triple challenges” of development.</p> <p>The implementation of development policies occurs at project level, usually by contractors with minimal involvement by public officials (provincial officials).</p> <p>Therefore, this indicator is not suitable to assess provincial government performance whose role focuses on oversight, policy direction and coordination.</p>
<p>13. Impartiality and fairness</p>	<p>The provision of public services is done in an impartial and fair manner, that is, in accordance with the legislation (e.g. PAJA) in all assessed provinces.</p> <p>However, this finding contradicts findings on other indicators, for example, professional ethics which reveal that generally public officials and politicians are corrupt and are generally found to be implicated in cases of misconduct in the execution of their duties.</p> <p>This finding could also mean that there is a focus on compliance with legislation, rather than on actual service delivery standards or the outcome thereof.</p> <p>If professional ethics are lacking in the public sector it will have a direct negative impact on the delivery of services, for example, poor performance, lack of expenditure discipline, inefficiency and poor decision-making.</p>
<p>14. Public participation in policy-making</p>	<p>The state needs to encourage public participation in all its matters, that is, political, social and economic, and not only during elections.</p> <p>Public participation is an important measure of democracy and should be encouraged and promoted in all decision-making processes, including the conceptualisation, design, implementation and Monitoring and Evaluation of programmes and projects.</p> <p>Public participation enhances the legitimacy and sustainability of government programmes and projects, and also increases the voice of the people in matters of the state.</p> <p>Currently, state entities merely comply with the requirements to have public participation policies in place, yet public inputs are not</p>

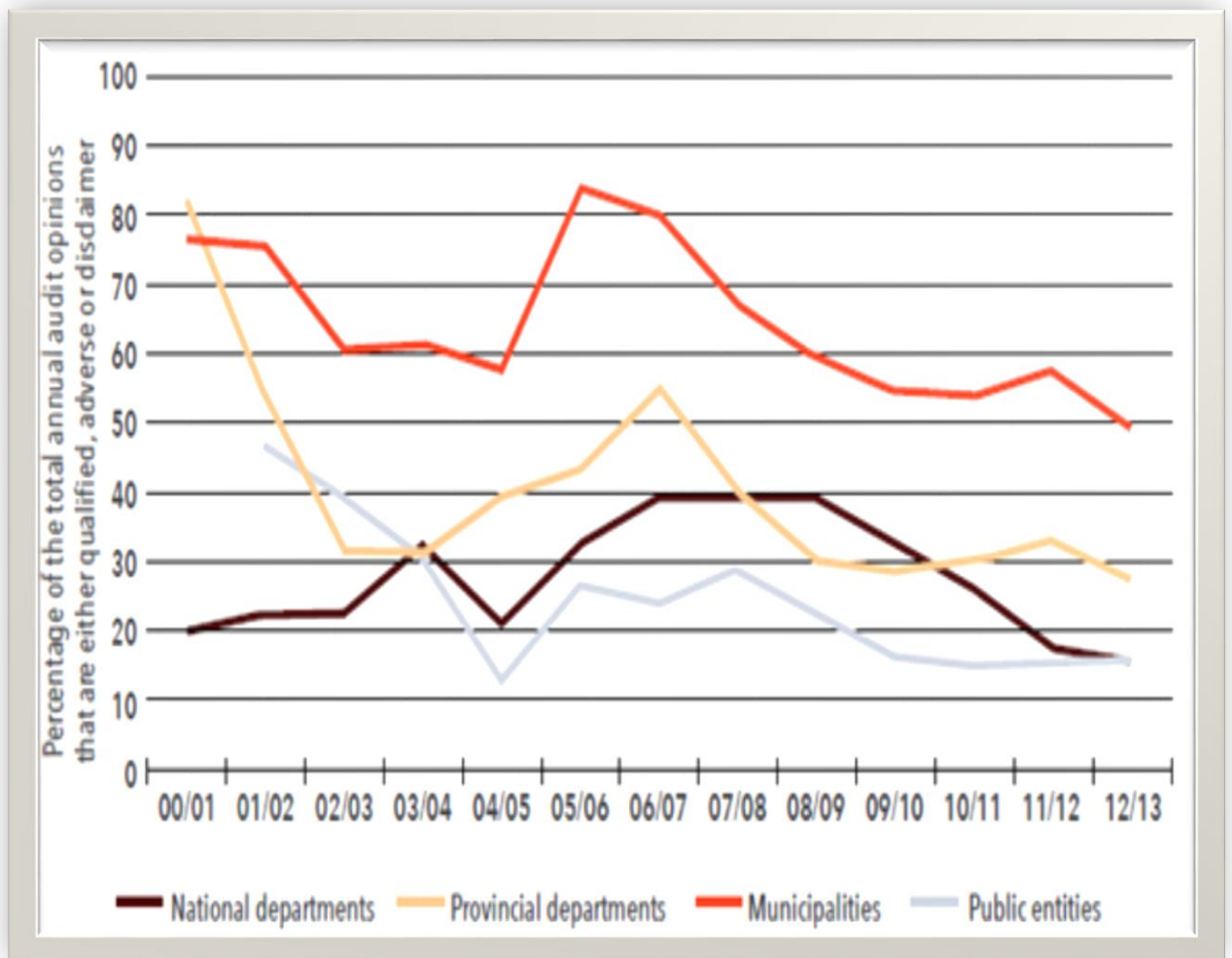
		considered in the planning and formulation of policies or the implementation of programmes and projects.
15.	Accountability	<p>Accountability in South Africa is undermined by corrupt government officials and politicians who manipulate accountability measures to continue to plunder state resources, that is, politicisation of anti-corruption mechanisms.</p> <p>Accountability requires those in control of state resources to account for their actions in using these resources; that is, to be held liable for outcomes of their actions.</p> <p>Therefore, any misconduct or corrupt activities by these officials should be sanctioned in accordance with the prescribed policies and the law.</p> <p>Most provinces have fraud prevention and risk assessment plans in place, yet these strategies are not implemented adequately.</p> <p>Other measures put in place within the public sector to promote accountability include internal audits, risk management, and performance management systems, e.g. PMDS and internal financial controls.</p>
16.	Transparency	<p>Transparency is an essential prerequisite for accountability. Therefore, state entities should publicise information about the performance and actions of state officials regarding the use of resources allocated to them.</p> <p>Many cases of misconduct and corruption go undetected or unreported due to poor or lack of transparency, which then undermines public scrutiny and enforcement efforts.</p> <p>The media plays a critical role in exposing and reporting cases of misconduct and corruption in the public service and therefore its freedom and independence should be protected and encouraged.</p> <p>The PAIA requires state entities to publicise information about their performance. The most common method of publicising state performance information is through the production of annual reports by state entities which the public can use to assess and scrutinise state performance.</p>
17.	Good HRM and Career Development	<p>The shortage of personnel in the public service with the requisite skills, that is, experience, competence and qualifications, is one of the major obstacles in public service delivery and good</p>

Practices	<p>governance.</p> <p>It is crucial for public bodies to develop and implement skills development plans and human resource policies to ensure that skilled personnel are recruited and retained. Thus, such practices as “cadre deployment” in bureaucratic positions should be discouraged.</p> <p>It is also important to ensure that all vacancies are filled to prevent shortages of personnel and gaps in service delivery.</p> <p>Further, training and capacity-building for employees should be encouraged to ensure that employees are adequately skilled and capacitated to perform their duties optimally.</p>
18. Representivity	<p>The biggest challenge in the public sector is to ensure diversity and representivity, particularly given the country's history and legacy of deprivation, discrimination and disenfranchisement.</p> <p>Women are still scantily represented in top management positions in the public sector. Also, representivity in employment should reflect the demographics of the country's population.</p> <p>Given the history of our country of exclusion, deprivation and suppression of blacks (African, Coloureds, Indians and Chinese), these population groups should be given preference in skills development programmes and access to employment opportunities in order to redress the legacy of the past injustices, fast-track their development, and level the playing field in the workplace and the labour market.</p> <p>Most provinces still lag behind in employing people with disabilities, the most vulnerable group of the society, and therefore need to improve their efforts in this regard.</p>

Source: Constructed from findings of the PSC 2010/11 assessment of Offices of the Premier

Figure 8.2 below is an example of the findings (by the Auditor-General of South Africa) regarding the performance of the various levels of government and public entities. These findings, together with those by other public entities charged with the responsibility of evaluating and reporting the performance of government and public entities, for example, the Public Protector and other state institutions supporting constitutional democracy (Chapter 9 institutions) and the PSC, provide a useful tool to measure and assess good governance performance in government.

Table 8.2: Decline in negative audit opinions in government and public entities, 2000/01 - 2012/13



Source: GCIS (2014) (www.gcis.gov.za viewed 18 August 2014)

Figure 8.2 above illustrates a declining trend in the prevalence of negative audit opinions among all levels of government and public entities, as released by the Auditor-General. However, despite the decline in negative opinions, the figure shows that the prevalence of negative opinions in municipalities is relatively high compared to provincial and national departments and public entities. Public entities have the lowest number of negative audit opinions, followed by national and provincial departments. This implies that performance and compliance among national departments and public entities is higher than in municipalities, which have the highest number of negative audit opinions.

This trend, as illustrated in Figure 8.1 above, is in line with the findings of the present study, which found an improvement in the performance of provinces with regards to good governance (see chapter 7). In the 2012/2013 financial year, nearly 30% of provincial departments and nearly 50% of municipalities received negative audit opinions. This poor performance is echoed by Sabelo Ndlangisa in *City Press* (2014) (www.citypress.co.za retrieved 8 September 2014), who reported that local and provincial governments failed to achieve clean audits by May 2014. This was the target set by President Zuma's administration in its first term of office in 2009, in what is called the Operation Clean Audit 2014 campaign (Ndlangisa, 2014; Powell, O'Donovan, Ayele & Chigwata, 2014). The goal to achieve clean audits in local and provincial governments by May 2014 was part of Zuma's performance agreement with the then Cooperative Governance minister, Sicelo Shiceka (he was replaced by Richard Baloyi and Lechesa Tsenoli after two Cabinet reshuffles) and his provincial counterparts and mayors (Ndlangisa, 2014).

The agreement included the pledge to reduce service delivery protests and keep fraud and corruption at a minimum (*City Press*, 2014; Powell, O'Donovan, Ayele & Chigwata, 2014). This is a worrying trend, particularly given that the Constitution (Schedules 4 and 5) charges municipalities and provincial departments with the responsibility of implementing national policies and interventions in their jurisdictions due to their close proximity to the people; that is, Oates' subsidiarity principle and theory of decentralisation (see page 90, paragraph 2.3.3 in chapter 2 above) (Craw, 2015:270; Oates, 1999; Oates, 1972; Goel & Saunoris, 2014:266). The former Auditor-General of South Africa, Dr Terrence Nombembe, emphasised the importance of strong leadership in government and argued that responsible leadership is needed to improve service delivery and to better the lives of all South Africans (see paragraph 6.2 in chapter 6). This view supports the findings made in this study regarding the performance of provinces, as discussed in Chapter 7.

The goal of improved service delivery can be achieved through improvements in such areas as skills development, auditing, financial reporting, tax, and facilitating good governance, among others (www.news24.com, www.bdlive.com, viewed 21 August 2015). At municipal level, which in most cases reflects the performance of the provincial government as a whole, fiscal autonomy and the skills level of top management influence the productivity and efficiency of local government administrations. Democratic governance at municipal level is very low in that higher income and highly educated households do not feel the incentive to be

active participants in public decision-making processes. This despondency among communities is largely due to the poor performance of municipalities in the delivery of basic urban services (Monkam, 2014:275).

8.4 INTERPRETATION OF FINDINGS

The current study identified key focus areas in the provincial governance framework, which should be prioritised and improved, and measures to be undertaken to ensure that governance at this sphere of government is improved and strengthened. These focus areas and proposed governance improvement measures (see the recommendations in chapter 9) resonate with the performance indicators and strategic objectives of the Department of Public Service and Administration, as outlined in its four year (2012-2015) strategic plan (RSA, 2012:1). This analysis and the resultant recommendations will provide guidelines to inform the development of a system of government that clearly defines the status and role of provinces in the current constitutional dispensation with respect to their legislative and constitutional obligations *vis-à-vis* their powers and functions, as outlined in the Constitution (see Schedules 4 and 5 of the Constitution (RSA, 1996); page 115 paragraph 2.7.1 in chapter 2; and page 323, paragraph 5.4.3 in chapter 5 above) (RSA, 1996:19-20; Steytler & Fessha, 2005:2; Monro, 2001:42).

Such a clearly defined framework will outline the systems, processes, mechanisms, strategies and procedures that are intended to promote and strengthen good governance in this sphere of government (see page 168, paragraph 3.5 in chapter 3 above). As a result, provinces will be able to exercise their constitutionally guaranteed powers and functions and thus increase their capacity to deliver on their legislative and executive obligations in accordance with the values and principles of good governance, as enshrined in section 195 of the Constitution, such as accountability, efficiency, transparency, fairness and the rule of law (see table 8.2 in paragraph 8.3 above).

However, the public service, that is, government under the leadership of the Cabinet (the executive) is but one branch of the three branches of the state, which include the judiciary and the legislature. Therefore, the analyses of the key performance areas that need attention in the public service are presented in this chapter. Then, the proposed governance improvement measures identified in the study for implementation across all three branches of

the state, with particular emphasis on the provincial sphere of government, are presented as recommendations in Chapter 9. It is also important to note that the initial debates about reviewing the system of provincial government, particularly by the ruling ANC and the actual policy review processes undertaken by the then Department of Provincial and Local Government (now the Department of Cooperative Governance and Traditional Affairs), and strong views from the media and the opposition parties, have fallen by the wayside (see page 27, paragraph 1.2.8 and page 60, paragraph 1.4 in chapter 1 above) (Simeon & Murray, 2001; Rapoo & Moloi, 2008:2).

This suggests that all parties have accepted the current configuration of the system of provincial government, particularly its structure and the objectives it seeks to achieve. It is however the systems and processes, that is, powers and functions, which show great weakness and thus raise questions about the effectiveness and efficiency of these structures of government to fulfil their constitutional mandate as set out in the Constitution. The effectiveness and efficiency of governance structures is a function of capacity, which in turn derives its authority from the legislative and executive (legislative and functional discretion) provisions of the Constitution, which define the degree of autonomy of provinces and municipalities in exercising the allocated powers and functions. The Constitution mandates provinces to support municipalities in the execution of their functions, that is, coordination and oversight and also to implement programmes and projects within their own mandate areas. Municipalities receive further support from the national departments to implement their basic service delivery mandates (HSRC, 2008:1).

However, challenges facing the provincial system of government continue unabated, for example, lack of service delivery, poor levels of accountability and increasing levels of corruption, as seen with the cases (2012) of national government intervention in some departments in provinces, such as Limpopo and the Eastern Cape, in accordance with section 100 of the Constitution (RSA, 1996:39) (see paragraph 7.2 in chapter 7 above). The renewed focus is instead on governance in the provincial sphere of government. Governance refers to the manner in which responsibility is discharged. The efforts of the state to improve good governance in all spheres of government is evinced by its commitment to the APRM (see section 5.3.1 in chapter 5 for a detailed discussion on the APRM), which seeks to address the endemic challenges of lack of accountability, political authoritarianism, state failure, and corruption. The programmes of the APRM are aimed at encouraging governments to embrace

and consolidate democracy, as well as effect sound and transparent economic management (Hope, 2005:284).

The South African government took drastic steps to promote and engender good governance in the public service soon after the 1994 general elections and the ascension of a democratically elected government to power. The 1995 White Paper on the Transformation of the Public Service (WPTPS) provided a framework to drastically transform the public service inherited from the apartheid regime, from an instrument of discrimination, control and domination to a people centred and democratic establishment that serves and empowers all the people of the country in a fully accountable and transparent manner (see page 404, paragraph 6.5.2 in chapter 6 above) (Cameron, 2010:677; RSA, 1996:74-77; Kanyane, 2004:3; Bardill, 2000:103). These transformation efforts were part of the government's RDP (see page 335, paragraph 5.4.4 in chapter 5 and page 354, paragraph 6.2 in chapter 6 above) (Naudé, 2014:454; Cheru, 2001:505; Binns & Robinson, 2002:26; Ngqulunga, 2009:12; RSA, 1994, RSA, 1997).

Various factors have led many countries throughout the world to embark on a thorough reappraisal of the role of the state and the public service in society. According to Bardill (2000:103), these factors include “the growing impact of global competition, the increasing spread of communications and information technology, the failure of centralised state-dominated development strategies, the worsening economic crisis in the developing world and the impact of IMF/World Bank structural adjustment programmes (SAP)”.

The World Bank's mission of poverty alleviation requires an effective and efficient public sector that delivers quality public services tailor-made for citizen preferences and that fosters private market-led economic growth and development and prudent fiscal management (see paragraph 3.7 in chapter 3 above) (Shah, 2006:iv). The impact of globalisation on the state and its role in the society is exemplified by the US-Africa summit in the US whereby South Africa pushed for its continued inclusion in the African Growth Opportunity Act (AGOA) and its renewal for another 15 years. AGOA is a non-reciprocal preferential trade scheme, which applies only to US imports from eligible Sub-Saharan African countries. It was signed into law on 18 May 2000 (www.news24.com retrieved on 21 October 2014). However, South Africa's continued inclusion in AGOA will require it to streamline its policy structures to remain competitive in the global market (www.news24.com retrieved on 21 October 2014).

This requirement is not far-fetched given the country's robust economic growth of 3.2 % per year in the four years preceding 2006³⁵. This impressive economic growth was attributed to “sound macro-economic performance and monetary management, improved competitiveness, structural reform, and a fiscal policy framework designed to underpin sustainable growth and investment” (Maharaj, Heil & Van Rensburg, 2006:20).

The above overview on international developments and factors impacting directly on the country's performance and competitiveness in the global context illustrates the importance and impact of good governance practices on the integrity of a country; that is, political and socio-economic stability. The influence of international organisations and markets on domestic policy is illustrated by the actions of the Organisation for Economic Cooperation and Development (OECD), the World Bank and the IMF, which had significant influence on domestic policy in Slovakia through their surveillance mechanisms and recommendations, as well as developing a set of legal instruments to influence national policies in the country. In most transition countries, the aim of international organisations was to weaken the authoritarian governmental structures by introducing more transparency, legality and oversight (see page 172, paragraph 3.6.1 in chapter 3; paragraph 4.4.1.1 in chapter 4; paragraph 5.4.4 in chapter 5 and page 354, paragraph 6.2 in chapter 6 above) (Padayachee, 1994:586; Abouharb & Cingranelli, 2004:1; Plaza & Stromquist, 2006:95).

In Bosnia and Herzegovina following the descent into war when Yugoslavia collapsed in the early 1990s, these state-building efforts driven by international organisations combined formal democratisation processes, such as independent oversight, with the strengthening and operational capacity building of previously weak-to-non-existent intelligence structures. Thus, international organisations played a leading role in proposing and effectuating institutional reforms in these countries (Lurås, 2014:600). The EU has similarly influenced domestic policy within its member states. This influence is manifested through the signing of treaties, including major anti-corruption conventions between these organisation and target or beneficiary countries. However, these commitments are not necessarily binding and sufficient to override domestic opposition (Sičáková-Beblavá & Beblavý, 2016:290).

³⁵ South Africa slumped into recession in the second quarter of 2017; that is, two consecutive quarters of negative economic growth as measured by GDP output, following downgrading of its foreign capital ratings to one level above junk status by major international ratings agencies, and losing its investment-grade status. This was done following the reshuffling of Cabinet and the removal of both the minister of finance and his deputy by president Jacob Zuma (www.huffingtonpost.co.za viewed on 16 August 2017).

Thus, good governance measures at all levels of government jointly shape the profile and image of a country in the global context and define its ability, capacity and strength to fulfil its constitutional mandate. These developments both in the domestic and international contexts provide a lens through which the analysis of the status and role of provinces in the current constitutional dispensation may be scrutinised and assessed with the intent to strengthen good governance in the country. Such an exercise would provide guidance and policy direction with regards to the configuration of a system of government that is adequately designed and capacitated to deliver effectively on its legislative and executive obligations. The design and capacity of the provincial governance framework is provided in the Constitution, which outlines and makes provisions for the legislative framework that prescribes the legal powers and functions allocated to provinces to fulfil their legislative and executive obligations.

Thus, the key indicators and benefits of good governance, as illustrated above, such as institutional reforms, strong democracy and dismantling authoritarian structures, anti-corruption measures, strong operational capacity, transparency, efficiency, quality public service delivery, fiscal discipline, robust and competitive market-led economic growth, legality and independent oversight would play a key role in strengthening governance in the provinces and the country as a whole. The decline in public service delivery and the accompanying increase in public service delivery protests is shown in Figure 8.2 below, which presents findings of the Markinor survey and Municipal IQ on public opinion on the delivery of public services and the number of public service delivery protests (GCIS, 2014).

Figure 8.2: Public opinion of delivery of basic services compared to number of service delivery protests, 2001 – 2013



Source: GCIS (2014) (www.gcis.gov.za viewed 18 August 2014)

This illustration is consistent with the assessments made in earlier chapters, particularly Chapter 7 above, and the findings of the study about the poor level of public services and the increase in public service protests throughout the country. Figure 8.2 above illustrates that public perception about service delivery levels declined by about 10% between 2001 and 2012. In other words, the public's satisfaction with the level of service delivery by the government has declined. This finding is corroborated by a drastic increase in the number of major service delivery protests, which increased from ten per municipality under study in 2004 to 170 in 2013. This drastic increase in service delivery protests is symptomatic of poor service delivery at local government level. Such poor service delivery levels are attributed to a severe shortage of skills, political instability and so-called cadre deployments, among other

causes (www.fin24.com retrieved on 18 October 2014; www.timeslive.com retrieved on 18 October 2014).

Limpopo province, for example, received the highest number of unsatisfactory audit outcomes between 2010 and 2012. Poor performance in financial management and service delivery in this province is attributed to the informal recruitment of staff into critical provincial and local government positions; that is, cadre deployment. Mamogale (2014:71) attributes this poor administrative and service delivery performance on the governing ANC's strategy that disregards competitive recruitment practices and rewards party members and those affiliated with the party with access to employment opportunities. This practice has a detrimental effect on financial management and the performance of municipalities. The shortage of skills in the country is largely due to the poor education system, which is the legacy of "neglect and dysfunction" under apartheid (Erasmus & Breier, 2009:1) (see chapters 5 and 6 for discussions on skills shortage and service delivery protests). The ensuing paragraphs present an analysis and interpretation of the findings of the study on the key performance areas of government, with particular focus on the provincial governments, which require increased attention to ensure improved governance (see Figure 8.3 below).

