

# A framework on democracy to critically evaluate school governance practices and policies in South Africa

by

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# SUMMARY

This study is premised on the perception that South Africa, as a sovereign and democratic state and a member of the United Nations, champions the concepts of democracy and basic human rights. Some of these principles are reflected in the *Constitution*. Yet, a review of the literature and relevant newspaper articles suggested that undemocratic school governance practices are in abundance. In the current debate on decolonisation, one should thoughtfully consider what democracy really means in the African and South African context, and I therefore set out to develop a framework on democracy to critically evaluate school governance practices and policies in South Africa. Such a framework had to stimulate and enable critical introspection regarding how school governance practices and policies reflect democracy.

The framework was derived by engaging with literature regarding different perspectives and theories on democracy. Not only did I use generic literature on democracy, but I also considered the views of African intellectuals, to ensure that my framework is context-relevant. It yielded two sets of criteria, namely *elements of a conducive environment for democracy* and *essential principles of democracy*. The elements of a conducive environment for democracy comprise *condemnation and rejection of acts of corruption, prioritisation of education and socialisation for democracy, promotion of deliberation and dialogue, promotion and display of trust, and the creation of a learning organisation* (specifically transforming School Governance Bodies (SGB) into learning organisations). The essential principles of democracy comprise *participation, representation, free and fair elections, respect for human rights, respect for the rule of law, separation of powers transparency and accountability, free and independent media, and the promotion of genuine partnerships*. The elements of a conducive environment and the essential principles for democracy laid the basis on which the framework on democracy was built. An argument for the justification for the inclusion of each of the elements of a conducive environment for democracy and essential principle of democracy is provided in the study.

The derived framework on democracy was checked to see whether it was legally aligned with the South African legal framework for education (*Constitution*, the *NEPA*, *SASA*, *EEA* and case law), its usefulness was tested, and based on the consideration of the whole process, was

adapted and declared ready for use in the South Africa education and school governance context. The test was to determine whether the derived framework on democracy is useful in the critical evaluation of school governance practices and education policies in South Africa. To achieve this, the national *Admission Policy for Ordinary Public Schools (1998)* and *Norms and Standards for Language Policy in Public Schools: Language in Education Policy (1997)* were purposely selected. In addition, related court cases were also used to solicit the opinions of certain SG stakeholders regarding their experiences with the selected education policies. It was found to be useful.

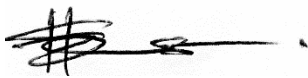
Through the use of the framework, it was apparent that in spite of the signposts clearly provided by the *Constitution* and subsequent legislation, we have seen a decay in terms of democracy and unity that had and still has devastating effects on the state of the nation. In this regard, it seems that at the core of this is that the elements that enable democracy are largely missing, which prevents democracy from flourishing. Furthermore, it exposed that democracy in SG practices and policies in SA is susceptible to abuse, manipulation and misrepresentation, whether innocently through ignorance, or consciously. In order to mitigate this, it is clear that democracy requires vigilance and requisite knowledge, and also definite checks and balances. In addition to providing these, this comprehensive framework on democracy is able to provide information regarding how and which elements have the potential to enable democracy and the essential principles of democracy in a particular context, or obstruct it. Furthermore, it has shown to be able to provide information regarding silences, gaps and contradictions in either policy or practice or both. It can be used at a single or multiple sites, to critically evaluate either or both elements that enable democracy and the essential elements of democracy through practice and policy. Since it is incumbent on SA citizens to be democracy-compliant, either through policy or practice, to check whether they comply can be informed through *inter alia*, the use of this derived framework on democracy. I thus recommend its use.

**Key words:** Democracy, school governance, human rights, education policy, education law

# DECLARATION

I declare that this thesis, submitted for the degree Philosophiae Doctor at the University of the Free State, is my own independent work, done with the assistance and guidance of my promoter and co-promoters. It has not been submitted by me for any degree to any other university or faculty.

I hereby cede copyright of the thesis in favour of the University of the Free State.



.....  
Hamilton Hanthon Shushu

Bloemfontein

30 November 2018

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# DEDICATION

I dedicate this study to my late sister Bohutsana Gladys and brother Olebetswe Anthony Shushu. I just know that they would have been so proud; and

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# LIST OF ACRONYMS

AU- African Union  
CPA- Critical Policy Analysis  
CT- Critical Theory  
DBE- Department of Basic Education  
DoE- Department of Education  
EEA- Employment of Educators Act  
EU- European Union  
HOD- Head of Department  
MEC- Member of the Executive Council  
NEPA- National Education Policy Act  
PED- Provincial Education Department  
RSA- Republic of South Africa  
SA- South Africa  
SASA- South African Schools Act  
SG- School Governance  
SGB- School Governing Body  
UN- United Nations  
WPET- White Paper on Education and Training

# CHAPTER 1: ORIENTATION

## 1.1 INTRODUCTION

Sovereign nation-states who are signatories to the United Nations (UN) embrace the concepts of democracy and human rights. This is evident in the adoption of *inter alia*, the *Universal Declaration on Democracy* (Inter-Parliamentary Union, 1997) as well as the *Universal Declaration of Human Rights 1948* (United Nations, 1949). The charter on democracy espouses a number of principles such as citizen participation, equality, political tolerance, accountability, transparency, regular and free elections, economic freedom, control of the abuse of power, a bill of rights, accepting the results of an election, a multiparty system of governance, and the rule of law (IPU, 1997: Preamble & Sections 1-8). Depending on the nation-state, it may embrace and include some principles that it perceives as relevant in the context of their country's constitution. South Africa (SA) as a sovereign and democratic state, and a member of the UN, espouses the concepts of democracy and basic human rights, and some of these principles are reflected in the *Constitution of the Republic of South Africa, of 1996* (RSA, 1996a) (hereafter *Constitution*).

Based on the *Constitution*, authors such as Matlosa (2005:12), as well as Smit and Oosthuizen (2011:59), have identified certain constitutional principles. These include participation, representation, accountability, transparency and the involvement of all stakeholders. Ramaphosa (1998:78), a prominent political figure who was instrumental in drawing up the *Constitution* and later became the President of SA, adds to these constitutional principles "the protection of basic (human) rights, holding of regular elections, participation of all people at all levels of the society, and the exercising of control over all matters that affect the people's lives". The *Constitution*, in line with common law, also protects the right of citizens to be heard (*audi alteram partem* principle), and due process to prevail in the event of a person having to appear before a disciplinary hearing, tribunal or courts of law (RSA, 1996a: Chapter 2, Section 33(1); *South African Schools Act* 84 of 1996: Section 8(5) and (3) (a) (RSA, 1996b) (hereafter SASA); Oosthuizen, 1994:42). This experience of transition to democracy and the respect for basic human rights had a historic preamble.

After experiencing centuries of colonisation and decades of apartheid laws and policies, which had no respect for democracy and basic human rights (James, 2014:1), SA became a democratic state in 1994 (Alexander, 2016:118; Maharaj & Williams, 2011:1). It is in this

regard that the new dispensation had steered in and embraced the concept of democracy, and consequently adopted some of the principles of democracy as enshrined in the *Constitution*. The ushering in of democracy did not only bring with it hope and the promise of a better future, but also the expectation that the transformation of society would become a reality (Mhlanga, 2014:19). Democracy can *inter alia* be dealt with when it is demarcated in a specific area or context (Ramaphosa, 1998:79). One of the areas in which the citizens of SA expected transformation was in education, and in particular in school governance (SG). Previously this aspect had been compromised due to the fundamentally fragmented apartheid education system (Alexander, 2016:20; Shushu, Jacobs & Teise, 2013:17-18; Hartshorne, 1999:26; DoE, 1997a:6).

The call for democracy in the education context was *inter alia* made in several key documents, namely the *Constitution*, the *South African Schools Act 84 of 1996* (RSA, 1996b) (hereafter *SASA*), the *National Education Policy Act 27 of 1996* (RSA, 1996c) (hereafter *NEPA*) and the *Employment of Educators Act 76 of 1998* (hereafter *EEA*). The *Constitution* (RSA, 1996a: Preamble) states that it has been adopted “as the supreme law of the Republic” so as to *inter alia*, “establish a society based on democratic values, social justice and fundamental human rights, and lay the foundations for a government based on the will of the people”. Furthermore, the fact that the basic human right to education is guaranteed (RSA, 1996a, Chapter 2, Section 29(1) (a)), is further clarified and expressed in the *NEPA*.

The *NEPA*’s preamble likewise recognises the adoption of “legislation to facilitate the democratic transformation of the national system of education into one that serves the needs and interests of all the people of SA and upholds their fundamental rights” (RSA, 1996c: Preamble). *NEPA* (RSA, 1996c: Section 3 (4) (b) and (g)) enabled the enactment of *SASA* as law, which deals with the organisation, management and governance of schools.