Figure 8.3: Graphic illustration of the findings of the study regarding the key performance areas of provincial government



Source: Constructed from the findings of the study (2012-2014)

Figure 8.3 above is an illustration of the findings of the study regarding governance in the provincial sphere of government. Given the options presented in the introductory chapter of the study for improved governance in the state, the study found the configuration of the current provincial system of governance to be well structured. Reference to the structure and configuration of the governance framework follows from the description of governance as a structure, process, mechanism and strategy (see page 168, paragraph 3.5 in chapter 3 above) (Levi-Faur, 2012:8; Rosenau, 1995:13). However, weaknesses within this configuration abound, which render the framework ineffective and susceptible to manipulation and subversion, which essentially undermine the constitutional imperatives and objectives of the state of sustainable development; that is, poverty reduction, political stability and socio-economic development. Thus, the analysis of these findings identified a set of key

performance areas of the provinces, as depicted in Figure 8.3 above, which need to be addressed decisively to strengthen the current framework and to improve good governance at the provincial sphere of government.

8.4.1 Promoting constitutional values and principles

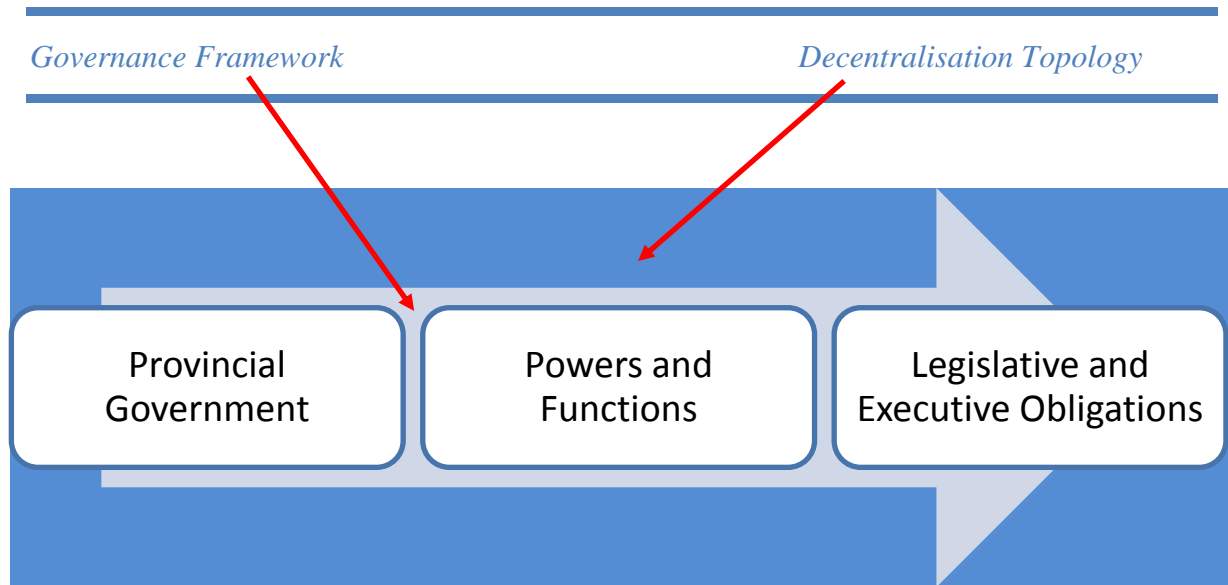
The Public Service Commission (PSC) is tasked by the Constitution (RSA, 1996) and the Public Service Commission Act (RSA, 1997) to promote good governance and excellence in the provision of quality services by the public service; that is, the effective and efficient management of public resources in fulfilling legislative and executive obligations. The constitutional values and principles of the public service, as provided in section 195 of the Constitution, constitute the indicators of governance against which the performance of the public sector should be measured and which all public entities should promote and uphold to ensure good governance and excellent public service delivery. The public service should uphold and promote these values and principles in conjunction with the provisions of the applicable legislation and policies. The PSC promotes good governance and excellent performance in public service delivery by investigating, monitoring, evaluating, communicating and reporting on public administration performance (RSA, 2012).

In addition to the abovementioned structures, the Department of Performance Monitoring and Evaluation, which was promulgated by the president in 2010, also exercises oversight of the public service by conducting performance monitoring of individual national and provincial departments, and monitoring of front-line service delivery and the presidential hotline (RSA, 2012). The government has introduced an array of measures, mainly legislative, to promote and enforce compliance with these values and principles (see Appendices B, C and D for a list of applicable legislation and policies). Legislation aimed at promoting and enforcing good governance includes the Combatting and Prevention of Corrupt Activities Act, the Promotion of Access to Information Act (PAIA), and the Promotion of Administrative Justice Act (PAJA). Other mechanisms aimed at improving good governance in the public service include Chapter nine institutions, such as the Auditor-General and the Public Protector (established through an act of parliament), audit committees and various codes of ethics, such as the Executive Members' Ethics Code and the *Batho Pele* principles.

Audit committees are integral governance structures in both the private and public sectors. They serve an oversight role for stakeholders and serve as tools to promote the reliability and transparency of financial information in the public sector. In South Africa, the establishment of audit committees in public institutions is regulated by the Public Finance Management Act (PFMA) of 1999 and the Treasury Regulations of 2001 (Moloi, 2015:68). The public sector is but one important facet of the country's political and socio-economic landscape. Business and labour (the private sector) and the public constitute other important components of the society. It is therefore important to ensure that governance frameworks, for example, the norms and standards and values and principles adopted by the public sector resonate with those espoused by the general public and the private sector. For example, the private sector espouses the good governance values and principles provided in the King Reports (King II, III & IV), also known as the King Code. The King Reports, in conjunction with good governance frameworks employed by the public sector, all seek to promote good governance in the society (Maharaj, Heil & Van Rensburg, 2006:20) (see section 5.4 in chapter 5 for a discussion on the King Report).

Thus, a provincial government administration that places the constitutional values and principles of good governance in the centre of its operational plan, as discussed above, creates an environment that is fair, transparent, efficient, fiscally prudent, democratic, accountable, professional, corruption-free, competitive, stable and geared towards delivering quality public services. This environment engenders accountable, ethical, effective and efficient management of public resources by the provinces to serve their constituencies adequately and satisfactorily. These values and principles as enshrined in the Constitution represent a guiding light that enables the provinces to stay on the governance track in pursuit of their legislative and executive obligations. Good governance serves as the vision that provinces should strive for, whereas the powers and functions allocated to them serve as the vehicle; that is, tools and resources that enable them to achieve their objective. This relationship between good governance and the powers and functions allocated to the provinces is illustrated in Figure 8.4 below:

Figure 8.4: Relationship between good governance and provincial legislative and executive obligations



Source: Constructed from the findings of the present study

In Figure 8.4 above, the blue background of the graphic illustration represents the theoretical typology of decentralisation that defines the devolution of powers to SNGs (provinces) and the areas of competence (powers and functions) allocated to them. The arrow represents the good governance framework within which the provinces exercise their powers and functions. Thus, the figure is a schematic representation of the relationship between good governance and provincial legislative and executive obligations. It implies that provinces are expected by the Constitution and the law to exercise powers and functions in accordance with the law and within the framework, that is, values and principles of good governance to fulfil their legislative and executive obligations.

8.4.2 Strengthening the accountability structures and Chapter nine institutions

Accountability in government ensures that state officials and politicians do not abuse state power and resources. In other words, accountability is one of the key elements of good governance as it binds or holds to account state officials, that is, those entrusted with state power and resources, to their constitutional mandate of using these resources effectively and

efficiently; that is, in accordance with the law to deliver on the needs of the public. State accountability structures and mechanisms available in South Africa include institutions such as the parliament, Chapter nine institutions and law enforcement agencies and state watchdogs, such as the National Prosecuting Authority (NPA) and the Public Service Commission (PSC). These structures and institutions employ a variety of mechanisms to promote and enforce compliance with accountability measures, such as investigating, monitoring, evaluating, communicating and reporting on the activities and performance of state entities. For example, legislatures exercise oversight over the executive and play a role in consolidating newly emerging democracies and poverty reduction (Pelizzo & Stapenhurst, 2004:5). Pelizzo and Stapenhurst (2004:6) define legislative oversight as the behaviour by legislators and their staff, individually or collectively, which results in an impact, intended or not, on bureaucratic behaviour.

Pelizzo and Stapenhurst (2004:5) emphasise the importance of the role of the legislature by positing that “legislative oversight of government policies in general, and of the budget process in particular, is of vital importance in ensuring that governments carry out their duties efficiently, democratically, and in a fiscally responsible manner”. The oversight tools available to the parliament include committee hearings, hearings in plenary sittings, commissions of inquiry, questions, question time, interpellations, and ombudsman. Schulz-Herzenberg (2009:1) argues that “regular elections provide an important accountability mechanism by allowing citizens to decide whether or not to extend a government’s tenure” (see chapter two for theory and a discussion on elections). Regular elections are a principal mechanism of political accountability in a democratic state, which seeks to control the risks associated with the rule of politicians over citizens. A government will be induced to become more responsive to the wishes and needs of the electorate if it wishes to remain in office. Citizens therefore use their vote in the elections to choose a better performing government and to sanction elected officials to fulfil their expectations (Schulz-Herzenberg, 2009:1; Rodden, 2004:488-489).

It is therefore necessary to strengthen these structures and institutions to ensure the sustainability and effectiveness of their actions and role. The different means of strengthening these structures include increasing public awareness through public education and participation, capacity building, education and training of officials within these institutions, imposing harsher penalties for those found guilty of non-compliance or contravening the set

codes and legislation, that is, rule of law, and introducing corrective measures and incentive packages for poor and excellent performance, respectively. Poor leadership and management capacity and a lack of skills among public service officials are some of the most critical challenges severely hampering service delivery and good governance in the public service, particularly at the provincial and local government spheres. The Department of Public Service and Administration highlighted these challenges in its 2012-2015 strategic plan by stating the following:

The current perception of the public service is that it is not as skilled as we need it to be; we do not have the level of management capacity we require to deliver on our mandate; we have an absence of a performance culture as there is no or little reward or sanction for good or bad performance; we have a severe problem of corruption; low levels of efficiency; and we simply do not get value for the money we pay in salaries.

8.4.3 Strengthening Intergovernmental Relations

The Constitution demands collaboration, alignment, integration and coordination of legislation, policy and activities by all spheres of government, including state entities under their authority. This requirement is entrenched in chapter 3 of the Constitution, which establishes cooperative governance and intergovernmental relations (IGR) (see page 27, paragraph 1.2.8 in chapter 1 and page 108, paragraph 2.6.2 in chapter 2 and page 341, paragraph 5.4.5 in chapter 5 above) (Ile, 2010; Inman & Rubinfeld, 1997; Baggchi, 2000:3026; Staten, 1993:131-136; Edwards, 2008:65; RSA, 1996:18; Monro, 2001:46; Cameron & Simeon, 2002:49). Collaboration enhances organisational performance in the public sector and can take different forms, including across public organisations, between government and citizens, or with the private sector. Collaboration within organisations occurs at various levels. Employees in highly collaborative organisations organise their efforts and work collectively to achieve salient objectives and organisational goals, which cannot be achieved independently. Collaboration creates processes and an enabling environment that allows employees to exploit tacit knowledge and other resources distributed across their organisation as valuable tools that can strengthen operational coherence and impact (Campbell, 2016:655).

This constitutional provision constitutes all spheres of government as distinctive, interdependent and interrelated structures of the state (RSA, 1996:17). Therefore, such

organisational arrangement and relationship requires all spheres of government to cooperate with one another in mutual trust and good faith by fostering friendly relations; assisting and supporting one another; informing one another of, and consulting one another on matters of common interest; co-ordinating their actions and legislation with one another; adhering to agreed procedures; and avoiding legal proceedings against one another (RSA, 1996:18). Maximising IGR as a facilitative element in governance will ensure the effective and efficient delivery of public services. Some of the means to strengthen IGR include integrated and improved administrative processes and coordinated and aligned governmental systems (Ile, 2010:51).

The cooperative governance nature of IGR in South Africa, as provided in chapter 3 of the Constitution, resembles the recent trend in the conduct of federalism and IGR in Canada³⁶, called executive federalism (Cameron & Simeon, 2002:49; Cameron & Falleti, 2005:248). The defining characteristic of executive federalism in Canada is the principle of codetermination of broad policies, which prevails over cooperative federalism based on the post-World War II period that is prescribed by the parliament in Ottawa and the more competitive federalism of later periods (Cameron & Simeon, 2002:49). Co-determination involves two orders of government working together as equals, as is the case in South Africa. However, in South Africa the national government has more power than both provincial and local governments. For example, the national legislative competence takes precedence over that of the provincial legislature where there is conflict (see paragraphs 2.8 and 2.14 in chapter 2 for a discussion on executive federalism; page 341, paragraph 5.4.5 in chapter 5 and page 389, paragraph 6.4.4 in chapter 6) (RSA, 1996:19; Hawker, 2000:632).

Calitz and Essop (2012:1) argue that the *de facto* erosion of the federal state, that is, trends characteristic of a unitary state in South Africa, is strengthened by fiscal centralisation and the gradual reduction of the fiscal autonomy of SNGs. However, despite these strong features of a unitary state, Calitz and Essop (2012:2) refer to the form of state in South Africa as a “federal-type dispensation” and a “composite state” with three particular federal features, namely, “the constitutionally entrenched distribution of powers between the national and provincial spheres; the power of the judiciary (specifically the Constitutional Court) to

³⁶ Canada and other countries used in the study are used to substantiate the findings of the study by making comparisons between South Africa and these countries and thus draw lessons from developments and practices in these countries that could be employed or adopted in the South African context to improve good governance.

adjudicate jurisdictional disputes between these spheres; and the right of provinces to enact their own constitutions, the Western Cape being the only province functioning under its own constitution”.

The debate on the form of state provided by the Constitution is complicated by the fact that the South African Constitution does not make any reference to either a federal or unitary state, hence the varying opinions and resultant classifications of the form of state. Tapscott (2000:119) argues that the Constitution emphasises cooperative governance, as provided in chapter three. However, the Constitution merely spells out an enabling framework for the development of a system of IGR. Based on this provision of the Constitution, the state promulgated the Intergovernmental Relations Framework Act (IGRFA) in 2005, whose purpose is to “establish a framework for the national government, provincial governments and local governments to promote and facilitate intergovernmental relations; to provide for mechanisms and procedures to facilitate the settlement of intergovernmental disputes; and to provide for matters connected therewith” (RSA, 2005:3).

The Constitution’s emphasis on cooperative governance and IGR creates tensions between a unitary and a federal form of state, as argued above (Tapscott, 2000:119). Co-determination in Canada could also entail provincial and territorial governments working together in the absence of national government to formulate national policy. However, the key feature that likens the Canadian intergovernmental relations to South Africa is collaborative governance, which views the provincial and national governments as equal, autonomous and interdependent orders of government that jointly decide national policy (Cameron & Simeon, 2002:49). The difference, however, is that in South Africa the national government takes the role of formulating national policy and norms and standards, while the provincial government is largely responsible for policy implementation and coordination.

Yet when it comes to policy-making on Aboriginal local government matters in Canada, Canadian politicians and policy-makers at both federal and provincial authority level seem to ignore the constitutional safeguard and status of the many treaties Indigenous governments have signed with the Crown; that is, federal government which guarantees Aboriginal communities the status of equal, yet independent partners in the policy-making process. Each of the federal and provincial governments believes that it has been assigned a particular set of Aboriginal responsibilities and they alone have the authority to manage those responsibilities,

thus excluding Aboriginal communities and governments in policy matters that affect them. These actions by these governments require intergovernmental coordination through IGR while completely excluding Aboriginal governments from participation in such matters and only treating them as stakeholders, rather than as equal government partners. This has led to protests by Aboriginal authorities against being treated as stakeholders or junior governments, rather than full and equal partners in the federation, operating on a nation-to-nation basis with the Crown. Yet, despite constitutional provisions for Aboriginal independence, the Canadian federalism model remains dominant and entrenched, while treaty federalism is limited and scattered (Alcantara & Spicer, 2016:184).

Collaborative federalism is a process by which national goals are achieved by federal and provincial governments working collectively (Cameron & Simeon, 2002:55). Collaborative governance in Canada, that is, collaboration among federal, provincial and territorial governments (FPT) facilitates and promotes coordination among these orders of government, which is necessary for effective policy. FPT is based on the premise that all these governments possess strong fiscal and jurisdictional tools, thus promoting interdependence (Cameron & Simeon, 2002:55). This development can therefore provide a lesson for the South African government to strengthen its IGR and cooperative governance by taking advantage of a coordinated and combined benefit of collective action in using the fiscal and jurisdictional powers of all levels of government, as is the case in Canada. The distinct and yet interdependent and interrelated relationship among the different spheres of government implies that some degree of autonomy and decentralisation (Andrews & Schroeder, 2003:30) of powers to the SNGs is provided by the Constitution. The decentralisation process that occurred in South Africa following the election of a new democratic government in 1994 has not only enhanced but has also constrained SNG autonomy.

The limitation in subnational autonomy in South Africa has been more pronounced in fiscal allocations to SNGs, which also put restrictions on the ability of provinces to borrow money (Dickovick, 2003:1). Intergovernmental cooperation and relationship hinges on strong and effective support structures and mechanisms. The Constitution provides for the promulgation of legislation and establishment of structures connected with IGR. These include the IGRFA and the Department of Cooperative Governance and Traditional Affairs (COGTA). The strength and effectiveness of these legislation and structures relies on competent; that is, skilled, experienced, qualified and disciplined officials, an effective political and

administrative environment and leadership, the availability of accountability mechanisms, and the rule of law.

However, such cooperation and IGR are likely to encounter resistance and subversion if the SNG is led by an opposition political party, as is the case in Kampala, Uganda. Uganda's National Resistance Movement (NRM) government of president Yoweri Museveni regularly employs strategies of subversion to undermine and weaken the authority of local governments and thus impact negatively on the council's ability to adequately deliver urban services. As Lambright (2014:S41) posits, in many African countries, the combination of decentralisation and competitive multiparty elections creates opportunities for national partisan struggles to emerge in local arenas. National political elites use this opportunity to advance national political interests at local government level. The interference by national government in local politics in Uganda has gone as far as instituting reforms to centralise control over the city of Kampala (Lambright, 2014:S41).

These national partisan struggles at SNG level are also found in South Africa where the provincial and local government politicians in provincial legislatures and local councils are more loyal and accountable to the president and the ruling party than to their constituencies³⁷. This is due to politicisation and patronage politics that is largely driven by the power of the president to appoint premiers³⁸ and mayors at provincial and local government levels respectively, thus creating a patronage system where these subnational representatives are beholden to the president for continued reappointment in senior political and administrative positions. In turn, this patronage politics is further replicated at the provincial and local government levels where these provincial³⁹ and local political elites use the powers vested in them to build their patronage networks and coalitions in order to create and sustain power bases in these jurisdictions. The result of patronage politics is endemic crony capitalism,

³⁷ A case in point is the axing of former cabinet minister and chairperson of the Gauteng ANC provincial executive committee (PEC), Paul Mashatile, by president Zuma. Mashatile and the Gauteng ANC PEC were accused of being anti-Zuma and operating autonomously from the national leadership structure of the ANC (www.news24.com viewed on 17 August 2017).

³⁸ The president does not appoint a premier directly, but instead appoints or nominates a candidate who is a member of parliament to be elected as Premier by the provincial legislature. Section 128 of the Constitution provides for the election of Premiers. Thus, the argument that the president appoints the premiers is premised on his ability or powers to nominate a premier candidate. Thus, a candidate nominated by the president for election as premier is likely to win the election if the ruling party has a majority in that provincial legislature (RSA, 1996:49).

³⁹ Section 132 of the Constitution grants the premier powers to appoint Members of the Executive Council (MEC) from among the members of the provincial legislature. He/she also assigns their powers and functions, and may dismiss them (RSA, 1996:50).

corruption and bitter factional struggles, which erode citizen trust and confidence in government (see paragraph 1.1 in chapter 1; page 404, paragraph 6.5.2 and page 409, paragraph 6.5.4 in chapter 6 above) (Cameron, 2010:677; Comroff, 2011:103; De Kadt & Simkins, 2013:113; Rotberg, 2014:17; Southall, 2014:48). Thus, decentralisation as the true devolution of power from central to provincial government provides a solution to address this challenge. Provincial officials should not only be elected, but should also be independent from the central government in order to achieve true decentralisation. Political decentralisation makes provision for the election of public representatives and officials to run public bureaucracies, and judicial authority that ensures that provincial and local government public representatives and officials cannot be removed from office or fully overruled (see page 15, paragraph 1.2.2 in chapter 1 above) (Dickovick, 2005).

Furthermore, cooperative governance in its present form discourages competition and promotes dependency and complacency among SNGs and their political elites, thus weakening or removing the incentive for improved performance in fulfilling their legislative and executive obligations and accountability to their constituencies. This behaviour is destructive to the independence, stability and integrity of political institutions and processes and thus weakens accountability, efficiency and fiscal prudence, democracy and citizen participation, the rule of law, the quality of public services, professionalism, transparency and fairness; all of which are critical elements of good governance. In contrast, competitive federalism promotes tax competition among SNG, thus creating economic efficiencies and improving good governance (see paragraph 4.3.7 in chapter 4 above) (Konrad, 1995:166; Krane, Ebdon & Bartle, 2004:517; Monro 2001:54; Tiebout, 1956:424; Roden, 2003:695; Prohl & Schneider, 2009:641).

Therefore, while stronger IGR and cooperative governance are encouraged, stronger monitoring and control measures should be put in place to promote the independence and transparency of SNGs and democratic institutions in order to direct their accountability to their constituencies and not to their political masters. This will require stronger public participation and autonomy of SNGs that are beholden to the citizens and not the political elites. Such autonomy may be achieved by providing SNGs with revenue collection powers, which ensure their self-sufficiency and independence, and thus free them from perpetual dependency on the national government, thus limiting and countervailing the power of the central government. Furthermore, the electorate and not the president should have the power

to appoint and remove public representatives (through regular elections) from office and thus ensure that they are accountable to their constituencies.

These reforms would motivate public representatives and administrators to fulfil their legislative and executive obligations effectively and efficiently and in accordance with the law with the knowledge that failure to deliver on the electoral mandate would risk them losing their public office. This implies that the current quasi-federal or decentralised unitary system engenders corruption and weakens accountability and good governance in the provinces since the powers wielded by the president and the national office encroach on subnational affairs and undermines the electoral mandate derived from the powers bestowed on public representatives by their constituencies. Thus, the power available to national government political and bureaucratic elites will be countervailed and limited to their jurisdictions. This will reduce the power of these elites to abuse their public office and state resources for their personal interests and political gains, that is, patronage politics.

8.4.4 Promoting public participation

Through the electoral mandate, the public entrusts the state with the stewardship of all public resources to manage and control effectively and efficiently in its interest. According to the principal-agent theory (Mabbett & Bolderson, 1998:180; Persson & Tabellini, 1996:624; Stein, 1990:473; Hedge, Scicchitano & Metz 1991:1055), the public is the principal to whom the state as the agent is accountable. The public should hold the state accountable for its actions to prevent the abuse of power and state resources. Clucas (2001:320) defines the principal-agent theory in the context of the US congress and state legislatures whereby the legislators delegate powers to their leaders by giving them responsibilities and resources to solve the collective-goods dilemma.

This delegation of power to party leadership means that the legislative leaders are not independent actors, but are instead agents of their followers and their job is to help legislators to attain their goals. Collective action problems emanate from the costs of producing collective benefits, for example, public policy which is too high for any individual legislator to bear. “The central argument of principal-agent theory is that legislative leadership positions are created to overcome the collective action problems confronted by legislators” (Clucas, 2001:320). Smith and Vawda (2003:31) define public participation as involvement

in bargaining over issue definition, available options, resources to carry out the decisions, and final choices. Yimenu (2011) argues that in less developed countries public participation is severely limited by top-down and highly centralised approaches of planning and policy-making and implementation.

This approach also affects the ownership and sustainability of development programmes. Social accountability, which is about participation of different stakeholders in accountability systems, contributes to improved governance, increased development effectiveness through better service delivery, and empowerment (Yimenu, 2011:1). Some of the earliest public participation mechanisms introduced since the dawn of democracy include the Reconstruction and Development Programme (RDP) and Integrated Development Planning (IDP) forums. However, these mechanisms served as bridging, transitional arrangements intended “to build the capacity of various community initiatives, whether of resistance or of managing daily life, into effective instruments of participation” (Smith & Vawda, 2003:31) (see page 139, paragraph 3.2 in chapter 3 and page 323, paragraph 5.4.3 in chapter 5 above) (Hafer & Ran, 2016:206; Lues, 2014:789; Zonke & Matsiliza, 2015:86).

Public participation, particularly in decision-making processes of the state, is one of the most important governance mechanisms available. The different platforms and mechanisms available for public participation include the parliament (national and provincial), *izimbizos*, Executive Council Outreach Programmes, Thusong Service Centres and public hearings (RSA, 2012:24). Public participation, also known as the “bottom-up approach” in the affairs of SNGs increases accountability of the government authorities and transparency of their activities. In turn, increased accountability and transparency promote good governance and sustainable development. As a result, aid-receiving countries such as Bangladesh have introduced decentralisation and SNG reforms to promote good governance through the people’s participation in order to meet development aid requirements (Zeemering, 2016:205; Waheduzzaman & Mphande, 2014:38).

Zeemering (2016:205) defines urban sustainable development as the process of developing and redeveloping urban areas in a way that will improve the urban environment and economy and promote equity or social justice. Thus, sustainable development seeks to achieve growth and improvement in the environment, economy and social justice, a phenomenon also known as the triple bottom line. As an example of local government institutional reforms,

particularly in rural areas, Bangladesh has introduced a system of locally-elected management and monitoring committees to ensure public participation. This local government reform system is similar to the South African accountability and public participation model of ward committees, which promotes the participation of local people in the decision-making processes of the state (Waheduzzaman & Mphande, 2014:38).

However, local government officials and locally elected representatives, that is, politicians, often become the main stumbling block in promoting and achieving good governance. As a result, the key elements of good governance, accountability, transparency, leadership, equity and predictability of development outcomes, become compromised. Good governance and strong local democracy hinges on strong political will and commitment to local or community governance, that is, public participation (Panday & Rabbani, 2011:293). Pelizzo and Stapenhurst (2004:5) argue that democracy has positive consequences for individual freedom, domestic stability and international peace. Democratic consolidation promotes development and poverty reduction (Pelizzo & Stapenhurst, 2004:5). Waheduzzaman and Mphande (2012:39) point out that in the new public participation model the roles of various local governance stakeholders have undergone transition, whereby public administrators have transitioned from experts to enablers and citizens from observers to active participants.

Public participation is critical in strengthening subnational governance and ensuring that public representatives and bureaucracies at this sphere of government are held accountable. Improved accountability translates into prudent fiscal management, efficiency and public expenditure discipline, improved quality of public services, the rule of law, and improved governance. Thus, the voice of the citizens needs to be elevated and strengthened by creating and building public participation platforms that are integrated and recognised by the political, administrative and social structures and institutions at this level of government.

In other words, public participation platforms such the Thusong Service Centres, public hearings and *imbizos* need to be brought into the mainstream accountability and governance institutional infrastructure and processes of government and accorded the necessary powers, resources, capacity and recognition (legal status). Thus, these structures should be accorded similar legal status as the public hearing processes and platforms available in national and provincial parliament and capacitated to fulfil their duties, roles and responsibilities on an ongoing basis, not on an ad hoc basis, as is the practice currently. Furthermore, the Executive

Council Outreach Programmes should also be strengthened and capacitated to enforce their findings, recommendations and public inputs emanating from public consultations.

8.4.5 Integrating and coordinating accountability and governance mechanisms

One of the major challenges hampering service delivery in the public service is the fragmented and uncoordinated approach towards policy development, implementation and service delivery by public entities. A more targeted and coordinated approach should be promoted to maximise state efforts to deliver public services and to improve good governance. The goal of integrated development and planning by public entities is closely related to that of strong intergovernmental relations (see paragraph 8.3.3 above) in that both seek to ensure cooperation and cohesion among the different spheres of government and their respective entities. The national government, in collaboration with various stakeholders in the private sector, academia and research, business and labour, has developed a National Development Plan (NDP), also known as the 2030 Vision, which seeks to drive the country towards economic prosperity and improved living standards for all citizens; that is, sustainable development and poverty reduction (RSA, 2010:24).

The NDP aims to eliminate poverty and reduce inequality by 2030 “by drawing on the energies of its people, growing an inclusive economy, building capabilities, enhancing the capacity of the state, and promoting collaboration and partnerships throughout society” (RSA, 2012:24) (see section 5.2 in chapter 5). Reduction of inequality is particularly important for development as the country has one of the highest Gini coefficients in the world. Income inequality and poverty are a great concern in South Africa as it threatens the political and socio-economic stability of the country and thus creates a fertile breeding ground for crime, lawlessness, corruption, moral decay and ultimately the collapse of the institutions of government. Persistent and high inequality in South Africa has strong roots in labour market (wage) inequality and the inordinately high wage Gini coefficient of 0.60 amongst wage earners (see paragraph 3.6.2 in chapter 3, page 289, paragraph 5.3.2 in chapter 5, and page 397, paragraph 6.5.1 in chapter 6 above) (Binns & Robinson, 2002:25-26; Brinkerhoff & Brinkerhoff, 2002:511; Posel, 2013:59).

Van der Berg (2014:198) argues that poverty can be addressed directly in the short term, while inequality requires a long-term approach. Income inequality is strongly related to the

returns on education and the quality thereof; that is, highly skilled and educated people with a better quality of education are more likely to earn more than low skilled and uneducated people. Also, these people are more likely to access wage income opportunities; that is, better paying jobs due to the high skills shortage in the country (Van der Berg, 2014:197). Labour unions also contribute to high income inequality, particularly intra-racial income inequality among Africans because unions play an important part in wage determination; thus, union members receive high wage premiums compared to non-union workers (Ntuli & Kwenda, 2014:323).

South Africa is rated as an upper-middle-income country judged by economic factors, such as GDP per capita or the structure of the economy. Yet its social indicators, such as life expectancy, infant mortality or quality of education, more closely resemble those of a lower-middle-income or even a low-income country. This reflects the fact that resources and human capital are highly inequitably distributed in South Africa. In contrast to their highly educated counterparts, poorly-educated workers compete for scarce unskilled jobs, thus reducing unskilled wages. Thus, if the unemployed were to find jobs, it would be in this bottom part of the wage distribution, and consequently this would not significantly reduce wage inequality. The historical apartheid pattern whereby only a small segment of the population obtained good schooling and subsequently access to better jobs thus remains firmly entrenched and replicated today in the new dispensation. The continuation of this pattern would leave the structures underlying the large wage premium unaltered and thus render efforts to effectively address income inequality difficult in the short to long term (Van der Berg, 2014:197).

The poverty and income inequality challenges are further exacerbated by government market-based reform policies, which merely attempt to level the economic playing field and yet fail to address the negative impact of previous distortions. Government intervention in agriculture, as an example, has been declining and ineffective and thus accelerated the rationalisation of commercial agriculture and failed to regenerate agriculture in the former Bantustans. In contrast, government-led intervention in the manufacturing sector since 1994 has been consistently generous in support for the heavy, capital-intensive industry; thus, failing to support labour-intensive economic sectors such as agriculture. Yet, government continues to take pro-employment policy positions as reflected in recent policy statements which place emphasis on an employment intensive growth path. According to Black and Gerwel (2014:241), “These include the 2010–13 Budgets, the Department of Trade and

Industry's (2010) Industrial Policy Action Plan, the Department of Economic Development's (RSA, 2010) New Growth Path Strategy and, most recently, the National Planning Commission's (2011) National Development Plan".

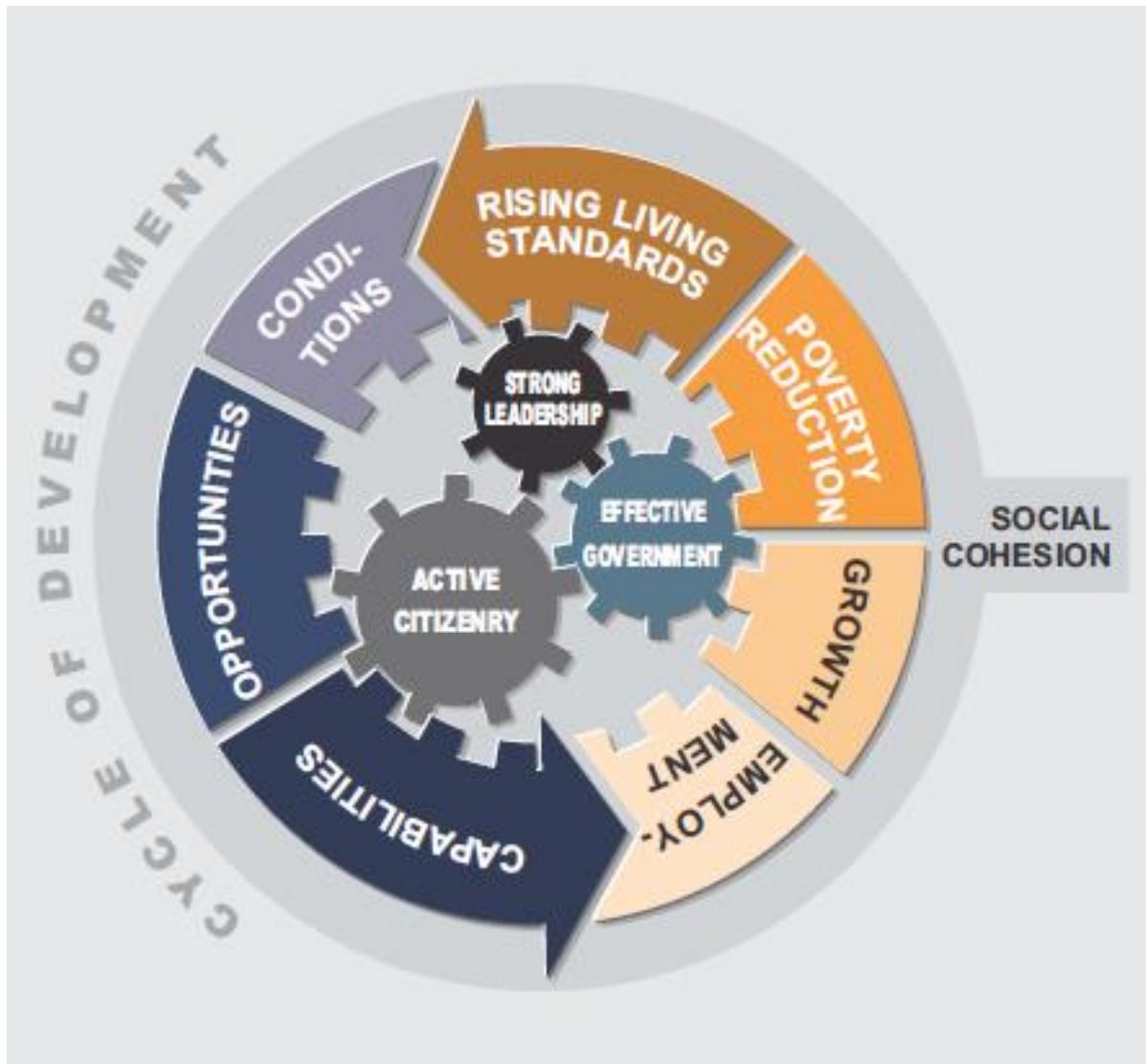
Government needs to take an employment intensive growth policy position to ensure that economic growth becomes more labour-absorbing. Thus, pro-employment policies have to be placed at the centre of the government policy agenda to increase employment and address the triple challenges of unemployment, poverty and inequality (Black & Gerwel, 2014:241). The decline in poverty levels and the increase in income inequality is corroborated by Borat, Tseng and Stanwix (2014:219) who posit that the country's long-term economic growth of 3.57% per annum between 1994 and 2008 had a positive impact on household poverty and a negative impact on inequality. This suggests that the country's growth model provides substantial redistributive income support to the poor through the social grant programme, whilst offering few returns to those in the middle of the distribution.

Altman, Mokomane and Wright (2014:347) highlight the extremely high levels of unemployment and poverty among the youth in South Africa. This is despite being a middle-income country wherein advanced industrial sectors co-exist alongside extreme poverty. This dire situation is further exacerbated by the lack of social assistance for low-income young adults in South Africa, unless they are disabled. Altman, Mokomane and Wright (2014:347) identify six examples of social security policy options that government could use as poverty and unemployment interventions to achieve widespread poverty alleviation, as well as help facilitate economic participation to improve lifelong earnings. These include "five grants ranging from an unconditional non-means-tested grant for young people to a conditional grant for young people in training or education, plus an 'Opportunities voucher' that is administered through the social security system but paid out to organisations offering youth education or work opportunities" (Altman, Mokomane & Wright, 2014:347).

Similar economic growth as that seen in South Africa during the period 1994 to 2008 was experienced for several decades in many countries in Sub-Saharan Africa. However, most cities in Africa are poor and thus could not keep up with the increasing need to provide the most essential services to the bulk of their people and consequently relied on international institutions, such as the World Bank, for project and programme support. These international urban assistance and interventions in Sub-Saharan African cities evolved from a singular

emphasis on “sites and services” housing projects to a focus on urban management and decentralisation to a more holistic approach grounded in the tenets of “good governance” (Stren, 2014:S19). The NDP takes a multi-dimensional approach towards development as represented by a virtuous cycle of development in Figure 8.5 below.

Figure 8.5: NDP – An approach to change

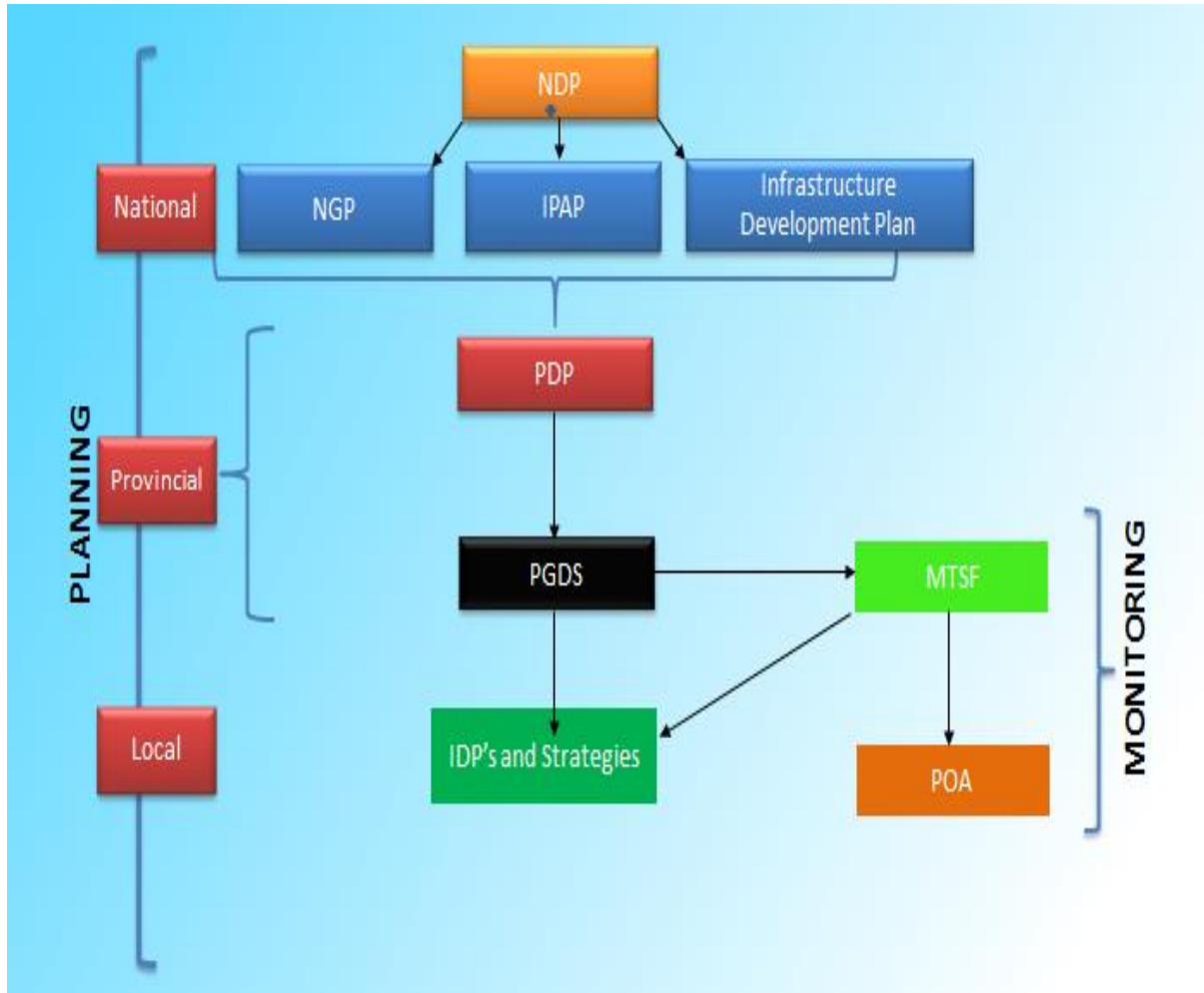


Source: National Development Plan (RSA, 2012:26)

Figure 8.5 above is a graphic illustration of the virtuous cycle approach of the NDP whereby progress in one area of development supports advances in others (RSA, 2012:25). The multi-dimensional approach of the NDP entails increasing employment, higher incomes through productivity growth, education, a social wage and good-quality public services driven by strong leadership, active citizenry and effective government. However, the NDP needs to be

supported and supplemented by an array of structures and processes to ensure its success. The activities of these structures and processes need to be integrated, aligned and coordinated to ensure focus and maximum output, as shown in Figure 8.6 below.

Figure 8.6: Integrated Development and Planning (IDP)



Source: Department of Cooperative Governance and Traditional Affairs (2013) (www.cogta.gov.za viewed 12 August 2014)

[NDP - National Development Plan, NGP - National Growth Path, IPAP - Industrial Policy Action Plan, PDP - Provincial Development Plan, PGDS - Provincial Growth and Development Strategy, MTSF - Mid-Term Strategic Framework, IDP - Integrated Development Plan, POA - Programme of Action]

The Department of Cooperative Governance and Traditional Affairs (COGTA) is tasked with facilitating and promoting the values of cooperative governance, as entrenched in chapter 3 of the Constitution (RSA, 1996:17). Cooperative governance, as provided in chapter 3 of the Constitution, requires all the spheres of government and organs of the state to cooperate with

one another in mutual trust and good faith. This cooperation includes fostering friendly relations, supporting one another, and coordinating their actions and legislation with one another. The Intergovernmental Relations Framework Act of 2005 gives effect to this provision (as explained in paragraph 7.3.3 in chapter 7 above) (RSA, 2005:3; RSA, 1996:17). It is worth noting that the South African government through the Department of Public Service and Administration (DPSA) developed a Public-Sector Integrity Management Framework in 2011, which seeks “to strengthen measures and standards for managing integrity and promotes ethical conduct in the public service” (RSA, 2011:4).

This framework was developed in response to widespread corruption, unethical conduct among public officials, lawlessness and poor governance standards in the public sector. The DPSA argues that widespread corruption and unethical conduct in the public sector has been on the increase despite the government developing and implementing a myriad of policies, legislation and regulations to manage integrity and promote good governance in the public sector. The DPSA attributes rampant corruption in the public sector to “lack of enforcement and unsatisfactory implementation of certain aspects of the regulatory framework managing integrity and promoting good governance in the public sector” (RSA, 2011:2) and that certain provisions of the regulatory framework managing integrity and promoting good governance in the public sector have become obsolete (RSA, 2011:2).