*SASA* (RSA, 1996b: Preamble), on its part, endorses and “advances the democratic transformation of society, and upholding the rights of all learners, parents and educators; and promotes their acceptance of responsibilities for the organisation, governance, and funding of schools in partnership with the state”. This seems to suggest, and to lay the foundation for, the democratisation of education through *inter alia*, the establishment of governance structures in schools. These SG structures have a responsibility to “determine policy and rules by which schools are to be organised and controlled, which includes ensuring that such policies and rules are carried out effectively in terms of the law and budgets of the schools in

which they operate” (Maile, 2002:326; DoE, 1997a:11). Buckland and Hofmeyer (in Maile, 2002:326) add that governance in education also involves the entire process, from policy formulation, adoption and implementation to the monitoring of education policies.

Schools are viewed as ideal structures where the concept of democracy can find expression (Sugawara, Hermoso, Delale, Hoffman & Lupšić, 2012:452; Arvind, 2009:3; Uygun, 2009:1; Steyn, 2005:1). This implies that these SG structures should promote and advance a culture of democratic practices and behaviours among the different stakeholders. It also raises an expectation that the stakeholders will endeavour to work in a harmonious partnership in an effort to democratise education, and therefore also SG (Shushu *et al.*, 2013:18; Shushu, 2012:26; DoE, 1997a:8; RSA, 1996c: Preamble).

Furthermore, “[t]he democratisation of education includes the idea that stakeholders such as parents, teachers, learners and other people (such as members of the community near a school) must participate in the activities of the school” (DoE, 1997a:6). This also includes the role of the state as a stakeholder, as an important agent for promoting partnerships. The DoE<sup>1</sup> seems to put a strong emphasis on representation and participation in decision-making of stakeholders, and also on accountability to them. It follows that the importance of the principle of an effective and harmonious partnership is acknowledged for SG to succeed (DoE, 1997a:8), and for democracy to find its envisaged expression.

The Inter-Parliamentary Union (1997: Section 4) emphasises the importance of an effective and harmonious partnership in the adoption of the *Universal Declaration on Democracy*. An effective partnership is generally characterised by “mutual trust and respect, shared decision-making, shared goals and values, common vision, open communication, good team work, promotion of the interests of the partnership rather than those of the individual, and the respect of the roles of different partners” (DoE, 1997a:8). SG, which should take effect through effective partnerships, is important for the establishment of a society based on democratic values (RSA, 1996a: Preamble).

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<sup>1</sup> The DoE was split into two departments after the SA general elections in May 2009, viz. the Department of Basic Education (DBE), which focuses on schools, and the Department of Higher Education and Training (DHET) (Hindle, 2010:7 & 9; Motshekga & Ndzimande, 2010:12-13).

The exposition on democracy regarding SG seems to find expression in the South African legal instruments referred to above. Nieuwenhuis (2007a:55) as well as Gray, Williamson, Karp and Dalphin, (2007:435) caution, however, on the subjectivity of people in their interpretation of their experiences of an issue at a particular time. This seems to be the case regarding democracy in the stakeholders' SG practices in SA.

## 1.2 RATIONALE AND STATEMENT OF THE PROBLEM

Nieuwenhuis (2007a:55) reminds us that there are some scholars who "believe the world is made up of people with their own assumptions, intentions, beliefs and values". These assumptions, intentions, beliefs, and values are exhibited through *inter alia* the manner in which citizens behave and experience democracy in their public lives (Mattes & Bratton, 2007:192; Prothro & Grigg, 1960:294), and in my view may influence their practice.

In considering the subjectivity that Nieuwenhuis refers to above, as well as considering that democracy may be observed in the manner in which citizens exhibit (un)democratic behaviour, I contend that as a consequence, the interpretation of democracy in SG practices and policies has the potential to become contentious and problematic. In this regard, numerous scholars, academics, reporters and individuals, as well as court rulings, have accordingly reported on SG challenges and tensions experienced by stakeholders in relation to human rights and legal matters (Beckmann & Prinsloo, 2015:1). The use of these reports and court rulings has a profound implication for this study. The reports and court rulings are normally lengthy and detailed, and the endeavour to cover the broader South African geographical space will inevitably make this section (rationale and statement of the problem) quite bulky. My intention is to include all the provinces of SA, making this a national (SA) study. Readers should keep this in mind as they engage with this section of the study.

### 1.2.1 INSTANCES REFERRED TO IN ACADEMIC PUBLICATIONS

The different interpretations of democracy, and practices in line with debatable interpretations of democracy, have come to the fore in some studies. A number of incidents where learners reported to have been adversely affected in their experiences of undemocratic behaviour from adult members of the SGB were highlighted. A study on the involvement of representative councils of learners (RCLs) in democratic school governance (DSG), for instance found undemocratic behaviours and practices from adult participants, and to a lesser degree, from learners themselves (Shushu, *et al.*, 2013; Shushu, 2012). The learners

in the study felt that they were not given a space to be genuinely involved in decision-making on important matters that had a bearing and effect on them (Shushu, *et al.*, 2013:19; Shushu, 2012:87-90). Such undemocratic behaviour from the adults impact on the learners the right to participate and the right to be heard; and also inhibits openness and the needs and interests of the learners, as enshrined in the *Constitution*, *NEPA*, *SASA* and other legal documents. The study further revealed that the adult members of the SGBs appeared to have interpreted the limitations of minors on the SGBs far beyond the specific directives (RSA, 1996b: Section 32). As a consequence learners were excluded and ostracised from genuine participation, and also in some instances disadvantaged.

Another study by Van Vollenhoven, Beckmann and Blignaut (2006:127-128) reported on matters regarding two incidents in their article, in which learners were disadvantaged based on alleged school transgressions. The first incident involved a 14 year-old Muslim Grade 10 learner at Crawford College in Johannesburg. In response to a notice written and pinned on the notice board of the school by Jewish learners regarding the Palestinian-Israeli conflict, she wrote and pinned an essay expressing the Palestinian view in October 1998. She was suspended a month later due to behavioural problems. The parents of the learner reported the matter to the Human Rights Commission (HRC), and it ruled in their favour. The second incident also involved a Muslim teenager who was refused admission to Hoërskool Vorentoe in Johannesburg. It was alleged that the teenager refused to shave his beard based on religious grounds, as he had learnt and had known the Qur'an by heart. He was subsequently refused admission in 1998. It is not stated what actions the parents took. However, in both these two incidents the human rights of the learners regarding the freedom of expression (RSA, 1996a: Chapter 2 Sections 15(1) and (2); 16(1) and 31(1) (a)), especially on religious grounds, seem to have been violated. These two incidents suggest that the principals and SGBs were unaware of, or misinterpreted, the constitutional prescripts and other legislation and policy directives regarding matters that relate to democracy in SG related matters. This further suggests that human rights, which are fundamental to democracy (Smit, 2013a:345; RSA, 1996a: Chapter 2, Section 7(1)), were violated, and this can result in democracy being threatened.

Yet another example is presented in a study that Smit and Oosthuizen (2011) conducted in schools in the North West Province on "improving SG through participative democracy and the law". The authors found that the North West Provincial Education Department (NWPED)



was disrespecting the language rights of schools; that elitist and bureaucratic attitudes increased centralisation and bureaucratic decision-making; and that misconceptions of democracy and the misapplication of legal and democratic principles were prevalent (Smit & Oosthuizen, 2011:61-68). The perception that democracy seems to be misinterpreted in SG-related matters, finds expression in these findings.

Such challenges also seem to have emerged in the Eastern Cape Province. A study in rural parts of that province on parental participation found that SG were fraught with challenges such as social tension, rejection, domination, and psychological stress. This led to the ostracisation of individuals involved in SGs (Onderi & Makori, 2013:268; Brown & Duku, 2008:432). The incidences referred to in this section bear testimony to my suspicion that democracy often seems to be misinterpreted or misunderstood, as seen from the cited incidents.

### 1.2.2 INCIDENCES REPORTED IN THE MEDIA

In addition to research reports, a few media reports and court judgements relating to undemocratic practices in schools and SGBs have also recently been published. I refer to some of these below.

1. According to Wildenboer (2013a:4), one hundred concerned parents petitioned against a Northern Cape (NC) High School's SGB, accusing them of *inter alia* mismanagement, interference in school matters, withholding of information, neglecting their responsibilities and duties, as well as harassment of an educator. It seems that important issues for democracy, such as inclusivity, participation and accountability, have been neglected and ignored (Matlosa, 2005:7). I believe that it is imperative for SGB members to take note of their duties as enshrined in SASA (cf. RSA, 1996b: Sections 20 and 21), and to be cognisant of the rights of educators regarding their dignity (cf. RSA, 1996a: Chapter 2, Section 10). Furthermore, educators' duties and responsibilities are articulated in the *Personnel Administration Measures* of 2016 (hereafter PAM document) (Department of Basic Education, 2016a: Section A5), as directed by the *Employment of Educators Act 76 of 1998* (RSA, 1998: Section 4). SGB members should be conscious and vigilant not to fall into the trap of interfering in such matters (rights and duties of educators).