This occurs despite “significant efforts that have been made by government institutions together with civil society and representatives from the business sector to promote integrity, reduce corruption and improve public and corporate governance” (RSA, 2011:2). The framework further identifies a set of objectives, which seek to protect the integrity of government and foster public confidence in state institutions. These objectives resonate strongly with the findings of the present study, particularly in seeking to align all measures relating to ethics and integrity in the public sector with the values of ethical conduct and good governance. These values, as identified by the DPSA, are as follows (RSA, 2011:2):

- Strengthening existing measures regulating probity in the public service;
- Strengthening capacity to prevent corruption;
- Monitoring and Evaluation to ensure compliance; and
- Enforcement as a deterrent.

The strong resonance of these objectives with the findings of the present study implies that the implementation of the Public-Sector Integrity Management Framework has not been effective. Thus, decisive action and increased commitment from the political and public-sector leadership and the state is necessary to achieve these objectives.

8.4.6 Options for an improved governance framework

The study interrogated the various options proposed for improved governance in the South African system of government; that is, the structure of government and the assignment of powers and functions, as discussed in the introductory chapter. These options are the following (HSRC, 2008):

- a) Doing away with the provincial sphere and apportioning its powers and functions amongst national and local government.
- b) Reducing the legislative authority and functional discretion of the provinces, which would become more focused on implementing policy for national government.
- c) Retaining the provinces in their present form and relying on new or amended policy, legislation, or administrative measures to improve their performance.
- d) Reducing the number of provinces (a rationalisation process) where this could ease staffing and capacity challenges currently being experienced by the country; and
- e) Strengthening the functional discretion and even authority of the provinces.

The findings of the present study and arguments presented, as discussed throughout the study, are strongly in favour of a model that strengthens the functional discretion and even authority of the provinces. This configuration of government as mentioned in sub-paragraph e) above requires passing a Bill in parliament to change the Constitution and passing the legislation that assigns more exclusive powers and authority to provinces. Sections 44 and 100 of the Constitution, in particular, need to be amended to prevent national government from encroaching in the legislative (section 104 of the Constitution) and executive authority (section 125 of the Constitution) of the provinces. Section 14 (Assignment of legislation to provinces) grants the president further powers to assign by proclamation legislation with regard to a matter within a functional area listed in Schedule 4 or 5 of the Constitution, to be administered by an authority within a provincial executive designated by the Executive Council of the province (see paragraph page 115, paragraph 2.7.1 in chapter 2 and page 323,

paragraph 5.4.3 in chapter 5 above) (RSA, 1996:19-20; Steytler & Fessha, 2005:2; Monro, 2001:42).

Further, although Schedule 5 of the Constitution provides for functional areas of exclusive provincial legislative competence, the Constitution also provides for functional areas of concurrent national and provincial legislative competence in Schedule 4, which creates an overlap in functional areas between the national and provincial governments; thus, limiting the discretion and authority of provinces to act autonomously from the national government in relation to functional areas in this schedule. Furthermore, the functional discretion and authority of provinces to implement national legislation within functional areas listed in Schedules 4 and 5 is limited by the extent that the province has the administrative and fiscal capacity to assume effective responsibility, as provided in sub-section (or item) 125 (3) of the Constitution.

This implies that capacity constraints resulting from the current constitutional assignment of powers and functions to provinces may constrain their capacity and ability to effectively exercise the authority vested in them through Schedules 4 and 5. The above analysis illustrates the pervasive and far-reaching powers of the national legislature and government over provinces, which render this level of government redundant and dependent on the national government. It further highlights the structural, procedural, legislative and administrative challenges inherent in the design and configuration of the system of government in the current (1996 to 2012, as per the focus of the study) South African constitutional dispensation that hinders provincial governance. The study revisited the options for the review of provinces in this regard, as posited by the Human Sciences Research Council (HSRC) above, to explore the validity and viability of each option in the context of the present study, the political developments discussed herein, and the findings thereof. This analysis presents an alternative view and compelling arguments for the most feasible option that would best capacitate and empower the provincial sphere of government to affirm its role and status as an autonomous, independent and duly elected institution of democratic governance that effectively represents the interests of its constituency. Thus, table 8.2 below provides a summary of this analysis of options for the review of provinces to improve good governance, based on the findings of the present study.

Table 8.3: Analysis of Options for Review of Provinces to Improve Good Governance

Proposed Options	Analysis
i. Doing away with the provincial sphere and apportioning its powers and functions amongst national and local government.	<ul style="list-style-type: none"> <li data-bbox="712 363 2011 443">• The biggest challenge of this option would be a Constitutional amendment by a Bill passed in parliament that requires a two-thirds majority vote by members of parliament. <li data-bbox="712 459 2011 643">• This arrangement would result in formation of a <i>de facto</i> unitary state with all powers effectively assigned to the national government as the local government has a record of poor governance, lack of capacity, and dependence on national and provincial governments to deliver on their legislative and executive obligations. <li data-bbox="712 659 2011 842">• The lack of capacity in the provinces and their dependence on the national government for policy formulation and direction is evident in the failure of all provinces to adopt their provincial constitutions, as provided in section 104 (1) (a) in chapter six of the Constitution, with the exception of the Western Cape, which has adopted its own constitution. <li data-bbox="712 858 2011 1375">• It would further exacerbate the challenge of poor governance in government and promote crony capitalism and patronage politics, which is endemic in the current dispensation. The abuse of power and poor governance, which is rampant in the current dispensation, would be exacerbated since all powers would be concentrated in the national government and the president, thus giving him and the national government the overwhelming absolute power and authority to control and abuse state resources without any deterrent. This configuration lacks the checks and balances required to prevent the abuse of power and to promote accountability. It further undermines the principles of democracy that empower the electorate to have a voice in the governance of the country. These checks and balances would be effectively nullified and removed, thus creating a dictatorship and tyranny where administrators and public representatives are beholden to the president and not the electorate and their constituencies.

- However, huge financial gains may be attained by cutting expenses currently being incurred by transfers to provincial governments that are failing to deliver on their constitutional mandate and merely serve as patronage networks for the ruling elite. However, the potential financial gains should not be the only goal for these reforms as the outcome of the resultant patronage politics may far outweigh the expected financial gains. In other words, the goal to achieve efficiency and financial gains in government should not be done at the expense of democracy, accountability and good governance.
- ii. Reducing the legislative authority and functional discretion of the provinces, which would become more focused on implementing policy for national government.
- This would merely reinforce the current situation whereby the legislative and functional discretion of provinces is limited and dictated by the national government.
 - Despite the constitutional provision for this discretion by provinces, sections 44 and 100 of the Constitution effectively nullify this discretion and render provinces redundant and mere extensions of the national government, which has overarching powers over provinces with respect to their legislative authority and functional discretion.
 - This would also undermine the electoral mandate given to the provinces by their constituencies who expect the provinces to fulfil their development and public service needs, which are specific to their jurisdiction and may not necessarily be similar to other provinces.
 - Thus, this would create a blanket and uniform policy approach that does not recognise the distinct character of each jurisdiction, as provided by section 40 (1) in chapter 3 of the Constitution.
- iii. Retaining the provinces in their present form and relying on new or amended policy, legislation, or administrative measures to
- This option would be effective in strengthening and promoting governance in provinces in terms of promoting fiscal prudence and professionalism in the provincial government. However, this approach has failed to improve governance in provinces since a plethora of new policies, legislation, and administrative measures have already been developed and put in place to

improve their performance.

improve their performance. Yet, the provinces are still failing to improve their governance. This would create a policy, legislative and regulatory overload that renders the majority of these legal documents redundant and thus a waste of state resources and inefficiencies.

- Failure to improve good governance in provinces, despite a large number of policies and legislation in this regard, is largely due to the configuration of powers and functions assigned to the different spheres of government in the Constitution (sections 44 and 100), which effectively gives the national government overriding powers over provinces and thus renders these policy, legislation and administrative initiatives futile or ineffective.
- Policy, legislation and administrative interventions need to be backed up by corresponding authority and independence to render them effective. Thus, merely putting these measures in place, which may be overridden and ignored at random by the national government without any consequences, would be futile and counterproductive. A clear delineation and definition of jurisdictions, which defines the legal authority and autonomy of subunits with respect to their legislative and functional discretion, is necessary to ensure accountability and good governance in all spheres of government.

iv. Reducing the number of provinces (a rationalisation process) to ease staffing and capacity challenges currently being experienced by the country;

- This arrangement resembles option iii above with the added benefit of a potential reduction in expenditure, that is, increased efficiencies particularly from sparsely populated, capacity constrained and less industrialised provinces that by and large depend on transfers and interventions from the national government for their survival, for example, the Northern Cape, which is geographically vast and sparsely populated, rural Limpopo and the Eastern Cape. The Northern Cape is an example of a province that is economically inefficient and almost entirely dependent on revenue transfers and administrative interventions from the national government despite its vast geographic size and both mineral and agricultural land endowments.

- Additional gains may be achieved from incorporating provinces with weaker and economically frail administrations into industrialised and economically viable, high capacity and stronger provinces, like Gauteng and the Western Cape.
 - However, despite a reduction in the number of provinces, retaining the remaining provinces in the current structural configuration with respect to their legislative and functional discretion will perpetuate the rot in government evinced by pervasive crony capitalism and patronage politics and thus perpetuate the lack of capacity, accountability and poor governance in provinces from a structural and procedural perspective.
 - The quality and level of public services will continue to decline and the corrupt and unethical practices and actions of the political elites will continue to undermine democracy, that is, the electorate and the values and principles of the Constitution, and thus continue to weaken governance in government.
- v. Strengthening the functional discretion and even authority of the provinces.
- This is the most effective option, which would not only capacitate and strengthen the autonomy of provinces with respect to their legislative and functional discretion, but also effectively limit and countervail the powers of the president and the national government from encroaching in subnational governments affairs, for example, political and bureaucratic appointments and disbursement of business opportunities (tenders and other business transactions controlled by the government) as a means to dispense patronage, politicise the bureaucracy and plunder state resources for personal gain and enrichment of the political elite.
 - This option is a direct opposite of option ii above, which proposes reduction of the legislative authority and functional discretion of the provinces, which would become more focused on implementing policy for national government. Thus, it would have a direct opposite effect as what is posited in option ii above, that is, it would curtail the ability of the national government to encroach in subnational affairs, increase and strengthen the autonomy of provinces from the
-

central government, align the public policies (public service and goods) with the specific needs of their jurisdictions, and increase efficiency, fiscal prudence and accountability.

- Thus, the overall outcome would be the improvement of governance at SNG level, upholding the attributes of decentralisation and reinforcing the precepts and principles of federalism, which advocate for subnational autonomy and delegation of political, legislative, fiscal and administrative autonomy to SNG. The resultant configuration of government would promote flexibility and prevent the abuse of power, encourage innovation, competition, responsiveness and efficiency, and management, cope with conflict, foster participation, and encourage self-reliance among SNGs (see page 90, paragraph 2.3.3 in chapter 2 above).
- This option also resembles the proposed reform as suggested in option iii above (retaining the provinces in their present form and relying on new or amended policy, legislation, or administrative measures to improve their performance), except that option iii does not state that the current configuration of provinces should be retained and that the autonomy of provinces should be strengthened. This option also creates policy and regulatory burdens; thus, it renders some policies redundant and creates inefficiencies.

In summary, the above options would no doubt bring about change in the governance of provinces in relation to their interaction with other spheres of government, particularly the national government. The resulting change would either be positive or negative in that the powers and ability of the national government to encroach in matters of the SNGs would be either increased or curtailed; that is, either the strong centralisation (unitary state) or strong decentralisation (federal state) of powers and functions.

A good example of the benefits of strong federalism with strong legislative and functional discretion for provinces is Germany, who solidified the jurisdictions of both the Lander and the federal government by clearly defining and demarcating the legislative powers of both the Bundesrat and the Bundestag (equivalent to the National Assembly and the NCOP in South Africa). This legislative reform was intended to untangle and reduce the policy paralysis of the state (legislature) emanating from the overlapping (interlocking) legislative competencies

of the two chambers. However, the added benefit resulting from that is the ability and discretion of SNGs and their politicians to legislate and implement policy, including fiscal management, independently from the federal government. This reform improved accountability and efficiency at the SNG level (Lander) and overall governance at this level of government (see page 218, paragraph 4.3.3 in chapter 4 above).

Thus, the independence and autonomy of SNGs (as opposed to the distinctive, interdependent and interrelated prescription of cooperative governance prescribed in the Constitution – see page 281, paragraph 5.2 in chapter 5 above) with respect to their legislative authority and functional discretion is critical in improving governance at the SNG level. It deters crony capitalism and patronage politics and promotes accountability, rule of law, efficiency and fiscal prudence, democracy and public participation, professionalism of the subnational bureaucracy and transparency.

Despite option v (strengthening the functional discretion and even authority of the provinces) being the most effective option to improve the governance of provinces, it would be further improved by including elements of the proposal suggested by option iv of reducing the number of provinces. This would ensure that the legislative authority and functional discretion of provinces is not only increased, but also rationalising the provincial sphere of government to improve efficiency and capacity, which would be leveraged from economically viable, administratively capacitated and industrialised provinces.

Source: Own construction from analysis of the options for the review of provinces identified by the HSRC (2008)

A two-thirds majority vote in the National Assembly is the threshold required to make constitutional amendments. The ruling ANC lacks the two-thirds majority required to amend the Constitution. Given this challenge, the ANC will need support from opposition parties to jointly constitute a majority in the National Assembly to be able to amend the Constitution. However, such collaboration with the opposition is unlikely given the entirely different views and positions of the ANC and the opposition on governance and policy matters. This is particularly so since the current crop of ANC leadership and its deployees in the bureaucracy of government and state agencies at all levels heavily rely on the weaknesses of the current constitutional configuration of government that allows them to rule with impunity, plunder state coffers, undermine accountability measures, and entrench their majority through crony capitalism and patronage. However, this difference in policy and position does not completely rule out the possibility of cooperation given the wide-ranging support for the NDP by many opposition parties, including the main opposition party, the DA.

As an example, in recent parliamentary debates, the EFF offered to support the ANC with its 6.6 % vote in the National Assembly if the ruling party were to consider amending section 25 of the Constitution, also known as the property clause, with the aim of legislating a Bill on the expropriation of land without compensation (*Mail & Guardian*, 2014 www.mg.co.za retrieved 5 September 2014). This intent to amend the Constitution follows many years of the failure of government and the land claims process through the ineffective Restitution of Land Rights Act (1994). This Act was used as a mechanism to address the past imbalances and concerns of all victims of racially motivated removals from land (land dispossession) in both urban and rural areas (Ngubane & Brooks, 2013:401).

Gumede (2014:50) attributes land reform failure in South Africa to lack of policy clarity⁴⁰. This policy clarity can be achieved by clearly articulating the kind of land reform and land tenure that is ideal, and the kind of farming that is appropriate for the country. Government's dismal failure to achieve land reform is largely attributed to its reliance since 1994 on the 1996 Constitution and the 1997 White Paper on Land Reform, as well as a plethora of legislative pieces as land reform policy frameworks to redistribute land, correct land tenure

⁴⁰ The discussion on the land reform policy is a good example of the potential for Constitutional amendment to effect policy reform in various areas, including the assignment of powers and functions (legislative and executive authority) that would help provinces increase their administrative and financial capacity required to effectively exercise their functional discretion and legislative authority autonomously from the national government.

and address land restitution. Land reform in South Africa is necessary in redressing the legacies of apartheid and colonialism (Gumede, 2014:50). The provinces are left at the behest of the parliament as they do not have any powers to amend the Constitution, despite having their voice recognised in parliament through the NCOP. The national legislature has an upper hand in legislative competence over the provincial legislatures, according to the Constitution (RSA, 1996:19).

8.5 CONCLUSION

The Constitution of South Africa provides the basis for engendering, promoting and enforcing good governance in the public service. The constitutional values and principles enshrined in section 195 of the Constitution are used by the PSC as indicators against which the performance of all spheres of government and public entities is measured with regards to practicing, promoting and protecting good governance. Analysis of the findings of the present study provides tools and insight to effectively identify and address the shortcomings and weaknesses in the current framework of governance and the performance of state entities in promoting and advancing good governance. A range of mechanisms prescribed by the Constitution and put in place by the state to promote good governance in the public service include an array of policy, legislation, and administrative measures, and various institutions (see page 501, paragraph 8.2 above).

These mechanisms seek to control the conduct of state officials and public representatives by introducing measures to promote and enforce the values of good governance, such as accountability, fairness, transparency and rule of law within the state. Despite the widespread corruption and reports of poor governance practices within state entities, the performance of all entities is improving. However, the improvement in good governance ratings as illustrated by the decline in negative audit reports on performance is uneven among state entities and the various spheres of government. The municipalities are the most challenged sphere of government, as illustrated by the high prevalence of negative audit opinions among the three spheres of government and state entities.

The findings of the present study are based on research and analysis of good governance frameworks and mechanisms in South Africa and other countries globally, as well as the various factors affecting good governance, particularly the system of government prescribed

in the Constitution that defines the assignment of powers and functions to the different constituent units. Collectively these findings enable the study to identify key indicators, mechanisms, processes, strategies and interventions that are critical in addressing the challenges of good governance in South Africa, particularly in the provincial sphere of government. These indicators include the promotion of constitutional values and principles, strengthening accountability structures and Chapter nine institutions, strengthening intergovernmental relations, promoting public participation, integrating and coordinating accountability and governance mechanisms, and exploring various options for improving the governance framework in South Africa (see the summary of the analysis in table 8.3 above).

Good governance at the provincial government level will be improved significantly by adequately addressing challenges regarding these critical performance areas. A common factor that cuts across all key performance areas is the element of visionary and effective leadership, which is directly linked to issues of severe shortages of skills, political instability and cadre deployments, among other challenges. The findings and analysis presented in this chapter provide the basis on which recommendations for improved provincial governance in South Africa are made, as presented in the next and final chapter of the study.

“Two qualities are indispensable: first, an intellect that, even in the darkest hour, retains some glimmerings of the inner light which leads to truth; and second, the courage to follow this faint light wherever it may lead” - Carl von Clausewitz

APPENDIX 8A: Principles of Good Governance in the Public Sector

Source: IFAC (2013) (www.ifac.org viewed on 18 August 2014)

	Principles and Sub-principles of good governance	
Principle	A.	Strong commitment to integrity, ethical values, and the rule of law
Sub-principles	A.1	Demonstrating integrity
	A.2	Strong commitment to ethical values
	A.3	Strong commitment to the rule of law
Principle	B.	Openness and comprehensive stakeholder engagement
Sub-principles	B.1	Openness
	B.2	Engaging individual citizens and service users effectively
	B.3	Engaging comprehensively with institutional stakeholders
Principle	C.	Defining outcomes in terms of sustainable economic, social, and environmental benefits
Sub-principles	C.1	Defining outcomes
	C.2	Sustainable economic, social, and environmental benefits
Principle	D.	Determining the interventions necessary to optimise the achievement of intended outcomes
Sub-principles	D.1	Determining interventions
	D.2	Planning interventions
	D.3	Optimizing achievement of intended outcomes
Principle	E.	Developing the capacity of the entity, including the capability of its leadership and the individuals within it
Sub-principles	E.1	Developing the capacity of the entity
	E.2	Developing the entity's leadership
	E.3	Developing the capability of individuals within the entity
Principle	F.	Managing risks and performance through robust internal control and strong public financial management
Sub-principles	F.1	Managing risk
	F.2	Managing performance
	F.3	Robust internal control
	F.4	Strong financial management
Principle	G.	Implementing good practices in transparency and reporting to deliver effective accountability

Sub-principles	G.1 Implementing good practices in transparency
	G.2 Implementing good practices in reporting

APPENDIX 8B: LIST OF ANTI-CORRUPTION ACTSSource (www.psc.gov.za viewed 6 September 2014)

Act	Act Number	Year of promulgation
• The Protected Disclosures Act	26	200
• Promotion of Administrative Justice Act	3	2000
• The Promotion of Access to Information Act	2	2000
• Promotion of Administrative Justice Act of 2000		2000
• Prevention and Combatting of Corrupt Activities Act	12	2004
• Financial Intelligence Centre Act	38	2001
• Public Finance Management Act		1995
• Public Service Act	103	1994
• The Public Service Regulations (PSR)		2001
• Municipal Finance Management Act	56	2003

APPENDIX 8C: LIST OF LEGISLATION

Act	Act Number	Year of promulgation
African Growth Opportunity Act (AGOA)	N/A	2000
Auditor-General Act	12	1995
Constitution of the Republic of South Africa	108	1996
Executive Members' Ethics Act	82	1998
Intergovernmental Relations Framework Act (IGRFA)	13	2005
Prevention and Combatting of Corrupt Activities Act	12	2004
Promotion of Access to Information Act (PAIA)	2	2000
Promotion of Administrative Justice Act (PAJA)	3	2000
Public Audit Act (PAA)	25	2004
Public Finance Management Act (PFMA)	1	1999
Public Protector Act	23	1994
Public Service Commission Act (PSCA)	46	1997

APPENDIX 8D: LIST OF POLICIES

Policy	Year of Promulgation
African Peer Review Mechanism (APRM)	2003
<i>Batho Pele</i> Principles	2002
Industrial Policy Action Plan (IPAP)	Annual
Integrated Development Plan (IDP)	Annual
Mid-Term Strategic Framework (MTSF)	Every five years
National Development Plan (NDP)	2012
National Growth Path (NGP)	2011
Programme of Action (POA)	Every five years
Provincial Development Plan (PDP)	Every five years
Provincial Growth and Development Strategy (PGDS)	Every five years

CHAPTER 9: SUMMARY, CONTRIBUTION, RECOMMENDATIONS AND CONCLUSION

“There comes a time when one must take a position that is neither safe, nor politic, nor popular, but he must take it because conscience tells him it is right.” — Martin Luther King Jr.

9.1 SUMMARY OF KEY GOVERNANCE ISSUES

Chapter 9 presents a concise summary of the key findings of each chapter of the study. This summary provides a prelude to the concluding thoughts of the study and provides the background analysis that informs the lessons, contribution and recommendations of the study. Each chapter deals with a specific aspect of the study, which contributes to the overall understanding of the research problem and the efforts to address the main research question of the study. Oates’ subsidiarity principle and the decentralisation theory that advocates for efficient provision of Pareto-efficient levels of output of public goods by SNGs governments, rather than central government, is the theoretical basis for the study. The basis of the decentralisation theory and Oates’ subsidiarity principle is the argument that SNGs are more efficient and effective in providing public goods and services and thus better positioned due to their close proximity to their constituencies to manage government resources more effectively and efficiently as public representatives and bureaucracies.