2. Kwon Hoo (2014:4) reported that a Northern Cape high school learner was allegedly not allowed to wear her religious apparel to school. The school principal and SGB were convinced that such apparel was against the school uniform policy. The obviously angry and disturbed family sought the intervention of the Northern Cape Department of Education (NCDoE). They indicated that the learner's constitutional right of religious customs was being infringed upon, and demanded that the school reviews its school uniform policy. The school seemed not to have acted in line with *The National Guidelines on School Uniforms* (DoE, 2006). While these guidelines permit SGBs to determine their choice of school uniform (DoE, 2006: Section 7), they should take into consideration religious and cultural diversity (DoE, 2006: Section 29(1-2)). It would seem as if the actions of the principal and SGB were *inter alia* indicative of intolerance, discrimination, and infringed or violated freedom of expression (specifically on religious grounds (RSA, 1996a: Chapter 2, Section 9(3) & Section 31 (1) (a); RSA, 1996b: Section 7)).
3. Mokoena (2013a:4) reported in the print media about disgruntled SGB members of a high school in the Frances Baard District in the Northern Cape over the alleged unfair dissolution of their SGB structure. The SGB members accused the district office of the NCDoE of having colluded with the local branch of the African National Congress (ANC) and its youth structure to disband the SGB structure. They further alleged that they were disbanded without valid reasons, that other parents were influenced to pass a vote of no confidence in them, that they were not afforded an opportunity to explain why they should not be disbanded, and that those who voted them out, did not form a quorum at the time of voting. They concluded that the whole process was therefore unfair. If these allegations were true, then the *audi alteram partem* principle had been flouted, and proper procedures had not been followed. I believe that the victims would feel aggrieved and that their right to just administrative action and to be heard were not applied. Failure to apply the stated rights and provisions would consequently threaten the practice and experience of democracy within SG practices.
4. In the Free State province, reports were published a case that involved a Constitutional Court (hereafter ConCourt) ruling on pregnant learners. The matter was between two schools' SGBs and the Free State Provincial Education Department (FSPED), regarding the policy surrounding pregnant learners. These allegedly infringed on the pregnant learners' constitutional rights to education (SAPA, 2013:2). The ruling was in favour of the FSPED.

The SGBs of the two schools were ordered to review their learner pregnancy policies and report progress before 10 October 2013. They also had to table a progress report regarding how they have dealt with the matter, as well as furnishing the court with copies of the reviewed policies (SAPA, 2013:2). This ruling is indicative of an incorrect interpretation of democracy by the SGB, which is not in line with the *Constitution*. The refusal of pregnant learners to attend school infringes on their right to education (RSA, 1996a: Chapter 2, Section 29(1) (a)).

The following two incidents, as reported in the media, were not yet concluded at the early stages of the study. They did however require the assistance of the courts, and that is why they are added here, as an indication of the misinterpretations of democracy prevalent in these reports.

5. An article in a Northern Cape newspaper titled 'Teachers up in arms after school attack' alleged that teachers handed over a memorandum to district officials, demanding that the NCDoe intervene in a case of an alleged assault of a teacher at the school (Mokoena, 2013b:9). It was reported that a high school principal assaulted and humiliated a female teacher in front of several learners, and locked her in the computer room. It is further alleged that this was not the first incident, strengthening the demand for an investigation. It seems that human rights such as the right to safety (RSA, 1996a: Chapter 2, Section 12(1) (c)) and dignity (RSA, 1996a: Chapter 2, Section 7(1) and Section 10)) were infringed in these alleged incidents.
6. A few days after this alleged physical assault was reported in the newspaper, a report was published on the sexual assault of a grade 10 learner in one of the districts in the Northern Cape. Wildenboer (2013b:2) reported that a high school principal appeared in court on a charge of statutory rape after allegedly impregnating a 15-year-old grade 10 learner in a Northern Cape school. It further emerged that the act was allegedly committed while the learner was still in grade 9. Besides the safety of the learners and statutory rape, education legislation such as the *Employment of Educators Act 76 of 1998* and the *Education Amendment Laws Act 53 of 2000* prohibit educators from entering into sexual relations with their learners (RSA, 2000: Section 17(1) (c); RSA, 1998: Section 17 (1)) and/or assaulting or intimidating learners or employees (RSA, 2000: Section 18 (1) (l) & (u)). The alleged physical and sexual assaults are indicative of examples of human rights violations.

From the above it is clear that human rights are regularly violated in schools.

### 1.2.3 EXAMPLES OF COURT CASES

Court rulings on matters of (mis)interpretation of the principles of democracy involving the Provincial Education Departments (PEDs) and DoE are not rare. To corroborate this point, some examples of court rulings involving SGBs are briefly discussed below.

1. In *Schoonbee and Others v The Member of the Executive Council (MEC) for Education Mpumalanga and Another* [2002] 4 SA 877 (T), the entire SGB was dissolved, based on the findings of a forensic report, without being given the opportunity to respond. Furthermore, the principal and senior deputy principal were also suspended. Their roles and obligations as employees of the DoE were apparently confused with that of the SGB. The dissolution and suspensions were set aside. The *audi alteram partem* principle seems to have been ignored, and there was a display of ignorance regarding the locality of SGB obligations;
2. In *Christians v Dale College Boys' Primary School and Others* [2012] 2All SA 224 (ECG) a refusal of admission of a learner in the Eastern Cape was heard. Due to the applicant and its legal team's failure to follow the correct procedure of addressing the problem, the decision was in favour of Dale College Boys' Primary School and its SGB. It seems as if the ruling attempted to portray that learners' right to education (RSA, 1996a: Chapter 29(1) (a)) may be misinterpreted. The human right to education should be read and interpreted in conjunction with other education policies, such as the admission policy of schools (RSA, 1996b: Section 5). Instead, the parents and legal representative ignored the advice from the school and SGB about what to do in case a learner is refused admission. The school and SGB had advised that the MEC be approached. Instead of this a complaint was lodged with the HOD and a legal representative was approached for help. The school had also advised them that it had no space for the learner, despite the fact that the learner resided close to the school and that the family already had another child attending the same school. The point here is that although the right to education is guaranteed in the *Constitution* (RSA, 1996a: Chapter 2, Sec 29), its application should take into consideration the admission policies of schools and SGBs. It does not seem as if this was the case here. It can be construed that this human right (education) was not properly interpreted. Since human rights are the cornerstone of democracy (Smit, 2013a:345; RSA, 1996a: Chapter 2

Section 7(1)), the misinterpretation of the right to education seems to have occurred, and the SG has therefore been negatively affected;

3. In the Western Cape (WC), *Jacobs v Chairman, Governing Body, Rhodes High School, and Others 2011 (1) SA 160 (WCC)*, was a case about a dispute between an educator and the SGB (and Others). A Grade 8 learner had seriously assaulted and injured a female educator (Jacobs) with a hammer in the presence of other learners. Jacobs successfully sued the principal and DoE for negligence and pain and suffering to the amount of R1 114 685. 53. Human rights issues such as the right to dignity (RSA, 1996a: Chapter 2, Section 7(1) & 10)), safety (RSA, 1996a: Chapter 2, Section 12(1) (c)), and to be free from harm, among others, seem to have been ignored and not given the necessary attention. As stated elsewhere in this study, it should be noted that human rights are regarded as the cornerstones of democracy (Smit, 2013:345; RSA, 1996a: Chapter 2, Section 7(1)), and therefore incongruent behaviours to democracy should be avoided. There was an expectation that the school principal, as an *ex-officio* member of the SGB and manager, should have foreseen the need for the interpretation of human rights as manifested in the safety and dignity of his staff, especially because of the behaviour and disciplinary record of the specific learner. It seems as if these rights were ignored, as the learner was left unattended and was able to have access to the educator. Disciplinary matters (such as in this case) are SG issues, as SGBs are legally required by law (RSA, 1996b: Section 8(1)) to adopt codes of conduct for learners. This disciplinary incident led to the violation of human rights (safety and dignity, amongst others), and in the process put democracy under threat (Van Vollenhoven *et al.*, 2006:119); and
4. In Gauteng Province, a case was heard in the Supreme Court of Appeal of SA (The Governing Body of the Rivonia Primary School v MEC for Education: Gauteng Province (161/12) [2012] ZASCA 194 (30 November 2012)) to determine the capacity of a school after an incident. The court ruled that an instruction given to the principal of Rivonia Primary School to admit a learner was contrary to the school's admission policy. It also ruled that the placing of the learner without having been admitted to the school was unlawful. The SGB and school seemed to be aggrieved that their admission policy, which should have been familiar to the Gauteng Department of Education GDE), was seemingly not given the deserved attention, and was therefore not respected (RSA, 1996b: Section 5(5)). It seems that in addition to human beings, the rights of juristic persons such as SGBs

and schools should also enjoy protection as stipulated in the *Constitution* (RSA, 1996a: Chapter 2, Section 8(2) and 8(4)). It should be noted that the school and the SGB have a duty in the determination of the admission policy of the school. It should also be kept in mind that SGBs are regarded as democratising institutions, and that neglecting their duties may result in compromising the practice and application of democracy in schools. Furthermore, SGBs are protected in so far as their administrative duties are concerned (RSA, 1996a: Chapter 2 Section 33(1)). In this case it would seem as if the SGB's right to just administrative action was violated. In light of this, the action of the GDE prejudiced the SGB, and this can be construed to be violating and hampering the experience of democracy in SG practices and policies in SA.