Thus, the study in essence seeks to investigate the underlying constitutional basis and framework that prescribes the configuration of provincial powers and functions *vis-à-vis* the legislative and functional discretion provided in the Constitution. With this theoretical background as a basis, the study therefore correlates the status and role of provincial governance in the South African constitutional dispensation 1996 to 2012 with the architecture and configuration of the legislative framework provided in the Constitution, which is the basis for allocation of powers and functions to the provinces as institutions of democracy and governance.

This theoretical basis of the inquiry lays out the principles and parameters for the study and thus provides the theoretical framework for the critical analysis and presentation of findings

in a logical, structured and compelling manner to arrive at the conclusions and recommendations of the study. In other words, the theory of federalism, which advocates for the decentralisation of powers and functions to SNGs in order to improve good governance and ensure efficiency in the administration of public bureaucracies, provides a framework and a prism to critically assess and analyse the current (1996-2012) constitutional dispensation of provinces with respect to good governance.

The constitution of federal states protects the unilateral repossession of powers by the central government from SNGs. Federalism further guarantees the autonomy of subnational spheres of government in exercising these powers and functions, which are constitutionally guaranteed and may not be repossessed unilaterally or encroached upon by any other spheres of government or jurisdictions (see page 19, paragraph 1.2.3 in chapter 1 and page 203, paragraph 4.2.1 in chapter 4 above). Any other form of government that would concentrate the powers and functions of the state in the central government would render the country an administratively decentralised regime where provinces become mere administrative spheres and officials appointed in these jurisdictions have no right to overrule or appeal the instructions of the central government (see page 206, paragraph 4.2.2 in chapter 4 and page 545, paragraph 8.4.6 in chapter 8 above).

Thus, the Constitution should provide provinces with the political, legislative, administrative, fiscal and intergovernmental relations capacity and authority to respond adequately to the needs of their jurisdiction. This will ensure that provinces establish themselves as an autonomous sphere of government elected by the population in their jurisdiction, that is, constituencies (political capacity); the ability of provinces and their legislatures to formulate and enact their own legislation (legislative capacity); and the ability to influence national legislation that affects them within appropriate institutions (see paragraph 1.2.8 in chapter 1 above). The ability and power of legislatures to shape and influence public policy derives from their law-making function (see page 354, paragraph 6.2 and page 380 in paragraph 6.4.2 in chapter 6 above). However, the autonomy of provinces is threatened by inherent ambiguities in the constitutional design, a strong centralising ethos on the part of the ruling party, and generally weak provincial capacities. Generally, the national parliament has taken over the legislative functions of concurrent competencies and relegated the provinces into a subordinate position. Thus, the ANC has used this argument to question the relevance of the provinces and their developmental roles. This autocratic leadership style of the new politico-

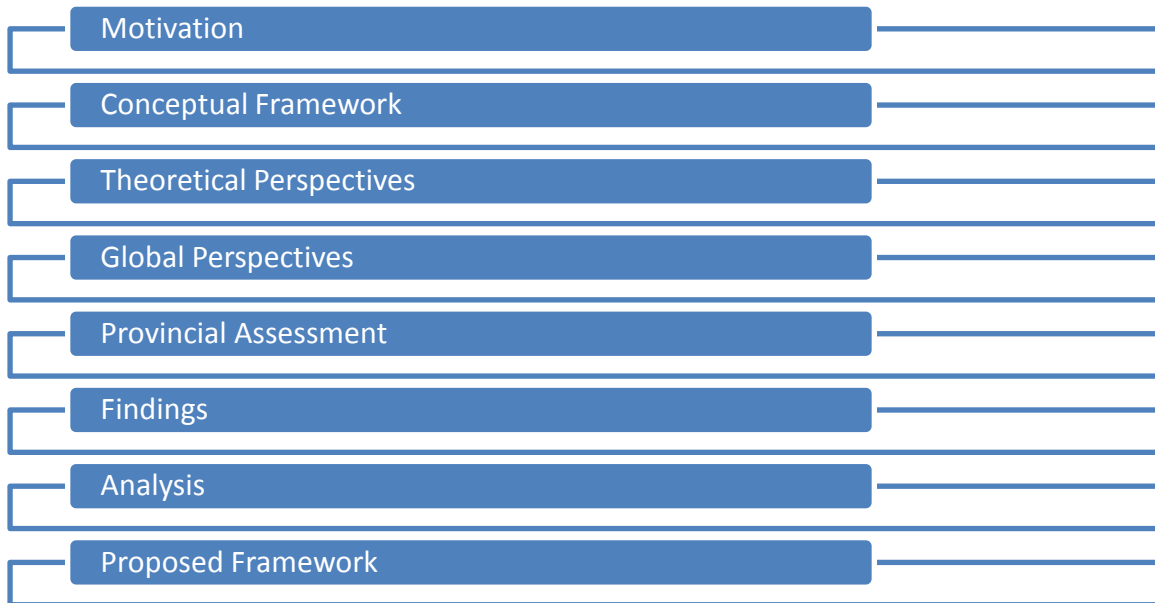
administrative elite and the overall ineffectiveness of managerialist public sector reforms are responsible for the weakening power of provincial legislatures and poor governance in the provinces (see page 36, paragraph 1.2.10 in chapter 1 and page 380, paragraph 6.4.2 in chapter 6 above).

Thus, the failure of provinces to fully exercise their authority through the powers and functions vested in them through the Constitution brings into question their capacity to deliver on their mandate and fulfil their legislative and executive obligations (see paragraph 5.2 in chapter 5 above). This failure and lack of capacity by provinces to exert and reaffirm their autonomy is due to the decline of assemblies and the progressive weakening of legislative power in provinces, which have been reduced to so-called talking shops that merely rubber stamp decisions made elsewhere outside the legislature. This external influence on provincial legislatures by powerful interest groups, such as business, labour, the military and society, in policy direction and decisions in the assemblies is responsible for the declining capacity of provincial legislatures to exercise their legislative and functional discretion and subsequently the failure to fulfil their legislative and executive obligations. This failure on the part of provinces translates into failure to deliver on their electoral and constitutional mandate. The decline in capacity and the failure of legislatures to fulfil their legislative and executive obligations gives rise to such acts of poor governance as state capture and corruption (see page 1, paragraph 1.1 in chapter 1; paragraph 3.7.1 in chapter 3; page 354, paragraph 6.2; and page 380 and 392, paragraph 6.4.2 in chapter 6 above).

Furthermore, the good governance indicators as determined by international organisations, such as the World Bank and other organisations promoting good governance in the public sector, provide the lens through which provincial governance in South Africa is assessed. The constitutional values and principles of good governance in public administration, as provided in section 195, chapter 10 of the Constitution, serve as specific performance indicators against which provincial governance is assessed. Thus, the contribution, recommendations and conclusion of the present study are formulated and delineated within this theoretical and constitutional framework and thus provides potential solutions to reconfigure, strengthen and improve good governance within the public sector in South Africa, particularly within the provincial sphere of government.

Therefore, the study firstly emphasises the constitutional values and principles of good governance in public administration as the basis for the objectives that the current South African governance framework is designed to uphold and achieve. These values and principles are in line with those prescribed by major international organisations promoting good governance in both the private and public sectors in all countries across the globe. Secondly, the study supports a provincial governance framework that espouses the values and principles of federalism, particularly the devolution of significant powers and functions to provinces that are constitutionally guaranteed to ensure and safeguard the autonomy of these institutions of democratic governance. Thus, the assignment of constitutionally guaranteed powers and functions to provinces would require constitutional reforms to establish South Africa as a federation whereby provinces have the authority and capacity to act independently as autonomous structures of government. This autonomy is critical for provinces to fulfil their legislative and executive obligations in the best interest of their diverse constituencies within their respective jurisdictions, as prescribed by the amended Constitution, while serving common national interests in the federal government. For example, this autonomy is critical to ensure fiscal autonomy, as in the current dispensation provinces have limited revenue sources of their own and receive an equitable share of the national revenue (see page 36, paragraph 1.2.10 in chapter 1; page 203, paragraph 4.2; and page 209, paragraph 4.3 in chapter 4 above). These reforms are expected to reverse and address the challenges of poor governance currently being experienced in provinces as a direct result of the centralisation of powers in the national government by the ANC-led administration, which is characteristic of a unitary state (see page 1, paragraph 1.1 and page 19, paragraph 1.2.3 in chapter 1 above).

The objectives dealt with in each chapter provide historical, theoretical and practical political insights and perspectives on the research problem and thus contribute to the field of good governance in the South African provincial sphere of government. The study took an exploratory research approach to understand the status and role of provincial governance in the South African constitutional dispensation 1996 to 2012. This path is depicted in the study outline, as shown in Figure 9.1 below (see page 60, paragraph 1.4 in chapter 1 above).

Figure 9.1: Outline of the study

Source: Constructed from the design and outline of the study

Figure 9.1 above depicts the path and research design espoused in the study to discern a scientific assessment and analysis of the status and role of provincial governance in the South African constitutional dispensation 1996 to 2012. The research commenced with a clear conceptualisation of the research problem and design based on the motivation of the study. The resultant research approach and path undertaken by the study then enabled an extensive and thorough assessment of provincial governance and analysis of the findings to develop an effective governance framework for provincial governance in South Africa.

9.1.1 A case for good governance

The present study was inspired by political discourse and policy initiatives within the ruling ANC to review the constitutional configuration of the provinces – the abuse of state power and institutions of democratic governance, such as the legislature and the executive, by the ANC, which uses its majoritarianism to subvert democracy and public institutions of governance, threatens the country’s democracy and the ideals of good governance (values and principles) entrenched in the Constitution. This review of provinces implies instituting a legislative reform process that requires amendments to the Constitution. The amendment of the Constitution requires a Bill to be passed by a two-thirds majority vote in parliament (see

Chapter 4 section 74 (Bills amending the Constitution) of the Constitution, particularly subsection 74 (3) (ii) dealing with alterations of provincial boundaries, powers, functions or institutions). Further, a rigid and short-sighted Constitutional amendment and policy reform may be problematic in that it may limit the capacity and flexibility of government to address unforeseen emerging legislative and executive challenges more effectively. This is due to the legislative and administrative constraints that may emanate from confining powers and functions to a specific sphere of government and thus limiting the potential economies of scale and collaborative synergies that would be generated and harnessed through a unified and flexible form of governance as and when required.

Thus, the flexibility in passing legislation and intervening in SNGs under certain circumstances, as provided for in the Constitution, is the most effective tool to define the competencies of each sphere of government under normal circumstances, while allowing for overlap and flexibility when the need for intervention and override arises. In this manner, the Constitution provides the necessary safeguards and guarantees for SNGs to exercise their Constitutional authority and autonomy in matters concerning their constituencies and jurisdictions with respect to political, fiscal, administrative and judicial independence. At the same time, the Constitution creates space for national unity and integration in matters of national concern regardless of the location of such areas of concern across the different jurisdictions. This is in line with the ideals of federalism that promotes both unity and diversity in a political organisation by reconciling both the marketplace (competition and self-rule) and a commonwealth (unity and shared-rule) (see paragraph 4.2.2 in chapter 2 above).

However, although this flexibility that enables parliament and national government to intervene in provinces to maintain national security, economic unity and standards (see section 44 (2) of the Constitution) is noble and well-intended, it is also susceptible to abuse by unscrupulous and corrupt politicians and elites who exploit and abuse these constitutional provisions to dispense patronage and benefit themselves unfairly. The benefit deriving from a unified nation of one single community rather than competing SNGs is a strong national government that is better positioned to mitigate the power of interest groups and counter the power of business and globalisation (see paragraph 4.2.2 in chapter 4 above). However, the pervasive power of the central government may also lead to the creation of a large government that increases corruption and rent-seeking practices, such as private misdeeds,

excessive patronage, nepotism, secret party funding, graft, bribery, extortion, and overtly close ties between politics and business interests (see paragraph 3.7.1 in chapter 3 above).

Such malfeasance is largely due to the failure to separate politics and administration and thus perpetuate the patron-client relationship between public administrators involved in policy-making and elected representatives. This relationship impedes the ability of public institutions to ensure accountability (see paragraph 3.7.3 in chapter 3 above). In contrast, subnational self-government, that is, self-rule, competition and subnational autonomy promotes democracy and these sub-units are more flexible and responsive to the needs of citizens and international developments than national governments. This is in line with the principle of subsidiarity, which demands decision-making to be made at the sphere of government closest to the people (see paragraph 4.2.2 in chapter 4 above).

Thus, greater political and fiscal autonomy of provinces in line with the principles of competitive federalism forces provinces to provide better tax regimes and public services in their jurisdiction. Effective and stronger governance in government leads to improved quality of life and provision of public services, such as housing, social amenities, job creation and economic development (see page 354, paragraph 6.2 in chapter 6 above). Otherwise, these provinces would risk their mobile production factors, that is, citizens and capital, exiting to more competitive jurisdictions. Thus, competitive federalism promotes provincial fiscal discipline, fiscal efficiency and responsibility in managing public resources, which translates into improved governance (see paragraph 4.3.9 in chapter 4 on competitive federalism and page 407, paragraph 6.5.3 in chapter 6 above on efficiency and New Public Management).

However, since this theory of fiscal federalism holds only when specific institutional preconditions are in place, which include state and local tax assignment, direct democratic elections, intergovernmental grants, revenue sharing and informal institutions to produce the desired effects and benefits, the necessary legislative and policy authority needs to be put in place in South Africa through constitutional and legislative reforms to accord provinces the necessary powers and functions to guarantee their legislative authority and functional discretion. Constitutional and legislative reform is necessary to significantly increase the legislative, political, fiscal, administrative and intergovernmental capacities of provinces. This reform will empower provinces to serve as alternative centres of citizen representation, responsible government, legislative initiative, and oversight of the bureaucracy, instead of

mere public service delivery mechanisms and administrative arms of the central government that undertake very few initiatives of their own (see page 27, paragraph 1.2.8 in chapter 1, paragraph 4.3.10 in chapter 4 and page 397, paragraph 6.5.1 in chapter 6 above). Policy and legislative reforms, including reforms of public institutions, would improve good governance in government and state entities and will go a long way in the reduction of ills, such as corruption (see page 412, paragraph 6.5.5 in chapter 6 above).

The constitutional powers of national government to intervene in SNGs and the resultant corruption and lack of accountability are the crux of the problem and the root of poor governance that threatens the stability and integrity of government in South Africa. This exploitation of the political system of government that capitalises on the weakness of configuration of government undermines the constitutional values and principles of good governance, as outlined in section 195 of the Constitution. Further, it undermines the legislative and functional discretion, that is, integrity and autonomy that the Constitution grants the provinces (through provisions of chapter 5 of the Constitution and Schedules 4 and 5) to exercise the powers and functions assigned to them. This in turn undermines and erodes the trust, democratic legitimacy and electoral mandate that the constituencies vest in the provinces to undertake legislative and executive functions.

It further undermines the ability of the legislature and other democratic institutions to exercise oversight of the executive and to hold it to account (see page 380, paragraph 6.4.2 in chapter 6 above). Thus, a collapse of accountability structures and processes with respect to the electoral mandate strikes a severe blow to democratic principles and processes, which constitute the pillar and foundation of South Africa's constitutional democracy. Public stakeholders should put pressure on public agencies to achieve both economic efficiency and democratic legitimacy in the allocation of public resources (see paragraph 3.2 in chapter 3 above and figure 9.2 below), and a proposed good governance framework which incorporates and highlights the importance of the democratic institutions, structures, processes, mechanisms and strategies necessary to defend democracy and uphold the constitutional values and principles of good governance in the provincial sphere of government (see page 404, paragraph 6.5.2 in chapter 6 above for policies, bills and legislation that provide mechanisms to facilitate and promote ethical and professional conduct and practices in the public service and thus promote and strengthen good governance in government). This arrangement will ensure that the ultimate authority lies with the people, even though the

representatives (in bureaucracies and public institutions including legislatures and executive) manage the affairs of the state; that is, representative democracy and accountability (see paragraph 3.7.3 in chapter 3 and page 397, paragraph 6.5.1 in chapter 6 above).

Therefore, it stands to reason that the guarantees and safeguards provided in the Constitution to protect the interests of constituencies in their different jurisdictions are under threat and thus need to be revisited and strengthened. Reviewing and strengthening these guarantees and safeguards through policy and administrative means has failed dismally over the years as evinced by the rampant disregard for the law, endemic corruption and lack of accountability across all spheres of government and state entities (see chapter 7). Thus, a legislative process that will solidify and clearly define the legislative and functional discretion of the constituent units (all spheres) of government is necessary.

The political and policy reform discourses mentioned above were largely informed and sparked by widespread cases of poor provincial administration and service delivery protests across the country. Although the issues of service delivery are largely a local government competence, they painted a bleak picture and reflected a dire state of affairs within both the provincial and local governments that are reflective of poor governance – which is indicative of inefficiencies and lack of legislative and operational capacity in most provinces. These developments sparked major debates among political parties, the media and many political analysts in the country. Community service delivery protests and other forms of public revolt are clear indications of the failure and collapse of public platforms and institutions that are required to facilitate public participation and consultation – a cornerstone of South Africa's democracy (see paragraph 2.4 in chapter 2 and 3.7.3 and 3.7.4 in chapter 3 above).

Representative democracy through public participation promotes accountability and builds trust in public institutions (democratic legitimacy), which helps to reduce the discretionary powers of public officials; thus, deterring corruption and the abuse of state resources and power (see paragraph 3.7.3 in chapter 3 above). These public protests further demonstrate the public's total lack of confidence in the government and public institutions. However, the ways and means used by the public to express their dissatisfaction and lack of confidence in the ruling elite are not effective in bringing about change and the desired outcomes despite being recognised as legal democratic processes. Thus, the severity and extent of these

community protests point to a serious governance challenge that needs to be addressed to ensure political and economic stability in the country.

However, failure to provide adequate public services and sustainable development is symptomatic of deeper and more fundamental challenges of capacity at all spheres of government, particularly the provincial and local government spheres. Capacity is a function of powers and functions, that is, legislative and functional discretion, which is prescribed and defined by the Constitution. Thus, the root cause of lack of capacity among provincial and local governments, which manifests as poor public service delivery, is the constitutional allocation of powers and functions to government subunits. Thus, any fundamental change to capacitate provinces with regards to fulfilling their legislative and executive obligations requires deliberate and strategic legislative and policy reforms, which ultimately necessitate constitutional amendment of certain sections of the Constitution that define and prescribe the allocation of powers and functions to this sphere of government *vis-à-vis* other spheres of government (see page 501, paragraph 8.2 in chapter 8 above).

Some of the sections or clauses of the Constitutions, which would require amendment to effect the necessary reforms to empower and capacitate provinces by reviewing the allocation of powers and functions, include the following (RSA, 1996):

- Section 40 – Chapter 3 - Co-operative government
- Section 100 – chapter 5 - National intervention in provincial administration
- Section 104 - Chapter 6 - Legislative authority of provinces
- Section 114 – Chapter 6 - Powers of provincial legislatures
- Section 125 – Chapter 6 - Executive authority of provinces
- Section 146 – Chapter 6 - Conflicts between national and provincial legislation
- Section 147 – Chapter 6 - Other conflicts
- Section 148 – Chapter 6 - Conflicts that cannot be resolved
- Schedule 4 – Functional areas of concurrent national and provincial legislative competence
- Schedule 5 – Functional areas of exclusive provincial legislative competence

Service delivery, being the competence of government, is in itself an indicator of government performance and the degree of good governance in these structures and systems of

government as they reflect government performance with regards to the quality of public services, efficiency and prudent fiscal management, public participation and democracy, and the rule of law. In other words, the level of service delivery or lack thereof provides a barometer to assess the degree to which provinces promote and uphold the values and principles of good governance in executing their constitutional mandate, particularly in relation to their executive obligations.

The worsening state of service delivery that is, poor governance in some of the provincial and local governments in the country was further confirmed when the national government invoked section 100 of the Constitution to place some of the severely challenged provincial departments in such provinces as Limpopo and the Eastern Cape under administration. These developments brought into question the capacity and role of provinces in relation to their legislative and functional discretion; thus, triggering the debates within the ruling ANC about whether the architecture and configuration of provincial governance and the allocation of provincial powers and functions should be reviewed to address the governance challenges experienced by some provinces (see page 2, paragraph 1.1. in chapter 1 above).

In essence, the attempt to review the provinces is a constitutional matter as it seeks to review the constitutional provisions that prescribe the architecture and configuration of the provinces. This is a field dealing with the political systems of government that are the two opposite extremes of government configuration, namely, unitary and federal states. The former centralises the powers in the central government, with little autonomy for the SNGs. The latter devolves powers to the SNGs that are constitutionally guaranteed and protected. The main focus of Chapter 1 was to clearly delineate the focus and parameters of the study, discuss and explore the different options and theories of systems of government, and discuss the current debates around the review of provinces in relation to the key performance indicators of good governance and highlight challenges and weaknesses within the constitutional framework that prescribes the legislative and functional discretion and capacity of the provinces, which are critical for good governance.

The main focus of the inquiry was the constitutional powers and functions of provincial governments with regards to the capacity of the provinces to effectively and efficiently fulfil their legislative and executive (law making, administrative and policy implementation) obligations; that is, policies and procedures on the one hand and systems and processes on the

other. The ANC responded to these developments by initiating policy proposals and the introduction of Bills, which sought to alleviate the challenges facing provincial governments. However, these actions were perceived by the main opposition party, the DA as attempts by the ANC to centralise power in the national government away from provinces and municipalities (see page 1, paragraph 1.1 in chapter 1 above).

The centralisation of functions in the national government goes against international developments in countries such as the US where more powers and functions are being transferred to states to increase innovation, and improve response to constituency preferences and efficiency in the delivery of public goods and services because of their proximity to the people and better knowledge of their constituencies (see paragraph 2.3.3 in chapter 2 and 3.7.4 in chapter 3 above). However, it should be noted that throughout the 19th and 20th centuries, the states in the US (the most advanced and oldest federation), shifted their responsibilities to the federal government in such policy areas as infrastructure development, particularly in rail construction, due to a lack of capacity in these functional areas (see paragraph 4.2.2 in chapter 4 above).