Although the issues and misunderstandings referred to above were resolved at court level, it should be kept in mind that the actual *loci* of the misunderstandings were at school level, where the SGBs (through the school governors) are actually operational. I argue that in the many studies, media reports and cases discussed above, SG seems to be fraught with serious challenges. These include *inter alia* the infringement on basic human rights of particular SG stakeholders, undemocratic practices in SG, and interferences in the affairs of the SGB. Another important point is that some of these cases cited in this section, and others that will follow, have happened more than a decade ago. However, similar cases are still contentious and on-going, such as the case of the Hoërskool Overvaal in Gauteng Province, where 55 English-speaking learners have apparently been refused admission due to a language (Afrikaans) and/or capacity problem (Fengu, 2018:8; Mashigo & Tshikalange, 2018:3). The GED and affected parents intend to appeal a Gauteng High Court judgement with the Constitutional Court, as the high court had "ruled in favour of the school and the SGB" (Mashigo & Tshikalange, 2018:3).

The above is compounded by complaints and discontentment from people who participate within the executive structures of the SGB. I believe that the stated incidents and cases clearly suggest that there are misinterpretations, or at least not a common understanding, of democracy in the way that some SG stakeholders handle school-related incidents in throughout SA. This manifests itself through the behaviours exhibited by the different SG stakeholders regarding the issues they are confronted with.

In summary: a number of incidents of some form of exclusion may contribute to undemocratic SG practices. These include:

1. Not allowing all stakeholders full and genuine participation in matters that affect them (Shushu, 2012);
2. Discrimination on religious grounds (Kwon Hoo, 2014);
3. Allegations of mismanagement and negative interference of some SGB members (Wildenboer, 2013a);
4. Dissolution of SGB structures without having allowed the *audi alteram partem* principle to take effect (Mokoena, 2013a);
5. Pregnant learners being denied the right to education (SAPA, 2013);
6. The physical assault of an educator (Mokoena, 2013b);
7. A principal being accused of statutory rape (Wildenboer, 2013b);
8. Language rights not being respected, as well as a misconception of democracy;
9. The misapplication of legal and democratic principles (Smit & Oosthuizen, 2011); and
10. Challenges including social tensions, rejection, domination, and psychological stress (Onderi & Makori, 2013; Brown & Duku, 2008).

Some of the matters related to court judgements include *inter alia* human rights violations and education policy disputes such as admission of learners, religious or language issues. For the purposes of this study, all the incidents referred to above can be summed up as SG practices and these may be related to education policies in SA.

The above SG practices depict behaviour that is inconsistent with a democratic culture. It seems that democratic principles, as embedded in South African legislation and education policies, are not reflected by SG structures in school-related practices in South African schools. While the individual SG practices cited previously are all isolated and school and province specific, listing these examples suggests a trend in the South African SG context to either disregard, misinterpret or be ignorant about democracy and the education legislation embedded in these democratic principles. Furthermore, it seems from the above that the SG

environment possibly promotes, or at least enables these undemocratic practices, and thus needs scrutiny.

The above exposition seems to highlight two phenomena which impact on democracy, as well as on myself on a personal level. They are the *elements of an environment conducive for democracy* and *essential principles of democracy*. In this regard, there is an assertion that the South African legal instruments referred to in the study “are silent on the nature, tenets and principles of democracy” (Smit & Oosthuizen, 2011:59), and that an environment conducive for democracy does not always exist. Stakeholders thus need to consider their practices, and the environment they create, against a form of benchmark, in order to become more democratic.

On the other hand, as an educator in a democratic SA, I have noted that Apartheid was declared a crime against humanity (Lingaas, 2015:86). I contend that the latter was informed by *inter alia* experience, economic boycotts, reports to the UN and other international bodies, interrogation and inquiry. I am equally convinced that the hard earned democracy also requires critical evaluation, so that if practice is inconsistent with the principles of democracy these should be exposed and addressed. My personal rationale is therefore based on the expectation that like Apartheid, democracy also needs critical scrutiny. In this regard, I therefore pose the overarching research question: **What comprehensive framework on democracy can be derived to critically evaluate school governance practices and policies in South Africa?**

The broad research question requires that a comprehensive framework on democracy be accordingly derived from different *existing theories* and *perspectives* on democracy. For the comprehensive framework to be legitimate, it has to be *aligned* with the existing South African legal framework for education, and it must be *useful* to critically evaluate SG practices and policies in SA. In this regard, the elements of a conducive environment for democracy and the essential principles of democracy will be the focus of the inquiry in both the derived comprehensive framework, and that of the South African legal framework.

It is also my contention that a response to this broad research question may be achieved if the secondary research questions that follow in the section below are investigated.



## 1.3 RESEARCH QUESTIONS

Migiro and Magangi (2011:3763) are of the view that research questions are general and broad, and seek to broaden the understanding of a particular issue (phenomenon). It is also worth noting that Winberg (1997:10) asserts that in order to find appropriate answers or responses, it is imperative that the right questions are designed and asked. Therefore, the following secondary research questions are posed to assist to address problem stated above.

1. What comprehensive framework can be derived from existing theories and literature on democracy to critically evaluate school governance practices and policies in South Africa?
2. To what extent is the derived comprehensive framework aligned with the South African legal framework?
3. How useful is the derived comprehensive framework to analyse selected education policies?
4. What critical comments can be provided on the theoretically grounded and legally aligned comprehensive framework on democracy to critically evaluate school governance practices and policies in South Africa?

The above-stated secondary research questions will be explored in order to guide the study through the derivation of the specific aim and objectives that follow.

## 1.4 AIM AND OBJECTIVES

The aim of this study is to derive a theoretically grounded and legally aligned comprehensive framework on democracy to critically evaluate school governance practices and policies in South Africa.

The objectives of this critical qualitative study are:

1. To derive a comprehensive framework from existing theories and literature on democracy. Towards this I will:
  - 1.1. Review literature on different theories and perspectives on democracy.

- 1.2. Derive a comprehensive framework from the theories and perspectives on democracy that can guide school governance practices and policies in South Africa.
2. To evaluate to what extent the derived comprehensive framework resonates with the South African legal framework. Towards this I will:
  - 2.1. Analyse to what extent the derived comprehensive framework's *elements of a conducive environment for democracy* resonate with the South African legal framework.
  - 2.2. Analyse how the derived comprehensive framework's *essential principles of democracy* resonate with the South African legal framework for education.
3. To apply the derived and improved framework to evaluate selected national education policies. I will specifically:
  - 3.1. Critically evaluate the *Admission Policy for Ordinary Public Schools* (1998), based on the derived comprehensive framework.
  - 3.2. Critically evaluate the *Norms and Standards for Language Policy in Public Schools: Language in Education Policy* (1997b).
4. To critically comment on the theoretically grounded and legally aligned comprehensive framework on democracy to evaluate school governance practices and policies in South Africa.

In order to achieve the stated aim and objectives of this study, I employed an appropriate and relevant research methodology or design. "Research designs are plans and the procedures for research that span the decisions from broad assumptions to detailed methods of data collection and analysis" (Creswell, 2009:5 & also Niewenhuis, 2007b:70). These broad assumptions are also referred to as world views or paradigms (McGregor & Murnane, 2016:420; Creswell, 2009:6; Niewenhuis, 2007a:46-47). Since the paradigm guides the study (McGregor & Murnane, 2016:420; Niewenhuis, 2007b:70), it precedes the research approach. Although traditionally a separate chapter would detail methodology or design, in this study I provided it upfront. This is because this is not a traditional empirical study, and the fact that even in my second chapter already multiple sources of information were used (as opposed to a traditional literature study).

## 1.5 RESEARCH PARADIGM

A paradigm (worldview) involves the beliefs and attitudes that can assist in looking at the world (Mertens, 2010:7; Gray *et al.*, 2007:22; Maree & Van der Westhuizen, 2007:32; Winberg, 1997:14; Guba & Lincoln, 1994:105; Guba, 1990:18). It involves philosophical assumptions, such as the nature and form of reality (ontology), the nature of the relationship between the knower and the known (epistemology), and how that reality can be known (methodology) (Cohen *et al.*, 2001:5-6; Nieuwenhuis, 2007a:52-55; Guba & Lincoln, 1994:108). Terre Blanche and Durrheim (2006:2) likewise explain a paradigm as the background knowledge of how one perceives reality (ontology), how one goes about the relationship of understanding that reality (epistemology), and how that reality can be studied (methodology). This suggests that reality can be understood and studied from different perspectives, and therefore different paradigms exist (Terre Blanche & Durrheim, 2006:7 & 9).

Based on careful considerations of the different paradigms and different aspects of the study, including the aim and objectives of the study (cf. Terre Blanche & Durrheim, 2006:9) that can generally be found in research, this study is demarcated within a critical theory (CT) research paradigm. In CT, reality is socially constructed (ontology), meaning that multiple realities exist. The relationship between that reality and the observer (researcher) is “suspicious and politicised” (epistemology) and thus therefore not neutral, and reality can be studied through *inter alia* an investigation of texts (methodology) (Groat & Wang in Noel, 2016:4; Terre Blanche & Durrheim, 2006:6). These multiple versions of reality need to be critically examined so as to expose oppressive structures and social policies (Mertens, 2010:31), if they are suspected or found to be prevalent. What this means in this study is that democracy in SG practices has to be understood from a position that various interpretations can be attached to the concept “reality”. A thorough discussion and justification of the demarcation of this study within the CT paradigm, will be provided below. I will then declare my assumptions in this study, and elaborate on the research approach and design in the subsequent sections.

### 1.5.1 PARADIGMATIC PERSPECTIVE

I discuss CT by first providing a historical overview, and then contextualising it within this study.

### 1.5.1.1 HISTORICAL OVERVIEW OF THE CRITICAL THEORY PARADIGM

CT was developed in the early 1920s at the Frankfurt University in Germany, by renowned scholars like *inter alia* Pollock, Grunberg, Horkheimer, Wiesegrund, Adorno and Marcuse (Fuchs, 2015:1; Meyer-Emerick, 2005:542; Rush, 2004:1; Cohen *et al.*, 2000:28; Kolakowski in Nel, 1995:123-124). They are also referred to as the scholars from the 'Frankfurt School', while some people regard them as 'Neo-Marxists' (Nel, 1995:123). They describe their theory as CT as they believed that theirs was different from the traditional theories that were already in operation at that time (Rush, 2004:7; Nel, 1995:123). Another prominent member, Jurgen Habermas, only later joined the original critical theorists, but is widely respected for his contributions to the CT paradigm (Meyer-Emerick, 2005:543; Cohen *et al.*, 2000:28; Dubiel in Nel, 1995:124). His approach and contribution to CT is also acknowledged and used in this study.

CT seems to have different dispositions or foci, depending on the scholar's views and assumptions (Meyer-Emerick, 2005:543; Rush, 2004:1-2; Nel, 1995:143). Habermas focused on communicative action and knowledge interests (Meyer-Emerick, 2005:543). Habermas posits that the latter has three knowledge interests. These are technical interests (control and predictability), hermeneutic interests (understanding other's perspective and views), and emancipatory interests ("promoting social emancipation, equality, democracy, freedoms and individual and collective empowerment") (Cohen *et al.*, 2000:33). However, the knowledge interests seem to be the fundamental common characteristic of CT (Meyer-Emerick, 2005:543; Cohen *et al.*, 2000:28). It also seems as if Habermas was influenced by other scholars like Karl Marx and Max Horkheimer regarding the fundamental characteristic of the importance of knowledge interests, hence, the acknowledgement of critical theorists being considered to be Neo-Marxists (Rush, 2004:4).

In line with Fuchs' interpretation of Horkheimer and Marx's interpretation on the definition of CT, Rush (2004:9) asserts that CT "is a way to instigate social change by providing knowledge of the forces of social inequality that can, in turn, inform political action (or at least at diminishing domination and inequality)". Furthermore, Fuchs (2015:1) contends that "critical" is used in this context to suggest questioning issues of power, domination, exploitation, the political demand and struggle for a just society. This appears to be one of the foundations of CT. This is succinctly reflected by Paulo Freire in his *Pedagogy of the oppressed*, written in the 1970s. He contends that it is imperative that teachers enable their

students to “develop their own critical consciousness of oppression” (Freire in Meyer-Emerick, 2005:546-547). Freire’s assertion resonates with Marx’s contention on knowledge and change when he states that “policy makers seek to change the world, but first they need to try to understand it, while involving others” (Marx in Watson & Watson, 2011:75). This interpretation and definition of CT allows for the extraction of a number of issues and concepts that can shed more light on CT. These issues and concepts (from the exposition above) are *inter alia* domination, power, oppression, inequality, emancipation (social change), knowledge (of who or what causes the mentioned social challenges), and the willingness to change the situation. The issues and concepts that I have identified are not exhaustive, and reference will also be made to what other researchers and scholars have articulated about the paradigm (CT).

From this historical perspective of CT, I believe that this study can be demarcated within the CT paradigm. The elaboration of the issues and concepts by other scholars and researchers will be used to further shed light on what CT entails. Furthermore, it will also be used to corroborate the assertion that this study satisfies the criteria to be demarcated within the CT paradigm. I address this by contextualising CT within this study below.

#### 1.5.1.2 CRITICAL THEORY PARADIGM IN CONTEXT

Different branches or strands of CT are operative (Nel, 1995:134; Meyer-Emerick, 2005:543), and is used in different disciplines (Meyer-Emerick, 2005:543). The usage of CT in various contexts may elevate certain tenets or characteristics of CT. Those that I posit to be relevant and important in this study include *inter alia* intention, purpose, interests, power and domination, knowledge, and values. However, before I discuss these, I believe a brief reflection of what “critical” entails is necessary, as it may sometimes be misconstrued. A critical perspective does not necessarily denote a negative stance (Smythe, 1988:141-142), but rather implies to look at issues from different angles (Gray *et al.*, 2007:13). The above suggests “looking beyond the obvious and into the many possible meanings and interpretations of human behaviour” (Gray *et al.*, 2007:17). I strive to do exactly that. Nel (1995:126) advises that society and its associated theories should furthermore be viewed in a critical manner. This also holds true for democracy, and how it is perceived and experienced in societies (Alston in Van Vollenhoven *et al.*, 2006:121). Through a critical view, societies will be able to interrogate issues that they are confronted with (Merriam, 2009:34; Van Vollenhoven *et al.*, 2006:122). However, taking such a critical stance may involve sacrifice. A

critical stance towards research “requires a painful process of radically examining our current positions and asking pointed questions about the relationship that exists between these positions and the social structure from which they arise” (Apple in Smythe, 1988:142). Furthermore, its function is to increase awareness of potential contradictions and distortions in society (Comstock in Smythe, 1988:143).

Cohen *et al.*, (2000:28) assert that CT’s “intention is not merely to give an account of society and behaviour but to realize a society that is based on equality *and democracy* [my emphasis] for all its members”. Much of this behaviour may be construed to be illegitimate, dominating and repressive, and may be perceived as the abuse of power to trample on other’s freedom (Cohen *et al.*, 2000:28). As with the intention, CT’s “purpose is not merely to understand situations and phenomena but to change them. In particular it seeks to emancipate the disempowered, to redress inequality and to promote individual freedoms within a democratic society” (Cohen *et al.*, 2000:28). This is what Marx (in Rush, 2004:10) meant when he said that “[t]he philosophers have only interpreted the world in different ways; the point is to change it”. This implies that stakeholders involved in SG need to be able to understand democracy in SG practices, particularly when the contrary seemed to have been proven (cf. 1.2). Furthermore, they need to be aware of what constitutes democracy and an environment that enables democracy (*inter alia* elements of a conducive environment for democracy and essential principles of democracy).

Some issues are central to the CT paradigm. These include *inter alia* “issues of equality, repression, voice, ideology, power, participation, representation, inclusion and interests” (Cohen *et al.*, 2000:28). Some of the issues that seem to resonate with CT, and informed the study, include learner representatives being ostracised and excluded from genuine participation; learner representatives being overruled and overpowered in decision-making processes; working against openness; undemocratic practices; religious bias; social tension, rejection, and domination; (cf. 1.2), and so forth. Furthermore, it is acknowledged in CT that the interests of the powerful few normally take precedent over the interests of the marginalised and the disempowered (Cohen *et al.*, 2000:28). It is in this light that “critical theory seeks to uncover the interest at work in particular situations and to interrogate the legitimacy of those interests” (Cohen *et al.*, 2000:28), and power (Popkewitz, 1995:140).