The DA's fear of the centralisation of power is based on the compromise arrangement of the country's government into three spheres of government; that is, national, provincial and local. This compromise was made during the Codesa multi-party negotiations between 1990 and 1994 and was aimed at accommodating the concerns of minority parties that were part of the constitutional discussions by providing guarantees and safeguards to protect and preserve their rights and interests within their respective jurisdictions. This arrangement of government into spheres of government, each with legislative, judicial (except local government which can only pass by-laws) and revenue or expenditure authority, makes South Africa a federal state, commonly referred to as a quasi-federal system or a decentralised unitary state as the Constitution does not give provinces autonomous powers (see paragraphs 1.3 and 1.4 in chapter 1 above).

Chapter 1 thus explored the political systems of government in other countries and found a general inclination towards decentralisation, as found in many federal states, particularly due to the increase in democracy in many developing countries and the diversity of societies (cultural, ethnic, religious, political, etc.). However, these powers and functions need to be controlled by a system of checks and balances, such as powers of the national legislature and

executive to legislate and intervene in functional areas of SNGs in matters of national concern. This implies that the powers and functions assigned to provinces are not absolute and may only be exercised within the set parameters of the Constitution and the law as currently prescribed in the Constitution. The rule of law constitutes a set of stable political rules and rights applied impartially to all citizens. The law and the application of the rule of law play the role of a jurisdictional constraint on state behaviour; thus, an institutional setup that has effective checks and balances and countervailing powers that are critical for the rule of law, democratic legitimacy and good governance (see paragraph 3.7.2 in chapter 3 above).

9.1.2 Systems and structures of good governance

Chapter 2 discussed in detail the theories and models of federal states in different parts of the world to explore their applicability to South Africa given the challenges of poor governance and failure of some provincial governments and municipalities to deliver on their constitutional mandate (as mentioned in paragraph 1.1 in chapter 1). The South African form of government (political system of government), that is, a decentralised unitary state bears a striking resemblance to those of Germany, the US and Nigeria, albeit with limited autonomy for the provinces. The models of governance adopted in these countries are anchored on the following: they promote and uphold the values of democracy, transparency, accountability, diversity, unity, shared and regional self-rule and the common and varied interests of the citizenry of a country. The defining feature of a federal state is the principle of advocating for a multi-tiered government combining the elements of shared rule and regional self-rule to accommodate the varied interests of their diverse societies.

In addition, federalism is based on the value of combining unity and diversity and accommodating, preserving and promoting distinct identities within a larger political union (see section 2.2 in chapter 2 above) (Erk, 2004:2). Federalism seeks to achieve liberty and freedom in cultural and regional matters, and unity in common social, economic and political matters. In a federation, states exercise some degree of regional autonomy despite having a single sovereign central government. Political practice in many political systems of federal states is distinctly different from the constitutional prescripts. There is a general trend by many states to move from a constitutionally prescribed quasi-federal form of state, similar to unitary states, to a more federal state. Examples of countries that have transformed from a

quasi-federal to a federal state in political practice include India, Canada, Switzerland, Russia and Belgium.

Another form of federalism is asymmetrical federalism, which refers to great variations in the territorial, economic and demographic conditions of a country, as found in countries such as Germany and Brazil. Asymmetry is also used to describe states where one part enjoys autonomy and the rest do not (see page 94, paragraph 2.4 in chapter 4 above). Asymmetry in federalism is prevalent in South Africa due to the history of the country of separate development and apartheid (see page 289, paragraph 5.3.2 in chapter 5 above). Asymmetry in federalism in South Africa is also due to the country's uneven distribution of natural and mineral resources, which concentrates economic activities and resources in some areas; thus, creating variation in territorial, economic and demographic conditions. This can also be ascribed to the country's history of apartheid, which promoted separate development and confined the black majority to homelands where socio-economic development opportunities were limited.

Chapter two further discussed various aspects of federalism, including decentralisation, the distribution and separation of powers, presidentialism and parliamentarianism, and intergovernmental relations. Decentralisation, that is, the transfer of political, fiscal and policy autonomy and authority from the central government to SNGs, is the most important feature of federalism. Policy decentralisation reforms deepen democracy, increase the autonomy of SNGs, and reduce the inefficiencies of centralised fiscal policy. The benefits of fiscal decentralisation include the efficient use of public resources by assigning policy control and power to the SNG and the resultant additional positive results for economic development within a country as SNGs are more responsive to local concerns; that is, subsidiarity (see paragraph 4.3 in chapter 4 above).

Decentralisation is also the most important differentiator between federal and unitary states, which in contrast centralise political, fiscal and policy autonomy in the central government, thus, subordinating SNGs to the central government. Another important feature of federal states is the separation of powers between the three branches of the state, that is, executive, legislature and the judiciary, and the notion of checks and balances that serves to prevent the abuse of power by one branch of the state. Thus, these features of federalism promote and protect the central values of good governance, such as democracy, transparency,

accountability, diversity, unity, shared and regional self-rule, and the common and varied interests of the citizenry of a country (see page 80, paragraph 2.2 in chapter 2 above).

9.1.3 Theoretical perspectives of good governance

Chapter three provided a theoretical perspective, background, and a detailed discussion and analysis of federalism in the international context in both developed and developing countries. The US, as the oldest and most developed federation and democratic state that has embraced and upheld federalism as a form of government, strongly advances a case for federalism as the most appropriate and effective form of state for culturally and politically diverse countries seeking to attain political and economic stability and good governance. The federalism model in the US transitioned from a layered-cake model in which the federal government played a limited role in the affairs of states prior to World War II and the Great Depression, to a marble-cake model or cooperative federalism in which the federal government played a significant role in the affairs of the states (see page 86, paragraph 2.3.1 in chapter 2 above).

The concept of cooperative federalism is found predominantly in Germany and refers to an interlocking system of actors at various levels of government and a complex interweaving of legislative and executive competencies and financial dependencies required in the functioning of government. This system creates checks and balances as well as inclusivity in decision-making, which are critical for good governance, transparency, integrity and the democratic legitimacy of the state (see paragraphs 3.2 and 3.4 in chapter 3 above). However, for a country widely known for its federalism, the US is found to be highly centralised instead. In the US, the states and local governments formulate less of their own policies and instead focus more on implementing federal policies and responding to federal grants, much like in South Africa (see page 27, paragraph 1.2.8 in chapter 1 and page 323, paragraph 5.4.3 in chapter 5 above).

Cooperative governance in South Africa is based on the German model, which emphasises concurrency, provincial delivery of national policies, and provincial representation at the centre. The South African government introduced new institutions, actors and processes to support and facilitate the implementation of this model. However, this model is difficult to implement because the ruling ANC favours a centralised polity and because provinces and

local governments have weak political, administrative and fiscal capacities. Thus, a stronger federal polity in South Africa that constitutionally guarantees and protects the autonomy of provinces with respect to their legislative and functional discretion would strengthen the political, administrative and fiscal capacities of provinces and thus improve good governance in this sphere of government (see page 27, paragraph 1.2.8 in chapter 1 above).

In Europe, the two leading federal states are Germany and Switzerland. Switzerland formed by uniting different linguistic and ethnic communities, while maintaining and recognising the ethnic and cultural identity differences of these communities. Other federations are formed by federalising a unitary state by granting autonomy to ethnically and culturally diverse communities in ethnically plural societies. Canada, Belgium, India and Spain are examples of countries that were formed by federalising (see chapter 4 above).

A federal state benefits from the advantages of decentralisation, which include public participation, and the subsidiarity principle and Oates' decentralisation theorem that advocates for efficient provision of Pareto-efficient levels of output of public goods by local governments, rather than central government (see page 212, paragraph 4.3.1 in chapter 4 above). In contrast to decentralisation, the advantages of centralisation include the following: the ability of centralisation to internalise local or regional spillovers; the advantages of economies of scale resulting from the provision of services by the central government; and the provision of distributive services by central government to prevent wealthy people from leaving jurisdictions with high distributive preferences.

In Germany, the federal government is not restricted in setting its taxes, whereas the SNGs have little power in this regard (Jochimsen, 2008:542). Joint policy-making (*Politikverflechtung*) in Germany is responsible for so-called blockade politics whereby the *Bundesrat*, which represents the *Länder*, wields a veto power in over one-third of legislation including tax reform bills. However, the effect of blockade politics has been reduced since the 2000 reforms, which reduced the veto powers of the *Bundesrat* in passing legislation from 40 percent to two-thirds. Further constitutional reforms of 2006 addressed this policy blockage provision and streamlined policy-making in Germany (see page 218, paragraph 4.3.3 in chapter 4 above).

In Switzerland, the Constitution was revised and adopted on 1 January 2000 to provide for ethnic diversity, while also allowing individual cantons to hold the federation together in unity. The principle of self-rule for Switzerland's 26 cantons and shared-rule in the federal government is of utmost importance to accommodate the linguistic, cultural and ethnic diversity of the country's populace (see page 222, paragraph 4.3.5 in chapter 4 above). Decentralised states adopted the democratic principles and values of putting in power democratically-elected national governments and SNGs. The benefits of decentralised governments include good governance, political stability, conflict resolution and economic efficiency. The wave of democratic consolidation has swept through many countries in Africa and Asia since the 1990s, which embraced decentralisation and federalism as part of their reform strategies. However, in Asia two of its largest and fastest growing economies, India and China, adopted federalism and fiscal decentralisation much earlier – in the 1970s and 1980s respectively (see page 235, paragraph 4.4 in chapter 4 above).

9.1.4 Different constitutional dispensations in South Africa

The political developments in the history of South Africa can be categorised broadly into two periods, that is, pre- and post-1994 democratic elections. The period prior to 1994 spans nearly a century, that is, 84 years since the inception of the 1910 Constitution, which established the Union of South Africa to unite the former British colonies and the Boer Republics when it emerged as a self-governing union under the British Crown. The formation of the Union of South Africa marked the beginning of a formal government system that discriminated against Africans and excluded them from governing the country, thereby entrenching racism at the very heart of the South African constitution. The second period of a Constitutional dispensation occurred in 1948 when the Afrikaner Nationalist Party (led by D.F. Malan, who was the Minister of Home Affairs in the Union of South African parliament), came to power in 1948 and continued with the policy of segregation first established by the British colonial officials to legally entrench their policy of apartheid or separate development (see page 286, paragraph 5.3 in chapter 5 above) (Mare, 2011:621).

Another major constitutional development occurred in 1961 when South Africa with the help of the *Broederbond* seceded from the Commonwealth and declared itself a Republic (Omond, 1987:622). The *Broederbond* was a covert and ultra-secret organisation, which sought to harness social, economic and political forces within and outside South Africa to promote the

cause of ultimate Afrikaner domination and to serve as a vanguard of Afrikaner Nationalism. However, the 1960s and 1970s saw a dramatic increase in black resistance and revolt against the apartheid government, and the rise and influence of Black intellectuals within the anti-apartheid movement, which was inspired by the Black Consciousness Movement of Steve Biko (Helliker & Vale, 2013:27; Posel, 2013:62). Major revolutionary events during this period include the 1973 Durban dockyard workers' strikes, the Soweto uprisings of 1976, and the nationwide protest that followed as a result of the imposition of Afrikaans by the apartheid regime as a medium of instruction and inferior schooling/education in black schools outside the Bantustans (see page 299, paragraph 5.3.4 in chapter 5 above) (Lee, 2010:75; Johnson, 1982:231; Brooks, 1996:210).

The last major constitutional development before the 1994 general elections was the 1983 Constitutional provision for the formation of a Tricameral Parliament, which excluded the black majority. This led to the formation of the UDF in response to the apartheid government's attempt to coopt the Coloureds and Indians, in what Drew (2003:174) calls the "New Deal". The UDF was a high-profile anti-apartheid umbrella organisation formed in Cape Town in August 1983. The formation of the UDF posed unprecedented challenges for social, economic and political change in the 1980s against the apartheid government. These challenges included a growing black middle-class as a result of the liberalisation of labour laws, that is, increased unionisation of black workers and the end of job reservation (Mogadime, 2005:155) due to the increased demand for skilled workers for industrial production spurred by economic growth and the relaxation of influx control and pass laws (see page 299, paragraph 5.3.4 in chapter 5 above). Then, in the 1990s, the multi-party democratic negotiations (Codesa) began with the aim to address the political instability and violence in the country. These negotiations paved the way for the country's first democratic elections in 1994. These elections and the subsequent victory by the ANC were followed by the formation of the TRC and the consolidation of democracy through the formation and strengthening of democratic institutions and processes (see page 308, paragraph 5.4 in chapter 5 above).

9.1.5 A historical perspective of governance in South Africa

Chapter 5 focused on good governance in the South African government as a means to engender and promote an efficient, effective, responsive, corruption-free and citizen-centred

administration within the government. Calls for improved governance in the state are gathering momentum as an increasing number of the country's population languish in abject poverty and the levels of inequality and corruption have reached unprecedented proportions. Good governance, as the exercise of economic, political and administrative authority to manage a country's affairs at all levels, is expected to improve the people's trust in government; that is, democratic legitimacy and promoting social harmony, political stability and sustainable economic development. The main objectives of good governance include the removal of corruption and the strengthening of public institutions, institutional integrity, public participation, transparency, administrative efficiency and accountability. Reforms aimed at improving good governance in a state, as advocated by international donor organisations such as the IMF and the World Bank, should be undertaken in the political, social, economic and legal contexts. Yet the dangers of a one-size-fits-all approach should be taken heed of given the varying contexts and history of the country. Key role players in the governance of a state include civil society, the private sector, government, and the media (see page 354, paragraph 6.2 in chapter 6 above).

The United Nations Development Program identifies the five principles of good governance as legitimacy and voice, direction, performance, accountability and fairness. Section 195 of the South African Constitution sets out the values and principles of good governance in the public administration, which include a high standard of professional ethics, orientation towards development, impartiality, fairness, equity, public participation in policy-making, accountability, transparency, good human capital management and development practices, promotion of broad representation, and focus toward redressing the imbalances of the past. Various governance mechanisms are employed in South Africa, on the African continent and internationally to strengthen and promote good governance. On the African continent, the most common governance mechanisms used are the Mo Ibrahim Index of African Governance (IIAG) and the African Peer Review Mechanism (APRM) (see page 366, paragraph 6.3 in chapter 6 above).

In South Africa, the various mechanisms used to promote and engender good governance include parliamentary committees, the PSC, the Public Protector, state institutions supporting constitutional democracy, that is, ombudsmen, policy and legislative frameworks, and various indicators, such as the values and principles of the public service as prescribed by section 195 of the Constitution. These indicators, as promoted and assessed in the public sector, are in

line with those of the World Governance Index (WGI), as developed by the World Bank. These include voice and accountability, political stability and absence of violence, government effectiveness, regulatory quality, rule of law and control of corruption (see page 376, paragraph 6.4 in chapter 6 above).

9.1.6 Good governance in South Africa

Chapter 6 of the Constitution provides the powers and functions of provinces in terms of the legislative, administrative and executive authority vested in them. Chapter 7 of the present study analyses the performance of the provinces with respect to exercising their powers and performing their functions in accordance with good governance principles. The constitutional values and principles, as set out in section 195 of the Constitution, constitute the good governance framework according to which the performance of provinces is measured. The PSC, which was established by an Act of Parliament, in accordance with the provisions of section 195 and 196 in chapter 10 of the Constitution, is required to be an independent institution that supports democracy in the country by exercising oversight over the public administration, thereby promoting and enforcing good governance in the public service (see page 435, paragraph 7.2 in chapter 7 above).

However, based on the findings of the present study and those of the PSC, it is very clear that the provinces in South Africa are far from achieving good governance in their administration. The recommendations of the PSC, which are aimed at improving good governance in the provinces in accordance with the values and principles of good governance as prescribed by the Constitution, only serve as guidelines but do not enforce compliance nor cultivate good governance in their conduct. Thus, more effective measures of ensuring compliance and upholding the values and principles of good governance are required.

Monitoring and evaluation alone will not engender good governance. Stronger, corrective and punitive measures, that is, sanctions, are necessary to enforce compliance and cultivation of a culture of good governance in the provinces. Thus, an integrated good governance framework that comprises of a number of different structures or institutions, processes, mechanisms and strategies is required to improve good governance in the provinces. The most critical component of the framework would be the legislative and policy reforms, which provide the

authority and legislative framework to define and prescribe these institutions, processes, mechanisms and strategies (see page 168, paragraph 3.5 in chapter 3 above).

Legislative and policy reforms with respect to the legislative and functional discretion of provinces is likely to provide the authority necessary to guide and compel provinces to comply with and uphold the values of good governance in their legislatures and administrations. The failure of other measures to improve good governance in provinces is largely due to the structural and procedural constitutional prescripts that constrain the autonomy and executive discretion of the provinces in the current (1996-2012) constitutional dispensation. These constraints are rooted in the Constitution, which prescribes the powers and functions assigned to all spheres of government – all molded and encapsulated in a rigid legislative and constitutional framework and systemic procedures and processes of exercising these powers and functions.

This legislative reform would entail passing a Bill in Parliament to amend the Constitution, in accordance with the provisions of the Constitution (see paragraph 8.4.6 in chapter 8 above). This constitutional amendment would effectively reconfigure the structural, procedural and administrative framework of the provinces with respect to their legislative authority and functional discretion, that is, redefining the autonomy of provinces in passing legislation and their authority to implement policy within the functional areas assigned to them. The integrity of the Constitution as the supreme law of the country should be maintained with respect to its robustness; thus, ensuring that it is not unitarily amendable and requires the consent of a significant proportion of the constituent units, as is currently provided for.

The amendment of the Constitution in South Africa requires a Bill passed in Parliament with the support of at least 75 percent of the members of the National Assembly and at least six provinces in the NCOP (RSA, 1996:29). The independence of the judiciary, which serves as an umpire to rule on disputes between the spheres of government, should be protected and guaranteed. This is another cardinal element of the governance framework that will improve governance in the provinces. The independence of the judiciary is critical in ensuring fairness and impartiality in adjudicating conflicts of powers and jurisdiction between the federal and state governments, unlike in Brazil where the judiciary often rules in favour of the federal government (see paragraph 4.4.1.1 in chapter 4 above).

Furthermore, as Schedules 4 and 5 of the Constitution provide for Functional Areas of Concurrent National and Provincial Legislative Competence and Functional Areas of Exclusive Provincial Legislative Competence, respectively, these assignments of functional areas need to be revised to ensure the clear and definite autonomy of provinces in matters of self-rule (exclusive legislative competences) and shared-rule (concurrent legislative competences), respectively; that is, clearly defined jurisdictions. The reorganisation and rearrangement of the assignment of powers and functions to the provinces should be done in a manner that prevents the pervasive overlap of functions, which would enable the national government to encroach in matters of the provinces and *vice versa*; particularly in matters that essentially reside in the competence of provinces.

Decentralisation, that is, the transfer of authority to SNGs reduces the role of the central government by fragmenting central authority and introducing more intergovernmental competition and checks and balances⁴¹ (see paragraphs 2.7.2 in chapter 2 and 4.4 in chapter 4 above). Other benefits of decentralisation include improved government efficiency and responsiveness, diffusing social and political tensions in ethnic conflicts or ethnically diverse nations, and ensuring local, cultural and political autonomy (see paragraph 4.4.1.1 in chapter 4 above). This would be akin to the old layered-cake model of federalism in the US in which the federal government played a limited role in the affairs of the states. However, in view of the shared-rule attributes of federalism, the concurrency of functions in some areas would require a marble-cake model of federalism; that is, cooperative federalism in which the central government plays a significant role in the affairs of the states, albeit on a consultative and consensual basis (see paragraph 4.2.1 in chapter 4 above). This provision is critical in vesting the autonomy and independence of subnational politicians and officials in the provinces and directing their accountability to their constituencies and not the national government or any other structure or political figure outside their jurisdiction.

Furthermore, the scope of functional areas within the exclusive competence of provinces should be increased to reduce their dependence on the national government for fulfilling these functions. Of course, greater consideration should be made with respect to Oates' theory and principle of subsidiarity that advocates for greater efficiency in devolving some functions to SNGs, while other functions are best located at the central government for

⁴¹ Many countries moved from authoritarian rule to re-democratisation through constitutional frameworks that redistribute and restrict political power, that is, decentralisation.

reasons of economies of scale, national interest and the ability of centralisation to internalise local or regional spillovers (see page 590, paragraph 9.1.3 above). Thus, a fine balance needs to be struck with respect to the assignment of exclusive and concurrent functions to the provinces, lest challenges of capacity and efficiency arise as a result of poor allocation of powers and functions to the provinces. Such challenges may arise if the functions and mandates allocated to provinces cannot be fulfilled, for example, due to limited capacity as a result of limited financial resources and human capital to deliver on the assigned functions.

In addition to the work of the PSC, other measures taken by the state to ensure that the public administration carries out its functions and exercises its powers in accordance with the Constitution include various pieces of legislation and policies aimed at curbing corruption within the state, such as the Prevention and Combatting of Corrupt Activities Act of 2004 and the Public Service Anti-Corruption Strategy (see page 428, paragraph 7.1 in chapter 7 above). The assessment and analysis of the performance of provinces, apart from the entire state administration, is on the basis that South Africa is a decentralised unitary state; that is, despite being a unitary state, it has devolved some administrative, legislative and expenditure authority to the subnational spheres of government. Therefore, the performance of these SNGs is expected to be different from that of the national or central government. The focus of the assessment of provinces is on the Offices of the Premier (OTP), which because of the constitutional mandate of executive authority in the province are responsible for coordination and providing the strategic direction of the entire provincial administration; their performance is thus a direct reflection of the performance of the entire provincial administration (see chapter 7 above).

The PSC assessed the OTPs and made recommendations to improve their performance. The study established that OTPs that implemented most of these recommendations improved their performance significantly, whereas those that implemented fewer recommendations declined in their performance against the set indicators of good governance. However, the uneven performance of OTPs across the country is attributable to historical and geographical, political and socio-economic factors. Most OTPs were found to focus more on compliance by putting the required policies and procedures in place, rather than on the actual implementation of those policies; that is, performance.

The assessment of the OTPs is a good measure of good governance in the provinces and the extent to which provinces fulfil their constitutional obligations and political mandate of sustainable development and poverty alleviation. Various mechanisms aimed at creating an enabling and facilitating environment for the implementation and achievement of the constitutional mandate of the provinces, such as the legislation and various institutions that protect democracy and oversee the performance of provinces, assist in enforcing, promoting, monitoring, evaluating and engendering good governance in the provinces (see page 435, paragraph 7.2 in chapter 7 above).

9.1.7 Governance in provincial administration

Chapter seven employs the findings of the assessment study conducted by the PSC between 1996 and 2012 to evaluate the performance of provinces in promoting good governance. These findings provided a comparative analytical tool to support and corroborate the findings of the present study with regards to the level of governance in the provinces. It therefore accentuates the triangulation method of analysis employed in the study that draws from different sources to verify and support the findings, and thus improve the reliability, dependability, validity, accuracy and credibility of the study and its findings (see paragraph 1.6 in chapter 1 above).

The assessment of provinces with respect to the level of governance in their administrations was carried out against the democratic values and principles governing public administration as enshrined in section 195 of the Constitution. The value and principles are as follows: professional ethics, efficiency, economy and effectiveness, development orientation, impartiality and fairness, public participation in policy-making, accountability, transparency, good human resources management and career development practices, and representivity. The study reveals a poor level of governance in the provinces despite efforts by the national government to introduce policy, legislative and administrative measures, and interventions that seek to promote good governance in provinces. However, the level of governance among the provinces varies across the board due to a number of factors, including challenges relating to the legacy of apartheid, uneven geographic distribution of natural resources, political developments, and the varying economic development profiles of the provinces (see page 435, paragraph 7.2 in chapter 7 above).

9.1.8 Analysis of the findings of the study

Chapter eight provides the findings of the present study that spans the period ranging from the ratification of the Union of South Africa in 1910 to the present democratic constitutional dispensation. Chapter 8 draws from the discussions and analyses of the study and links it to the assessment of provinces, as carried out by the PSC, in Chapter 7 to present a coherent and holistic understanding and analysis of good governance in the country's provinces. In summary, the discussions and analyses of the various chapters as presented in this chapter define governance as a principle that sets out the manner in which public servants and representatives should take decisions and implement public policies to promote the values of efficiency, non-corruptibility, and responsiveness to civil society. This view of governance encapsulates the conceptualisation of governance as a structure, process, mechanism and strategy (see page 168, paragraph 3.5 in chapter 3 above). This view includes governance as a norm generating process, practices of governing, exercise of authority, and the institutionalisation and naturalisation of procedures of decision-making (see paragraph 3.5 in chapter 3).

The study places great emphasis on the Constitution as the supreme law of the country and the basis for all good governance prescripts and values and principles. Thus, the analysis of the findings of the study, as presented in this chapter, provides an in-depth understanding of the current constitutional dispensation (1996-2012) and how it impacts on the governance of provinces in South Africa. Thus, this analysis enables the study to identify factors that are either hindering or promoting good governance in the provinces in relation to the current (1996-2012) constitutional dispensation. Furthermore, the theories of governance and federalism, as discussed in Chapter 2 and Chapter 3, provide an analytical framework for the study. The practice and political developments in other countries, discussed in Chapter 4, provide a comparative analysis and insight into the challenges and potential solutions that could be applied in the study to define an effective and suitable governance framework with respect to good governance in the provinces in South Africa.

The South African government demonstrates its commitment to good governance by subjecting itself to both internal (e.g. Parliament, the Auditor-General and Chapter nine institutions) and external (e.g. APRM and AIIG) scrutiny and oversight by various governance and accountability mechanisms. Further, Chapter eight provides the findings of

the study regarding the performance of the provinces in areas critical for improved governance within this sphere of government. The findings of the assessment by the OTP, the analysis of these findings, and the preceding discussions provide the basis for making comprehensive recommendations and conclusions about the study, which are central in critically understanding the status and role of provincial governance in the South African constitutional dispensation 1996 to 2012. These findings hint at strengthening the current governance framework in provinces, rather than developing an entirely new framework. This is largely due to the strong and noble constitutional values and principles on which this framework is premised. The process to review the current framework would require a constitutional amendment, which is likely to encounter resistance from opposition parties in parliament and various stakeholders, as was previously the case when the DA accused the ruling ANC of attempting to centralise power in the national government by passing bills that sought to review provinces (see page 1, paragraph 1.1 in chapter 1 above).

Thus, the foundation of the current governance framework and its structural configuration are not being disputed in this study. Instead, the study finds weaknesses and challenges with the powers and functions, that is, the structures and systemic and internal processes of the framework that undermine the noble guiding values and principles on which it is founded. The structural and functional policy reforms required to improve governance in the provinces would necessitate amendment of the Constitution as the allocation of the powers and functions of provinces and the degree of autonomy in exercising the powers and performing the assigned functions, that is, the design and configuration of governance, is prescribed by it (see paragraph 8.4.6 in chapter 8 above).

This process would however require a concerted effort of all stakeholders, including social, business, international and political movements, as was the case with Codesa to bring about policy and constitutional reforms that strongly centred around the distribution of power, that is, centralism versus federalism, and the mechanisms to safeguard the provisions of the resultant Constitution (see paragraph 5.4.1 in chapter 5 above). Even though democracy is not a precondition for good governance, it certainly provides an enabling environment for the processes, structures, mechanisms and strategies of good governance to flourish. Thus, another Codesa in the 21st century would be instrumental in charting a new path for a democratic and prosperous South Africa, given the strides made since 1994 with regards to

peace and stability, political freedom, democracy and respect for human rights (see page 308, paragraph 5.4 in chapter 5 above).

Thus, the prevailing democratic environment is conducive to a fair, transparent, equitable and consultative democratic negotiations process to revise and review the current constitutional provisions with respect to the autonomy of provinces, their capacity to fulfil their legislative and executive obligations, and the degree of functional discretion they have to fulfil these obligations. The developments during the Codesa negotiations prior to the 1994 general elections and the lessons learnt during the democratic dispensation since 1996 provide a wealth of experience and both theoretical and practical reference material to review the Constitutional powers and functions of the provinces with the aim of improving good governance in the provinces of South Africa. A key aspect of governance that ensures good governance and the efficiency of government is accountability of the different spheres to their respective constituencies (see paragraph 5.4.1 in chapter 5 above).

The autonomy of provinces in policy-making, decision-making, legislative authority and functional discretion is thus critical in ensuring this accountability. This autonomy would require a clear delineation and guarantee of the powers and functions of provinces in the Constitution; such that provinces act independently from the national legislative framework in specified functional areas that are the exclusive competence of provinces and that they are accountable only to their constituencies. This would not only improve good governance and efficiency in fulfilling their executive obligations, but will also clear the ambiguity with regards to the responsibility for functional areas, that is, jurisdictions, and to deter political interference by the national government in provincial governance, which is largely responsible for the prevailing corruption, lawlessness and impunity in the state (see paragraph 7.1 and 7.2.1 in chapter 7 above).

Lastly, Chapter eight summarises the analysis and findings of the study regarding the performance of provincial governments against the constitutional values and principles of the public service, as set out in section 195 of the Constitution, and presents arguments for a stronger and more effective governance framework for provinces. The findings of a longitudinal assessment of this performance reveal that the provinces have improved over time in promoting and upholding good governance principles, particularly those which have implemented the recommendations of the PSC. In addition to improvements in skills

development, auditing, financial reporting, tax and facilitating good governance, visionary and effective leadership in the public service is critical in achieving good governance in the state, particularly at the provincial government level. Thus, the policy, legislation and administrative interventions introduced by the government to improve governance in the provinces contribute to the efforts aimed at strengthening the provincial governance framework, which could result in improved governance.

However, these interventions on their own are not enough and have thus failed to achieve the level of governance required by the provinces to fulfil their legislative and executive obligations. Therefore, the arena of the assignment of powers and functions to the provinces presents an alternative and supplementary avenue to strengthen and improve governance in the provinces. This arena would require constitutional amendments and policy reforms since these competencies reside within the legislative and executive functional competencies of the provinces, which are prescribed by the Constitution. Thus, the analysis of various options that could be considered and pursued to advance good governance in provinces against the backdrop of political developments in the country (within the 1996 to 2012 constitutional dispensation), international developments and practices, theoretical perspectives, and constitutional provisions in South Africa (as presented in Table 8.3, page 547, paragraph 8.4.6 chapter 8 above) provides an adequate practical and theoretical basis to make recommendations with respect to governance in the provinces.

9.2 RECOMMENDATIONS

The most important principle of good governance is accountability, that is, ensuring that elected and appointed officials use state resources responsibly and efficiently and that they conduct themselves in a professional and ethical manner in compliance with the law, values and principles, ethics, norms and standards of government, and the Constitution. Therefore, promoting and maintaining accountability in government and all state entities is central to improving good governance in government. The findings of the study regarding governance in the provincial sphere of government highlighted the need to improve the following key governance aspects of provincial government, as presented in Chapter 8:

- (i) promoting constitutional values and principles,
- (ii) strengthening the accountability structures and Chapter nine institutions,
- (iii) strengthening Intergovernmental Relations (IGR),

- (iv) promoting public participation, and
- (v) integrating and coordinating accountability and governance mechanisms, that is, strengthening good governance systems and structures and policies and procedures.

These recommendations highlight the different forms that governance espouses. These forms are as follows: to rule, lead, direct, guide, control and manage the responsibilities and resources entrusted to the public representatives and officials by the public, namely, as a structure, process, mechanism and strategy (see paragraph 3.5 in chapter 3 above).

There is a striking resemblance between the findings of the present study and the findings of the Presidential Review Commission (PRC) Report of 1998, as stated below:

- (i) transforming service delivery to meet basic needs and redress past imbalances;
- (ii) rationalisation and restructuring (including right-sizing and outsourcing where appropriate) to ensure a unified, integrated and leaner public service;
- (iii) institution building and management reforms to promote greater accountability and organisational and managerial effectiveness;
- (iv) increasing representativeness through affirmative action;
- (v) improving internal democracy and external accountability;
- (vi) human resource development and capacity building;
- (vii) improving employment conditions and labour relations; and
- (viii) promoting a professional service ethos.

The PRC was established by President Mandela in March 1996 to carry out a comprehensive investigation of the operation, transformation and development of the public service, and to make recommendations for improving and accelerating the transformation and reform processes in line with the vision, mission and recommendations contained in the WPTPS. The PRC Report highlighted concerns regarding the relationship between and within the different spheres of government and reported that weaknesses in the structures and practices of IGRs were responsible for poor coordination within and between the different departments and spheres of government. Furthermore, these challenges weakened state capacity to implement national programmes, and led to a consequent failure to deliver basic services.

This resemblance in the findings of the present study and those of the PRC Report is an indication that despite notable progress made thus far by the government, particularly in relation to the integration and unification of the public service, the devolution of power to SNGs and the decentralisation of managerial responsibility, and the increased representation of blacks within senior management echelons, a great deal of work still needs to be done to enhance the efficiency and effectiveness of the public service and the quality of service delivery. This, in turn, will depend on good governance in the structures of government and the state.

The recommendations made above represent the policy, legislative and administrative measures introduced to improve performance and good governance in provinces. However, recommendations (ii) and (iii) above, made by the PRC Report of 1998, stand out with respect to the options for improved governance in provinces (as discussed in paragraph 8.4.6 in chapter 8 above), namely, rationalisation and restructuring (including right-sizing and outsourcing, where appropriate) to ensure a unified, integrated and leaner public service; and, institution-building and management reforms to promote greater accountability and organisational and managerial effectiveness. These recommendations resonate with the analysis of the options, discussed in Chapter 8, particularly the last option, strengthening the functional discretion and authority of the provinces. This option encapsulates the spirit of the findings of this study and the recommendations made thus far in relation to increasing the legislative and functional discretion of provinces, which forms the basis and ultimate framework for realising the recommendations made in this study with the intent to improve governance in the provinces.

9.2.1 Recommendations for improved governance

The present study does not seek to invent a new governance framework, but rather to improve the current framework of provincial governance and the governance in the state by identifying areas of improvement in the current systems and structures of good governance. The term 'state' in this study refers to the three branches of the state, namely, the legislature (law making), the judiciary (law interpreting), and the executive (law implementation - administrative), which are constituted by publicly-elected representatives. However, more emphasis in the study is placed on the executive branch of the state, that is, government (national, provincial and local), which is charged by the Constitution with the responsibility

to deliver the public services or functions of government, as outlined in Schedule four and Schedule five of the Constitution (RSA, 1996).

Using the options proposed by the HSRC's 2008 study as a basis, the study proposes a review of governance systems, processes and procedures in South Africa to strengthen governance and improve the efficiency and effectiveness of the state, with particular focus on the provincial sphere of governance. This study provides a basis for the review process and posits that this process will entail amendments of the Constitution as the desired impact and outcome with respect to policy, legislative and administrative reforms can only be achieved through reconfiguration of the constitutional legislative framework that prescribes the degree of autonomy, authority and functional discretion of provinces, including the allocation of revenue resources. In turn, the legislative authority and functional discretion of provinces informs, defines and prescribes the powers and functions assigned to provinces to fulfil their legislative and executive obligations. This implies that the Constitutional amendment paves the way for legislative and policy reforms to define and prescribe the powers and functions (legislative and functional discretion – executive and revenue collection) of provinces with the intent to promote good governance in provinces.

Thus, the assignment of powers and functions to provinces that would be provided in the amended Constitution will require a configuration that increases the capacity and discretion of provinces to fulfil their legislative and executive obligations autonomously and free from interference and influence by the national legislature and executive, that is, national government. Thus, the resultant structural and procedural configuration with respect to the powers and functions of provinces will be such that they will be autonomous institutions of democratic governance that have the autonomy and authority to exercise the powers and perform their functions within their mandate and jurisdiction, in accordance with the law and the provisions of the Constitution. This implies that the sovereignty of provinces must be derived and guaranteed from the Constitution and not another level of government – the national government in the case of South Africa.

This constitutionally guaranteed autonomy will ensure that provinces are not subordinate to the national government and that they are constitutionally empowered to act autonomously within their jurisdiction and to deal directly with their constituencies that have directly elected them by exercising their executive, legislative and taxing (fiscal) powers. This will

ensure that provinces have the liberty and freedom to attend to matters of different cultural, political, economic or regional interest in their jurisdiction, while also having designated representation of distinct regional views within the federal policy-making institutions, such as the NCOP, to promote unity on matters of common national, social, political and economic interest. Such an independent and effective political environment is thus favourable for policy, legislative and administrative reforms aimed at cultivating and promoting good governance in the provinces⁴² (see page 80, paragraph 2.2 in chapter 2 and page 203, paragraph 4.2.1 in chapter 4 above).

The argument presented in this study in support of the review of the legislative authority and functional discretion of provinces to increase their autonomy and capacity, which is critical for good governance, is the view premised on the theory of federalism that advocates for decentralisation and the devolution of powers and functions to SNGs for provision of Pareto-efficient public goods and services (see page 212, paragraph 4.3.1 in chapter 4 above). The benefits and advantages deriving from the devolution of powers and functions to SNGs include institutional reforms, a strong democracy and the dismantling of authoritarian structures, effective anti-corruption measures, strong operational capacity, transparency, efficiency, quality public service delivery, fiscal discipline, robust and competitive market-led economic growth, legality and independent oversight (see paragraph 8.4 in chapter 8 above).

Competitive federalism, which results from the devolution of legislative and executive powers and functions to SNGs, promotes tax competition among them, which leads to low local corporate tax rates and efficiency gains from the resultant improved governance (see paragraph 4.3.7 in chapter 4 above). Competitive federalism is related to fiscal federalism, whereby jurisdictions within a nation-state have a considerable amount of tax and spending autonomy. This subnational autonomy promotes fiscal equivalence among SNGs, gives local politicians more responsibility, and forces politicians to manage their budgets more efficiently and according to the preferences of their constituencies (see paragraph 4.3.8 in chapter 4 above).

⁴² See chapter 2 (paragraph 2.2) for a detailed discussion on the design and principles of federations.

These benefits represent the objectives, values and principles of good governance, as provided in section 195 of the Constitution, and thus, the attainment or failure thereof is a reflection of the degree of governance in the provinces. Hence, the proposed review of provinces provides a Constitutional basis for the assignment of powers and functions to the provinces in a manner that would increase their legislative authority and functional discretion. Thus, it would deter pervasive political interference by the national government that creates weaknesses and loopholes that politicians and bureaucratic elites at both national and provincial government level exploit for personal benefit and to advance their politics of patronage.

The HSRC's 2008 study proposed five possible options to strengthen good governance (as discussed above and in chapter 8). The present study uses the values and principles of the public service entrenched in the Constitution (section 195) as indicators of good governance that inform and guide the content and architecture of the provincial governance framework proposed in the present PhD research study. The methodology used in the study to strengthen good governance entailed identifying gaps in how the provincial government upholds these values in practice and identifying the different structures, processes, mechanisms and strategies that would enforce and promote achievement of these ideals.

The present study used the analysis of the findings of the PSC's 2010/2011 assessment of OTPs and experiences in government administration since 1994 to identify these gaps and support the argument made in the present study and its findings. The methodology resembles the SWOT analysis methodology of identifying the strengths (S), weaknesses (W), opportunities (O) and threats (T) in a system. An overview of the findings of the study, as discussed in Chapter 8, provides the insight, useful tools and background that inform the recommendations. These findings and recommendations were then used to present a viable option to improve governance in the provinces, that is, highlight good governance determinants and factors that have the potential to strengthen and improve good governance in the provinces (see Figure 9.1, page 580, paragraph 9.1 above).

Good governance in the public sector ensures that public entities act in the public interest at all times by demonstrating a strong commitment to integrity, ethical values, the rule of law; and openness and comprehensive stakeholder management. Other requirements for upholding and promoting good governance in the public sector include defining outcomes in terms of

sustainable economic, social, and environmental benefits; defining the interventions necessary to optimise the achievement of intended outcomes; developing the capacity of the entity, including the capability of its leadership and the individuals within it; managing risks and performance through robust internal control and strong public financial management; and implementing good practices in transparency and reporting to ensure accountability.

9.2.2 Key determinants of good governance in the provincial sphere of government

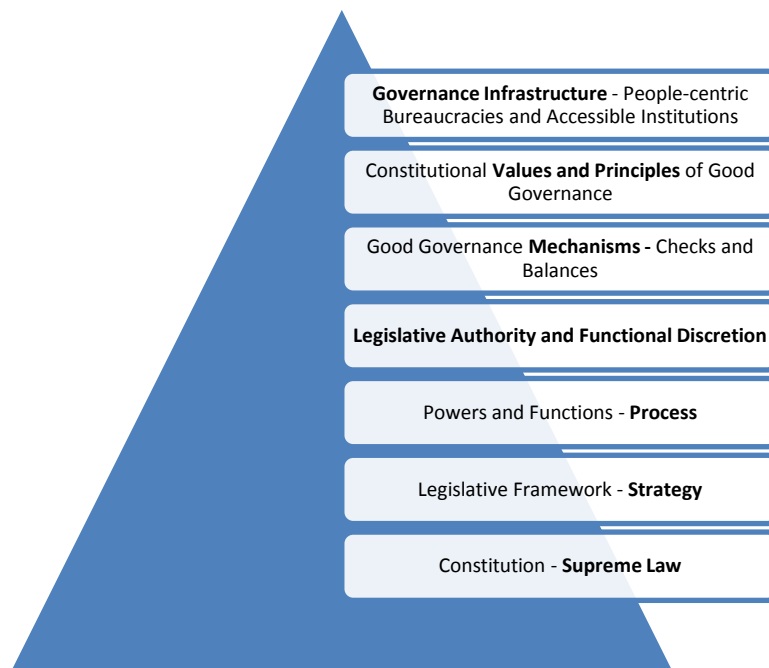
The expectation of the study is that the proposed interventions will significantly improve governance within the provincial sphere of government and its relations with other spheres of government. The identified determinants of governance in the public sector (provincial government) in South Africa are intended to promote good governance in the public sector by doing the following:

- (i) identifying practices within the public entities that are detrimental to good governance objectives (weaknesses, gaps and risks),
- (ii) identifying areas of exemplary and outstanding performance (strengths),
- (iii) providing a performance assessment intervention, that is, monitoring and evaluation (targets and controls),
- (iv) providing remedial actions to improve performance and sustainable incentive measures to strengthen good governance (sanctions and interventions), and
- (v) defining desired outcomes of remedial and corrective action on good governance (impact).

The factors identified above, which have an impact on governance in provinces, are largely policy, legislative and administrative interventions; thus, they constitute the systems and processes that facilitate the cultivation and promotion of good governance. Hence, these interventions are expected to deliver the desired outcomes of good governance, provided the legislative framework as prescribed by the Constitution makes provision for the legislative and functional discretion of provinces. This legislative framework should define the powers and functions of provinces and guarantee their legislative authority and functional discretion, that is, autonomy to exercise the powers and perform their functions within their jurisdiction, mandate and prescribed functional areas.

Hence, with reference to determinant (i) above, identifying practices within the public entities that are detrimental to good governance objectives (weaknesses, gaps and risks), political interference and the pervasive powers of the national legislature and government to override and intervene in provincial government affairs stands out as the root cause of poor governance in provinces, which replicates itself among the subnational public representatives and bureaucratic elites to circumvent legislative provisions, governance principles and administrative guidelines (see page 2, paragraph 1.1 and page 11, paragraph 1.2.1 in chapter 1 above). Thus, Constitutional provisions to define and prescribe the legislative and functional discretion of provinces is a bulwark against the abuse of power and state resources for personal gain and to guard against the politics of patronage and the politicisation of the bureaucracy (see paragraph 3.7.1 in chapter 3 above). This interrelatedness and dependence of the Constitutional provisions, legislative framework, powers and functions, legislative authority and functional discretion is critical to attain and maintain good governance in the provinces. See an illustration of this relationship in Figure 9.2 below:

Figure 9.2: Elements of the Proposed Good Governance Framework



Source: Developed from the findings and analysis of the study

Figure 9.2 above illustrates the intricate and delicate relationship between the various factors and elements that constitute the framework of governance. The diagram further illustrates the

characteristics and forms of governance as a structure, process, mechanism and strategy (see paragraph 3.5 in chapter 3 above). According to this diagram, the Constitution is the foundation of the governance framework and prescribes the shape and form of government with respect to the powers and functions of the constituent units of government and the extent (authority, discretion and autonomy) to which they may be exercised within their respective jurisdiction. Figure 9.2 above emphasises the importance of the bureaucracy, institutions and legal framework necessary for the incubation and maintenance of good governance. namely, the recording and promulgation of law by the legislature and fair application of the law by relevant state institutions, that is, executive and independent interpretation of the law by the judiciary (see paragraph 3.7.2 in chapter 3 above).