What seemed to emerge from all the incidents and cases in the problem statement (cf. 1.2), is that a party or parties were adversely affected, either through the violation of human rights

or common law principles. It seems that one of the involved parties had power, and that they wielded this power, sometimes to the detriment of the other party or parties. It also seems that power was used to the extent that the other or opposing party felt aggrieved, and sought the assistance from either the courts of law or higher authority (cf. 1.2). The issue of power and domination actually permeates throughout the study. The infringements highlighted in the Rationale and Statement of the Problem, (cf. 1.2) occurred in SG contexts in the various schools and provinces, but these are also social issues, as education is generally a societal issue (Merriam, 2009:4; Berkhout & Wielemans, 1999:404).

When domination occurs through the misuse of power in society, as seen in the mentioned cases involving SG (cf. 1.2), oppression and a feeling of disempowerment consciously or unconsciously come to the fore. In such instances, a requisite paradigm (i.e. CT) that entails and exposes the issues of power and domination, and also oppression and disempowerment, becomes relevant (Merriam, 2009:34-35; Nel, 1995:126-127; Popkewitz, 1995:140). In this regard, CT needs to be considered in order to change society for the better (Cohen *et al.*, 2011:31; Merriam, 2009:23; Nel, 1995:129). However, the requisite knowledge, appreciation and understanding of the phenomenon in contention (democracy in this case) concomitantly become necessary.

Cohen *et al.* (2000:33) acknowledge Habermas' contention about knowledge not being neutral, and in this regard assert that knowledge has an emancipatory interest. This suggests that the emancipatory interests of knowledge are in "promoting social emancipation, equality, democracy, freedoms and individual and collective empowerment (Cohen *et al.*, 2000:33). These issues are addressed in this study. In line with this, the preliminary literature study (media reports, research articles and court cases) revealed the prevalence of misconceptions surrounding democracy and the misapplication of legal and democratic principles (cf. 1.2). The foregoing implies a knowledge gap. The issue of the knowledge interests is also in line with Paulo Freire's contention. He suggests that in order for one to be able to change a phenomenon or situation in a society, one first needs to be knowledgeable about it, so that you may know and be conscious about what constitutes it, and as a result be able to act to change it. The same applies to democracy in SG practices and policies.

CT promotes social justice and helps to expose and address problems in society (Watson & Watson, 2011:66). This implies that it can enable individuals to be empowered (Kincheloe, McLaren & Steinberg in Watson & Watson, 2011:66), and as a result be able to initiate change

so as to benefit the oppressed (Lincoln, Lynham & Guba in Watson & Watson, 2011:63). In this regard, the circumstances that give rise to the threat to democracy through SG practices need to be identified and exposed. This can be done through viewing the phenomenon through the CT emancipatory or transformative lens (Mertens, 2010:8), due to its emancipatory intention or purpose (Merriam, 2009:34). In this regard, CT is able to alleviate this threat by assisting to bring about an egalitarian society based on the promotion of democracy (Merriam, 2009:23; Cohen *et al.*, 2000:28; Nel, 1995:129). Furthermore, CT will assist in exposing “issues of repression, voice, ideology, power, participation, representation, inclusion and interests” (Cohen *et al.*, 2011:31), which are paramount in this study *and in democracy* [my emphasis].

In addition to the issues of power, dominance and social justice, another important issue in CT is the role that values play. In this regard, Guba (1990:24) is of the view that “the choice of a particular value system tends to empower and enfranchise certain persons while disempowering and disenfranchising others”. My observation of the above is the apartheid/democracy dichotomy in the history of pre-1994 (pre-democracy) SA, which also impacted on schooling and SG practices and policies. Apartheid or separate development was regarded as a value to the previous regime and the privileged white minority, which gave them a sense of being empowered and enfranchised. The poor black majority experienced this separate development, or apartheid, as disempowering and disenfranchising. Similarly, the oppressed black majority regarded democracy as a value, while the apartheid regime regarded democracy as a threat, and consequently as potentially disempowering and disenfranchising. A similar conclusion can be drawn from values perceived to be sacrosanct to others (Jewish) as in the Grade 10 Muslim learner in the Israeli/Palestinian issue I earlier referred to (cf. 1.2.1).

The contrasts identified (Apartheid/Democracy & Israeli/Palestinian) above, as one example, can also be exposed through the use of CT. Fuchs (2015:5) asserts that CT uses dialectical reasoning as a method of analysis, and this (dialectical) method of analysis in turn identifies contradictions. Fuchs adds that these contradictions cause problems, which in turn require solutions. In other words, problems are exposed and solutions are pursued. This implies that the contradictions between what education legislation and policy provides, and SG practices, can be investigated.



In summary, issues of intention, purpose, interests, power and domination, knowledge, emancipation, values, contradictions, and democracy in broad terms have been identified, highlighted (exposed) and discussed in this study. Similarly, these issues have also been shown to be present in CT. However, what is also part of CT, like any other theory is a limitation.

Since the purpose of critical theory is not merely to understand situations and phenomena but to change them (cf. 1.5.1.1), this resonates with Freire's view. Freire (cf. 1.5.1.1), as well as Fuchs (2015:7) believe that people will only be liberated if they learn to know who is oppressing them and also how this oppression manifest itself. Hence the exposing of exploitive practices (Higgs, 1995:8) should be followed by practice that is informed by relevant theory (Nel, 1995:129). However, the identification of the problem and potential solution, may themselves be problematic if this is not carefully critiqued or done (Sayer, 1997:484-485). Furthermore, that knowledge is not neutral (cf. 1.5.1.1), I posit that this could exacerbate the potential of wrongful or inappropriate identification of the problem and the alternative to address the issue. In this regard, Sayer (1997:484-485) cautions to the potential of a wrong diagnosis of the problem and alternative to an issue and refers to it as a limitation, particularly when a matter is contentious. In other words, a potential limitation of CT is the potential wrong identification of the problem and solution of the problem. In this study, democracy is a contentious matter (cf. 1.2), and I believe that both the identification of the problem (cf. 1.2-1.3), as well as working towards a potential solution (cf. 1.4) are well taken care of. Both the identification and alternative that this study offers are based on a well sourced literature review that is based on *inter alia* sources that have undergone rigorous peer review, court judgements, accredited journals and books, UN and AU resolutions, and the *Constitution* (cf. Chapters 1-8). However, though I having tried my best to be objective, I believe that the issue of (some) bias as a researcher may not be entirely eliminated.

Based on the above, and bearing in mind the potential limitation I argue that this study can best be conducted when demarcated within the CT paradigm.

### 1.5.1.3 MY ASSUMPTIONS IN THE STUDY

Resonating with the exposition above, I declare and state my own assumptions in this study:

- South African education policy and legislation seems to be fraught with contestations regarding the interpretation and implementation of democratic school governance practices (court judgements are but one example);

- Specific South African education policy and other official documents may be silent and or may not be emphasising issues of democracy enough, and this may perpetuate undemocratic SG practices;
- Distortions and misunderstandings of what constitutes democracy in SG practices and policies in SA (conducive environment and essential principles) seem to be prevalent;
- SG stakeholders seem not to be aware of aspects that can negatively impact on democracy;
- The abuse of power and authority, which may lead to undemocratic practices (oppression, voicelessness, discontentment, unequal treatment, worthlessness, inadequate participation, inadequate representation, etc.), seem to be prevalent, and these necessitate intervention. In this regard, I contend that the application of CT will be the most relevant and appropriate paradigm to use;
- The common law principle of *audi alteram partem*, as demonstrated in the rationale and problem statement, seems to be ignored sometimes;
- The CT paradigm can expose what is not readily and easily visible, and can deal with undemocratic practices in SG; and
- SG stakeholders may not be adequately empowered to deal with or be able to distinguish undemocratic practices, so a comprehensive framework on democracy may empower them and may expose such practices.

It should be noted that demarcating this study within the CT implies that it will be the lens through which the rest of the study will be undertaken. As a consequence, the research approach and design as well as the rest of the sections were approached through the use of the CT paradigm. This will be evident when each of the sections is discussed. It includes *inter alia* investigating (interrogating) documents, education legislation, court judgements and specific education policies.

One of the implications of having demarcated this study within the CT is its impact on the research approach, which is addressed below.