Thus, the hierarchy and interdependent relationship among these elements defines the resultant degree of governance or lack thereof in the provinces since it defines and prescribes the legislation, policy, scope, powers, authority and discretion that provinces have at their disposal to fulfil their legislative and executive obligations, as prescribed in the Constitution. Figure 9.2 above further illustrates the characteristics of governance as a structure, process, mechanism and strategy (see paragraph 3.5 in chapter 3 above) in which the various elements of the governance framework are mutually and synergistically interdependent and interacting spheres engaged in hegemonic struggles. For example, as a mechanism, the governance framework provides public participation spaces for continuous interaction among a wide range of political and societal actors with different interests and levels of power (see page 354, paragraph 6.2 in chapter 6 above).

Thus, the synergistic and symbiotic relationship between the civil and political societies is one of consensus and engagement between the two sectors, which plays a critical role in reducing the discretionary powers of public officials; thus, creating a system of checks and balances that promotes and strengthens accountability, democracy and good governance (see paragraphs 3.7.3 and 3.7.4 in chapter 3 above). Therefore, the indicators, values and principles of good governance represent the desired outcome of this framework, which the government is expected to implement and uphold in accordance with the provisions of the Constitution, the law and the various legislative, policy and administrative frameworks defined and prescribed in accordance with it.

In Australia, public entities such as the National Museum of Australia (NMA) uphold the values and principles of good governance and have developed a model which seeks to protect and promote good governance in the public sector. The key mechanisms of good governance in the public sector include accountability measures, control mechanisms, performance indicators and the implementation strategy, which are driven by the leadership of the organisation, as listed below:

- (i) **Accountability:** Parliament, Government, Minister, Council, and other stakeholders
- (ii) **Performance:** Internal conformance and reporting, and external conformance and reporting
- (iii) **Controls:** Legislation, delegations, values, codes of conduct, ethics, certified agreement, and staff circulars
- (iv) **Strategy:** Vision and mission, performance management framework (plans, policies and procedures; and strategic and business plans), organisational structure, risk management, committees, and culture.

The gaps identified, namely, the weaknesses and shortcomings in the implementation of good governance practices should serve as red flags of a potentially detrimental practice or conduct within the public service, which should be sanctioned and addressed decisively to prevent further damage and weakening of good governance mechanisms in the public service. On the other hand, the strengths identified within the public service provide a proactive measure to harness, encourage and reward this potential and to ensure promotion and enforcement of good governance practice in the public service. Accountability is central in all governance mechanisms and therefore the improved governance framework hinges on the same and the various structures, such as the parliamentary committees and Chapter 9 institutions, for scrutiny and oversight over public representatives and government bureaucracy. Furthermore, public participation is a critical component of the accountability process as, according to the principle-agent theory, the state as the agent is accountable to the public, that is, the principal. Therefore, the public holds the state accountable for its actions by participating in its decision-making and democratic processes. National and provincial legislation makes provision for public participation in all decision-making processes of the state, that is, all spheres of government and state entities.

Different interventions and approaches are used to strengthen governance, depending on the size, complexity, structure and legislative provisions of a public institution. These agencies

should constantly test and adapt their governance frameworks (systems and structures, policies and procedures, mechanisms and strategies) to adapt to the changing political, social and economic environment. In order to improve the effectiveness of a governance framework, public officials and representatives in public institutions and government should take responsibility to ensure the effective and efficient provision of public services and goods within their respective jurisdictions. These institutions should focus on building strong, sustainable and effective governance frameworks that consist of well-established processes and mechanisms for monitoring, detecting and dealing effectively with risks and areas of poor governance. This approach will help state institutions and provinces deal with problems before they develop into serious governance challenges.

The building blocks required to develop and implement a better governance framework include the following:

- a strong leadership culture and communication
- appropriate governance committee structures
- clear accountability mechanisms
- working effectively across organisational boundaries
- comprehensive risk management, compliance and assurance systems
- strategic planning, performance monitoring and evaluation
- flexible and evolving principles-based systems.

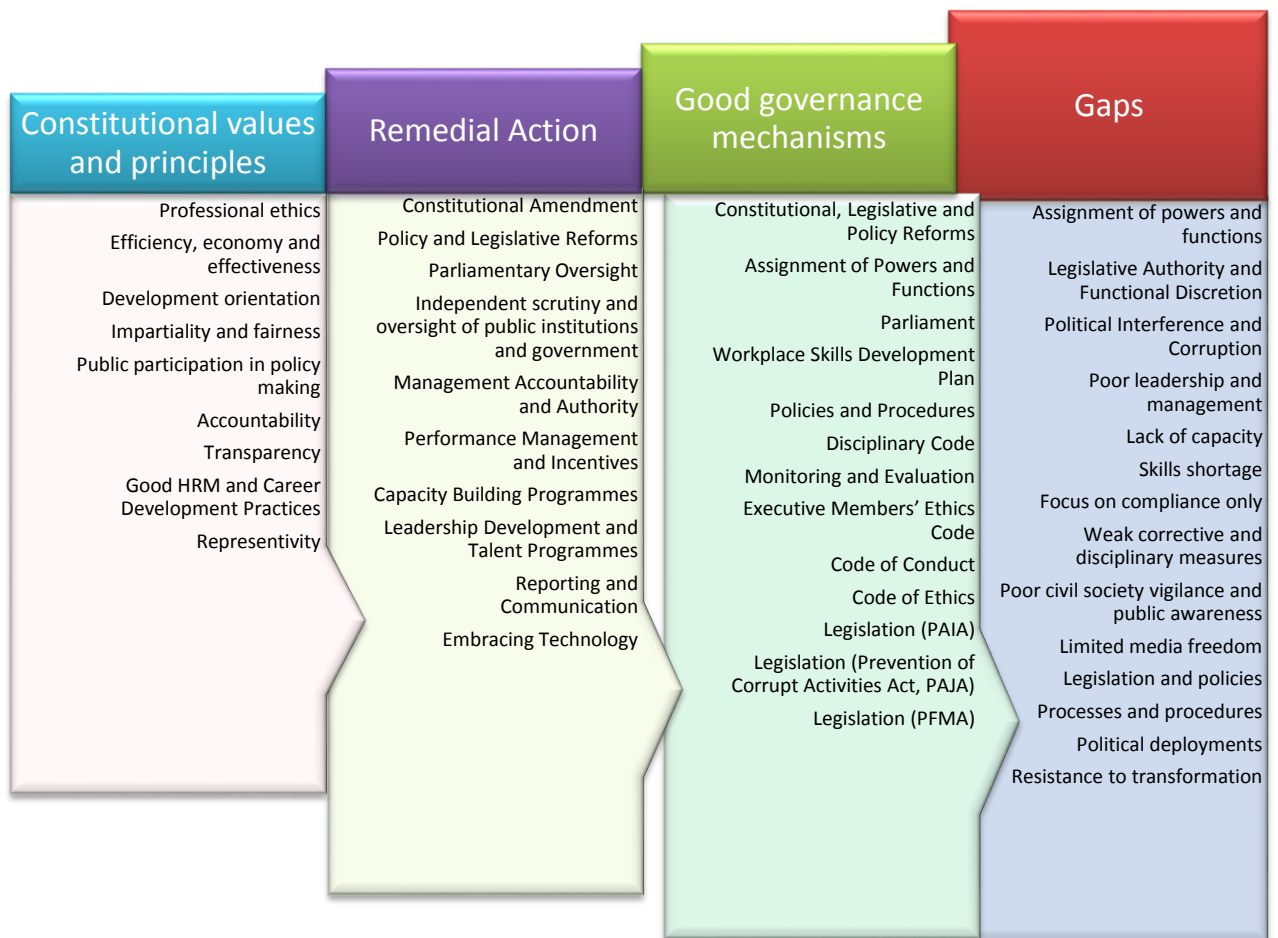
Good governance building blocks support the elements of leadership, ethics and performance culture, stakeholder relationships, risk management, planning and performance monitoring, and review and evaluation of governance arrangements. The present study was conducted by critically analysing the developments and practice of governance in the provincial sphere of government since the inception of the current constitutional dispensation in 1996. This was done against the backdrop of historical political developments in South Africa, political developments and policy reforms in some of the leading democracies and federal countries across the world, as well as the theoretical perspectives of federalism.

Various forms of state and operational practices were analysed to provide the theoretical basis required to identify the strengths, weaknesses, threats and opportunities that

characterise, that is, hinder or promote good governance in the provincial sphere of government. The various options for improving good governance at this sphere, as presented by the HSRC study of 2008, were thoroughly analysed and a case is made in the present study for strengthening the functional discretion and even authority of the provinces as a viable option to improve their governance. This view is taken against the backdrop of the current framework of governance, which is replete with inherent weaknesses and challenges that hinder good governance and thus render government's objectives of poverty reduction and sustainable development elusive. Instead, it perpetuates lawlessness, corruption and the lack of accountability in the state, in general, and within provinces, in particular.

Therefore, the contribution of the present study to the field of governance is based on its endeavour to propose a viable governance framework by identifying effective mechanisms and processes which will improve governance in the provincial sphere of government. The proposed framework hinges on four key pillars, which constitute the main structural pillars of good governance in the provincial sphere of government. These pillars are as follows: the constitutional values and principles of good governance, which must be pursued and upheld by all public entities; sanctions or remedial action to maintain the integrity of public institutions, that is, provincial government departments; control mechanisms, that is, good governance mechanisms which seek to correct, facilitate and promote good governance; and gaps (weaknesses and threats) within the system, which are practices that weaken and hinder good governance in the provincial sphere of government (see Figure 9.3 below).

Figure 9.3: The four pillars of good governance in provinces



Source: Constructed from the findings and analysis of the study

The key feature of the above framework is its inherent attribute of providing measures and mechanisms (good governance mechanisms) to cultivate and promote good governance, as well as the indicators (values and principles) used to define it. The good governance mechanisms in the above framework thus make it possible to identify gaps whenever there are deviations or undesirable conduct and outcomes, which point to a weakness or challenge within the governance ecosystem. The remedial or corrective actions would then be mobilised and activated to address the observed challenge or malfeasance; thus, ensuring the maintenance of the values and principles, and the norms and standards of good governance, as provided by applicable legislative and policy frameworks.

The interrelated and interdependent nature of the different spheres of government, as provided in section 40 (1) chapter 3 of the Constitution, invariably renders governance in the provincial sphere of government somewhat interconnected to the developments and practices

of governance in other spheres of government, that is, national and local, despite each being distinct (see paragraph 1.2.8 in chapter 1 above) (RSA, 1996:1269). This implies that good governance in one sphere of government cannot be viewed in isolation from the other spheres of government. The Constitution dictates that the form of state in the country is a decentralised unitary state; that is, a unitary state, which accords some degree of autonomy (legislative authority and functional discretion) to the SNGs in terms of policy, legislation, political elections and expenditure in certain functional areas, as discussed in the preceding chapters (see paragraphs 1.2.8 in chapter 1 and 5.4.3 in chapter 5 above).

9.3 CONCLUSION

The present study identified gaps and weaknesses in the current provincial governance framework, which threaten the integrity and effectiveness of its governance structures and mechanisms and the rule of law. A sustained practice of undermining the values and principles of good governance and the rule of law risks plunging the country into a failed state where the rule of law and accountability measures are rendered dysfunctional (see paragraph 3.6.2 in chapter 3 above). These gaps consist of threats, weaknesses, challenges and risks, which, if not adequately and decisively addressed, could significantly damage and weaken the system of governance in the provinces. Such a weakened and comprised governance system would render itself susceptible to such undesirable behaviour and practices as corruption, fraud, lawlessness, poor service delivery, and eventually the total failure and collapse of the system of governance in provincial government. It therefore follows that governance should receive the highest attention and priority in the state and its entities, particularly SNGs, to maintain the integrity of government and to renew the confidence of the electorate in the state, that is, the democratic legitimacy of the state.

Democratic legitimacy requires exemplary conduct by politicians and government officials who conduct themselves with professionalism and integrity in managing state resources and executing their duties and responsibilities as public representatives and servants. Public agencies, in particular, are under more pressure from their stakeholders with respect to the effectiveness of the public goods and services they provide and the efficiency of how they allocate and manage public resources, which is one of the key determinants of the democratic legitimacy of public institutions. Good governance and the democratic legitimacy of government hinges on the existence of strong institutions of governance, which are

independent and transparent (see paragraphs 3.3, 3.4 and 3.7.1 in chapter 3 and 9.1.5 above). It requires respect for the law, accountability, transparency and abiding by the provisions of the policies and laws of the country. This conduct should occur within the governance framework, depicted in Figure 9.2 above, which outlines the different levels and elements of governance that prescribe and guide the behaviour and actions of both public representatives and bureaucrats when carrying out the functions assigned to them within their respective portfolios and jurisdictions; that is, in fulfilling their electoral mandate (legislative and executive obligations).

Good governance facilitates and promotes accountability in government, which then leads to improved management; that is, the stewardship of state resources and public service delivery. The key indicators of good governance include transparency, accountability, public sector reform, effective bureaucracy, democratic competition for public office (i.e. political elections), the rule of law, the judicious exercise of discretion, and the prevalence of freedom of speech, the press and association. The PSC uses the constitutional values and principles, as provided in section 195, chapter 10 of the Constitution, as indicators of good governance against which the performance and integrity of government entities, including provincial government departments, is evaluated.

The present study established that the performance of provincial governments varies across the country and this difference in performance may be attributed to a variety of reasons. Chief among these is the history of the country, particularly the legacy of the apartheid government which marginalised and oppressed the majority of the citizens of the country and advanced a racially discriminative policy of separate development⁴³. However, 23 years later, this cannot be the sole reason for the poor performance of provincial governments. The study further found that despite a strong legislative and regulatory framework, provincial governments and departments generally still perform poorly against the set governance indicators. Poor performance by provincial governments is a direct result of weak political leadership and management within provincial government. Corruption is the main obstacle of good

⁴³ Separate development is responsible for income disparities among different racial groups and geographic locations, with the majority of the poor being predominantly black and concentrated in rural and township settlements in abject poverty and with high levels of unemployment. In contrast, the majority of those in the middle and upper income group are predominantly white and live mainly in urban affluent areas in the cities and experience low levels of poverty and unemployment (www.statssa.gov.za viewed on 24 August 2017).

governance in the provincial sphere of government, which is largely perpetuated by SNG's political leaders and senior government officials.

The good governance mechanisms provided by the Constitution and the law are not robust enough to effectively address the problem of corruption and poor governance. Hence, the study makes recommendations that seek to strengthen the existing governance structures and mechanisms of the state through legislative and policy reforms, which require amendment of the Constitution⁴⁴. The weakness of the country's governance structures and mechanisms manifested in the widespread administrative failure of provincial governments, including those in the Eastern Cape and Limpopo. The national government was forced to intervene by placing some departments in these provinces under administration, according to section 100 of the Constitution. Further manifestation of this weakness was observed in the poor service delivery records of municipalities, which continue to receive negative audit reports annually (see page 2, paragraph 1.1. in chapter 1 above).

The South African government has taken steps to improve good governance by committing itself to both internal and external scrutiny. These measures include performance agreements between the president as the chief executive of the cabinet and the ministers as the political heads of the ministries. Other internal scrutiny mechanisms include an array of oversight and good governance assessment measures conducted by such institutions as Chapter 9 institutions and other governmental organisations and NGOs; that is, private and civil society agencies, for example, the media (see page 509, paragraph 8.3 in chapter 8 above).

External scrutiny mechanisms include voluntary membership to the APRM and the promotion and upholding of international governance standards as advocated by international aid organisations, such as the World Bank and the IMF (see page 366, paragraph 6.3 in chapter 6 above). South Africa is replete with policies, legislation, frameworks and mechanisms that seek to facilitate and promote good governance in the state. However, corruption, lawlessness and government failure to provide effective and efficient public administration undermine the objectives and values of good governance that these

⁴⁴ Constitutional reforms with the intent to address policy issues are common in other countries, for example, Germany undertook constitutional reforms to untangle policy paralysis resulting from its interlocking cooperative federalism framework that created a stalemate between the *Bundesrat* and the *Bundestag* due to the overwhelming (more than half of the articles) veto powers of the former in passing legislation (see paragraph 1.2.14.1 in chapter 1 above).

mechanisms seek to promote. Poor enforcement of these good governance indicators is to be blamed for the failure of these mechanisms. The study identified the weaknesses and gaps within these mechanisms, such as the legislative and policy framework that defines and designs these mechanisms, which render them ineffective and susceptible to corruption and poor governance practices. The study further identified potential remedial action in the form of proposed recommendations that will strengthen good governance in the provinces (see Figure 9.2 above).

These recommendations include promoting the constitutional values and principles of good governance, strengthening the accountability structures and Chapter nine institutions, strengthening IGR, promoting public participation, and integrating and coordinating accountability and governance mechanisms. These remedial actions and accompanying control mechanisms constitute the key determinants of good governance, which seek to facilitate and promote good governance values and principles in the state, as provided in the Constitution. The underlying stumbling block in addressing good governance challenges in the provinces is the Constitution, which prescribes the powers and functions of the constituent units of government (all the three spheres of government), and the resultant governance framework that derives from these Constitutional provisions.

Thus, it stands to reason that constitutional reform that entails an overhaul of the governance framework is necessary to reconfigure and strengthen the structure and mechanisms of governance in government. This constitutional reform will create a legislative environment that reviews the powers and functions of the provinces in a manner that will expand their legislative authority and functional discretion in exercising these powers and functions; that is, in executing their legislative and executive obligations. This will result in the development of a stronger and effective governance framework that is able to cultivate and advance the values and principles⁴⁵ of good governance, as provided in section 195 of the Constitution.

⁴⁵ The values and principles of good governance, as provided in the Constitution, are not unique to South Africa. They are universally applicable across the world and are advocated by major democracies, including major international aid and development organisations, such as the World Bank and the IMF. A number of agencies and institutions have developed different sets of good governance indices, including Transparency International's Corruption Perceptions Index (CPI), Freedom House's Freedom in the World, the World Bank's Country Policy and Institutions Assessments (CPIAs), the International Country Risk Guide (ICRG), the World Bank Institute's World Governance Indicators (WGI) (formerly known as 'KKZ' indicators), the African Peer Review Mechanism (APRM), the World Governance Index (WGI), and the Ibrahim Index of African Governance (IIAG) (see paragraph 3.2.1 in chapter 3, and paragraph 7.1 in chapter 7 above).

State institutions supporting constitutional democracy (Chapter 9 institutions), namely the Public Protector, the SAHRC, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Commission for Gender Equality, the Auditor-General and the Independent Electoral Commission, all play an important role in defending the country's democracy and promoting good governance in the state. Their independence and integrity should be safeguarded to ensure that they fulfil their mandate impartially, effectively and without fear, favour or prejudice. Supporting and strengthening these institutions will prevent widespread corruption, lawlessness and poor service delivery in the provinces, which undermine the integrity of these institutions and the constitutional values and principles of good governance that they seek to protect and uphold (see page 386, paragraph 6.4.3 in chapter 6 above).

The study therefore concludes that the Constitution as the supreme law of the country is the foundation on which all legislative, policy and administrative frameworks and interventions are founded, and thus provides the basis to review the powers and functions of the provinces with the intent to improve good governance in this sphere of government. Thus, constitutional reforms, as proposed in this study on the basis of its findings, provide the legal and political instrument to improve governance in provinces.

"The end is reconciliation; the end is redemption; the end is the creation of the beloved community. It is this type of spirit and this type of love that can transform opposers into friends. The type of love that I stress here is not eros, a sort of esthetic or romantic love; not philia, a sort of reciprocal love between personal friends; but it is agape which is understanding goodwill for all men. It is an overflowing love which seeks nothing in return. It is the love of God working in the lives of men. This is the love that may well be the salvation of our civilization" – Martin Luther King, Jr.

APPENDIX 9A: Principles of Good Governance in the Public Sector

Source: IFAC (2013) (www.ifac.org viewed on 18 August 2014)

	Principles and sub-principles of good governance	
Principle	B.	Strong commitment to integrity, ethical values, and the rule of law
Sub-principles	A.1	Demonstrating integrity
	A.2	Strong commitment to ethical values
	A.3	Strong commitment to the rule of law
Principle	B.	Openness and comprehensive stakeholder engagement
Sub-principles	B.1	Openness
	B.2	Engaging individual citizens and service users effectively
	B.3	Engaging comprehensively with institutional stakeholders
Principle	C.	Defining outcomes in terms of sustainable economic, social, and environmental benefits
Sub-principles	C.1	Defining outcomes
	C.2	Sustainable economic, social, and environmental benefits
Principle	D.	Determining the interventions necessary to optimise the achievement of intended outcomes
Sub-principles	D.1	Determining interventions
	D.2	Planning interventions
	D.3	Optimising achievement of intended outcomes
Principle	E.	Developing the capacity of the entity, including the capability of its leadership and the individuals within it
Sub-principles	E.1	Developing the capacity of the entity
	E.2	Developing the entity's leadership
	E.3	Developing the capability of individuals within the entity
Principle	F.	Managing risks and performance through robust internal control and strong public financial management
Sub-principles	F.1	Managing risk
	F.2	Managing performance
	F.3	Robust internal control
	F.4	Strong financial management
Principle	G.	Implementing good practices in transparency and reporting to deliver effective accountability

Sub-principles	G.1 Implementing good practices in transparency
	G.2 Implementing good practices in reporting

APPENDIX 9B: LIST OF ANTI-CORRUPTION ACTSSource (www.psc.gov.za viewed 6 September 2014)

Act	Act number	Year of promulgation
• The Protected Disclosures Act	26	2000
• The Promotion of Administrative Justice Act	3	2000
• The Promotion of Access to Information Act	2	2000
• The Promotion of Administrative Justice Act of 2000		2000
• The Prevention and Combatting of Corrupt Activities Act	12	2004
• The Financial Intelligence Centre Act	38	2001
• The Public Finance Management Act		1995
• The Public Service Act	103	1994
• The Public Service Regulations (PSR)		2001
• The Municipal Finance Management Act	56	2003

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