### 1.5.2 RESEARCH APPROACH

The multiplicity of realities (ontology), a “suspicious and politicised” relationship between the researcher and reality (epistemology), and that the researcher can study or learn reality by way of texts (methodology) as expressed in (1.5.1), satisfy the characteristics of a qualitative study. It *inter alia* involves people or school governance stakeholders’ words, observations and experiences (Merriam, 2009:23; Gray *et al.*, 2007:42; Nieuwenhuis, 2007a:50; Terre Blanche, Kelly & Durrheim, 2006:272; Fouché & Delport, 2011a:65), as expressed through *inter alia* reports and court judgements (cf. 1.2).

Drawing from Fouché and Delport (2011a:65), qualitative research also involves the identification of SG stakeholders’ beliefs and values about the phenomenon (democracy). Hence, the subjectivity and uniqueness of qualitative research, due to the interpretations of those involved, is noted (Nieuwenhuis (2007a:50-51). Merriam (2002:15) also notes that qualitative research promotes “a search for meaning and understanding”, and normally provides a thick description of phenomena. Denzin and Lincoln (in Watson & Watson, 2011:63) add another dimension, by mentioning that qualitative research is also inherently critical in function.

The critical perspective of qualitative research is also evident in the philosophical assumptions described in the first paragraph. Besides the above, other elements also corroborate the critical perspective taken by qualitative research. In this regard, Merriam (2002:4) posits that “critical research incorporates a strong emancipatory agenda along with critique” and with an objective of empowerment. Furthermore, issues of power, privilege, oppression and interests are also prevalent (Merriam, 2002:4). Merriam (2002:4) describes such research as critical qualitative research, and this allows this study to satisfy most of the criteria that Merriam has prescribed, except one. This one relates to sources of data.

Qualitative research potentially has three main data sources, namely interviews, observations and documents (Kelly, 2006:297; Merriam, 2002:15; Merriam, 1998:23). In line with the aim and objectives of this study, I use a variety of documents (document analyses). This decision has various implications. One is that data will not be collected directly from participants, yet I still applied for ethical clearance for the study (UFS-HSD2018/0203). If participants are not directly involved, this implies that there will be no direct relationship or contact, but that secondary data will be collected from different types of documents. Although it may be

perceived to be against the norm in (critical) qualitative research, provision is made for this (cf. Terre Blanche & Durrheim, 2006:2). This acknowledgement is also evident in the opening paragraph of this section, when I refer to “texts”. Further clarification and justification for employing only one type of data gathering strategy will be provided in the following section.

### 1.5.3 RESEARCH DESIGN

A research design is generally understood as being a process through which the different steps or activities in a research project are undertaken from beginning to end (Gray, *et al.*, 2007:34; Nieuwenhuis, 2007b:70; Durrheim, 2006:34, 67; Mouton, 2001:55; Cohen *et al.*, 2000:70). The main steps or activities defining a research design include data collection and analysis (Sellitz, Jahoda, Deutsch, & Cook in Durrheim, 2006:34). Furthermore, data collection and analysis in qualitative research are usually executed at the same time (Nieuwenhuis, 2007b:81; Merriam, 2002:14).

Based on the above, this critical qualitative study essentially used document analyses as a data collection and analyses strategy. Since there are different types of documents (Strydom & Delport, 2011:377; Bailey in Mogalakwe, 2006:221), some documents will require a specific kind of analysis. Besides this, the objectives of the study will also contribute to the support of the sole use of document analyses in this study.

The first objective of the study is to derive a comprehensive framework on democracy from existing theories and literature. This can best be done through the use of literature and documents (cf. 1.5.3.1 & 1.5.3.2). The second objective is to evaluate to what extent the derived framework resonates with the South African legal framework. The South African legal framework comprises official documents which *inter alia* include legislation, policies court judgements, the NDP, and the PAM document. These are also (official) documents. The third objective is to determine the usefulness of the derived framework by using it to critically evaluate selected national education policies. These policies are also official documents. To conclude, the fourth objective is to comment on the usefulness of the theoretically grounded and legally aligned comprehensive framework on democracy in order to evaluate SG practices and policies in SA. It can be observed that the use of (different types) of documents as a single source of data collection and analysis strategy is observable and acknowledged. In other words, the different objectives will be achieved through the use of different types of documents with different foci and in different situations.

In order to achieve the above, the research design will comprise three stages. I employed a literature study, document analyses and Critical Policy Analysis (CPA). It is important to note that most of the chapters (except Chapter 4), required a combination of two or more of the techniques. Chapters 1-3 and 5 accommodate both a literature study and document analysis. Chapter 4 utilises document analyses only. Chapters 6 and 7 use a literature study, document analyses and CPA. The use of different types of documents will serve different purposes in the different chapters. Below follows a discussion on each of the techniques that is to be employed, i.e. literature study, document analyses, and CPA respectively.

#### 1.5.3.1 LITERATURE STUDY

The concept “literature” is regarded as a difficult term or concept to define (Kennedy, 2007:139). However, the dominant interpretation is that it comprises a variety of information sources or materials (Kaniki, 2006:19; Fouché & Delport, 2011b:137; Hart, 2004:2). Furthermore, different authors emphasise or highlight different sources of information. Kennedy (2007:139) asserts that literature sources include journals, dissertations, conference presentations and independent reports. Hart includes (edited) books, articles, reports, theses, conference literature, official and legal publications, and reviews. Although Naoum (2002:18) also includes those sources referred to by the previous two authors, he categorises the sources into three literature categories. The primary category includes sources such as “academic researched journals, refereed conferences, dissertations and theses, reports, occasional papers and government publications”. The secondary category includes “textbooks, trade journals, newspapers and magazines”, and the third includes “dictionaries, encyclopaedias and handbooks as reference guides” (Naoum, 2002:18).

An analysis of the authors’ conceptualisations of what constitute literature reveals two main observations. The first is that there is an acknowledgement and emphasis on sources that have been subjected to scrutiny by peers in that discipline. The second is that there are also sources that are not necessarily refereed, such as newspaper and magazine articles. When using those that have not been refereed, it is advisable to be cautious and do the necessary credibility checks to verify facts (Fouché & Delport, 2011b:137). Besides being subjected to evaluation (refereed), literature also needs to satisfy some other conditions. These include that sources should provide relevant information, that the researcher should be able to use them in the study to draw conclusions, and the sources must be credible (Fouché & Delport, 2011b:137). Based on this, I adopt and use both Naoum’s and Hart’s inputs regarding the

category of sources that have been refereed as literature in this study. Those that are relevant (in respect of dealing with the topic) in this study include academic researched articles or journals, refereed conference papers, edited books, dissertations and theses, and (legal) reports. Literature generally plays an important role in research, and the same applies to this study.

A literature review provides the platform to consider what has already been researched in a particular area of study (Nieuwenhuis, 2007b:82; Volmink, 2007:66-67; Delport, Fouché & Schurink, 2011:302; Mouton, 2001:87). Fouché and Delport (2011b:135) add another dimension and are of the view that “the literature review provides the framework of the research and identifies the area of knowledge that the study is intended to expand”. What can be drawn from this is that the different definitions, theories, models, and related concepts of democracy will be explored, with the aim of elucidating and commenting on deriving a theoretically grounded and legally aligned comprehensive framework for democracy to critically evaluate SG practices and policies in SA. A review of literature is also referred to as a literature study (Mouton, 2001:86), and I will refer to it as such in this study. In this regard, I intend to undertake a literature study to consider what has already been researched about the topic, and use this information to derive a comprehensive framework on democracy.

Using literature also helps researchers to learn what has already been done in order to avoid duplication, and it helps to identify gaps which the researcher can then pursue. It also helps the researcher to identify and avoid errors committed by previous researchers (Hart, 2004:3). Literature also assists in gathering information that can be used to develop issues and themes (Naoum, 2002:17). In this instance the literature study assisted the researcher to develop the two main themes (conducive environment for democracy and essential principles of democracy) and sub-themes (elements and essential principles). The conducive environment for democracy in SG practices and policies in SA was informed by literature regarding the basis of a context within which democracy can be promoted or constrained (Obenzinger, 2005:1). It is also through literature that the paradigm to be employed in the study can be decided upon and justified (Delport, Fouché & Schurink, 2011:302). Finally, the literature provides the researcher with a reason for the study (Obenzinger, 2005:1). It is precisely due to these listed advantages that I could embark on this study.

After the literature study follows a document analysis. It may become apparent that some sources may overlap, implying that some may be regarded and used as literature or documents. This will particularly be evident in the discussion below.

### 1.5.3.2 DOCUMENT ANALYSIS

I *inter alia* used document analysis to assist in the derivation of a comprehensive framework on democracy in order to critically evaluate SG practices and policies in SA. However, “[d]ocuments can be used as an umbrella term to refer to a wide range of written material relevant to the study” (Merriam, 2009:139). Also, documents are referred to as all written text (Guba and Lincoln in Ahmed, 2010:2; Nieuwenhuis, 2007b:82; Mogalakwe, 2006:221; Scott in McCulloch, 2004:4), and there are different categories of documents (Nieuwenhuis, 2007b:82; Strydom & Delport, 2011:377). Instead of listing all types, I will only identify those that are relevant to this study.

These include *inter alia* the *Constitution*, SA legislation, SA court judgements directly related to education, SA education policies, the PAM document, the NDP document, and UN and AU reports, declarations, and resolutions which are categorised as official (Strydom & Delport, 2011:379; Ritchie and Lewis in Strydom & Delport, 2011:377) or public (Mogalakwe, 2006:223); mass media documents which *inter alia* include newspaper articles, and non-fiction books such as biographies and autobiographies (Strydom in Strydom & Delport, 2011:379). It should be noted that, according to Mogalakwe (2006:223), public documents can also be categorised as documents intended for mass media. I also used other public documents such as internet sources, and academic material that have not necessarily been sourced from refereed journal articles. However, all the documents will have some bearing on the topic under investigation. Hart (2004:5) regards EU and UN documents, and by implication AU documents, as literature sources as they can also be categorised as official publications, and will be used as such in this study. I have decided to use these documentary sources as they can contribute to the broad body of knowledge in scientific research (Bailey in Mogalakwe, 2006:221; Strydom & Delport, 2011:377). In addition, Merriam (2009:163) asserts that “[d]ocuments of all types can help the researcher uncover meaning, develop understanding, and discover insights relevant to the research problem”. In other words, the use of document analysis in this study in the field of education is recognised and therefore important (Ahmed, 2010:1). Besides the contribution that documents can make, it has various advantages, as well as limitations.

Some of the advantages of a literature study is that it is relatively low in cost compared to a comprehensive survey (Merriam, 2009:155; Monette *et al.*, in Strydom & Delport, 2011:382). Sometimes “producers of documents do not necessarily anticipate the analysis of their documents” (Strydom & Delport, 2011:382), and in this way there are no potential reactions - the researcher does not have to take the effort or trouble to make contact with participants (Strydom & Delport, 2011:382). A literature study is not necessarily time consuming (Ahmed, 2010:10; Merriam, 2009:155), and that data is readily available (Appleton & Cowley in Ahmed, 2010:10). Merriam (2009:154) asserts that documents are more stable and objective. This implies that the researcher “does not have influence on the data”. Although Strydom and Delport (2011:382) maintain that the main limitation with documents is that they have not been particularly written for research purposes, I actually regard this as an advantage. This suggests that neither the author of the document nor I would have had any influence on the contents of the document. Other limitations relate to bias, particularly with regard to biographies and autobiographies and other personal written contributions; the contents of documents could be affected by the linguistic skills of the producers; and there is usually a lack of a standard format. The origin of the documents can also be a limitation (Strydom and Delport, 2011:383). In order to overcome these limitations, I believe that in handling the documents with integrity (cf. 1.5.4) will strengthen the quality of my study. In other words, what would generally be regarded as a limitation, will be used to enhance the integrity and quality of my study. The implication is that I will have to be careful in the selection of documents for my study. It should be noted that the use of documents also implies that an analysis will accompany the documents and my dealing with them.

In this regard “[i]n qualitative research, data analysis is simultaneous with data collection” (Nieuwenhuis, 2007b:81; Merriam, 2002:14). It implies that analysis should still be done, and should be “systematic and well structured” (Ahmed, 2010:6). As a point of advantage, Punch (in Ahmed, 2010:6) advises that how it is to be done depends on the researcher, and this will also be evident in this study. In this regard, I will revisit, relook and consider how my research questions, methodology and methods link in the formulation of the structure I intend to employ in the analyses of the documents (Mason in Ahmed, 2010:6).

Furthermore, Blaxter, Hughes and Tight (in Ahmed, 2010:5) posit that document “analysis is about the search for explanation and understanding, in the course of which concepts and theories are likely to be advanced, considered and developed”. This search for understanding



is dependent on the application of a structure which is to be derived from the data (Easterby-Smith, Thorpe & Lowe in Ahmed, 2010:6). This exercise of applying the structure on the data will assist with the analysis (Easterby-Smith, Thorpe & Lowe in Ahmed, 2010:6). The analysis structure that will be followed is that the categories of “a conducive environment” and “essential principles” will be identified from the data. These refer to the elements and essential principles. In line with the research questions, objectives, methodology and methods, arguments will be put forward whether the identified elements and essential principles of democracy are compliant with what was mentioned previously. Also, the data will be analysed and used to derive a comprehensive framework for democracy and a determination will be made whether its elements and principles are aligned with the South African legal framework for education.

I have indicated that South African education policies are official documents. I have also argued that I will employ CPA to analyse specific national education policies of SA (cf. 1.5.3.3). Since CPA is specifically applied to policy documents, this suggests a particular kind of analysis, and therefore it will be discussed in a separate section below.

### 1.5.3.3 CRITICAL POLICY ANALYSIS

Hartshorne (1999:5) asserts that “[e]ducation Policy, like any other state policy, may be defined as a course of action adopted by government, through legislation, ordinances, and regulations, and pursued through administration and control, finance and inspection, with the general assumption that it should be beneficial to the country and its citizens”. It implies that these policy documents should *inter alia* carry positive messages and statements that promote democracy in SG practices. However, I assert that it should not be taken for granted that this will necessarily be the case, and therefore there is a need for enquiry in this regard. It is for this reason that this study will endeavour to explore the presence of the elements of a conducive environment for democracy as well as the essential principles of democracy within SG contexts in SA. Furthermore, it will also be used to evaluate to what extent the derived comprehensive framework resonates with the South African legal framework.

An investigation into the effects or consequences that such policies have on groups, as well as “the values, assumptions and ideologies underpinning the policy process”, is referred to as a policy analysis (Codd, 1988:236-236). Since policy is also *inter alia* about the exercise of (political) power (Codd, 1988:235), Anderson (in Berkhout & Wielemans, 1999:404, also

supported by De Clercq (2010:92), recommend that a critical policy analysis (CPA) approach be used.

Troyna (in Taylor, 1997:24), who equates critical social research to CPA, asserts that “critical social research is interested not only in what is going on and why, but ... is also concerned with doing something about it”. This is in congruence what has been explained regarding the CT paradigm (cf. 1.5.1.1 & 1.5.1.2). In this regard, Diem, Young, Welton, Mansfield & Lee (in Cahill, 2015:303) define CPA as referring “to a form of education policy studies where the focus is upon exposing inconsistencies between what policy says and what policy does, particularly in terms of power relationships in society”. This implies that CT is brought into focus in the critical analysis of education policy, and will therefore contribute towards the derivation of a theoretically grounded theory on democracy in this study.

CPA can be approached in different ways. CPA can focus on *inter alia* policy as texts and its impact, or consequences Taylor, Rizvi, Lingard, and Henry (1997:50-52), or texts and impact or effects for Ball (1993:15). In addition, Ball (1993:10) advises that in order “to analyse policy, we need a toolbox of diverse concepts and theories”. Since I have noted some similarities between Taylor *et al.*, (1997) and Ball (1993), I will acknowledge those if and when they emerge, in line with Ball’s advice. However, Taylor *et al.*, will be the dominant theory that will be used in the CPA of education policies in Chapters 6 and 7.

Pillay (2006:444) notes that policies are generated as a consequence of some need, and asserts that policies are “developed to influence or shape behavio[u]r”. The implication is that potential deficiencies can be exposed through CPA In light of the foregoing, I assert that if policy is to “shape or influence behaviour”, a framework is also required to evaluate such resultant practice. The foregoing fundamentally solidifies the basis for this study. Furthermore, Pillay (2006:444) highlights the reliance of government on the impact of research on new policies.

Burgess (in Cohen *et al.*, 2000:41) emphasises that when embarking on research in education, such research should be policy relevant. This means that just as there is a need for democracy in SG practices to be introduced through *inter alia* the *Constitution, White Paper on Education and Training (WPET), NEPA, SASA, EEA*, and other related policies (*Admission Policy & Language Policy*), an evaluation as to how these legal instruments have influenced the

particular school governors' practices need to be undertaken. Hence the need for the application of CPA in particular, and this specific study in general

As it has been demonstrated that the school governors' practices were found to be inconsistent with what policies propose and direct, it is advisable that the dictates of CT through CPA should be applied. This will assist with *inter alia* exposing silences and gaps, oppressive practices and structures, and will consequently attempt to change the situation for the better. This exposure and attempt to change is applicable particularly when one constituency feels disempowered and oppressed due to an act of omission regarding some policy interpretation or implementation regarding SG practices and policies.

In an attempt to achieve what is stated above, Chapters 6 and 7 dealt with policy by employing CPA. This was done in conjunction with a literature study and document analysis, as those chapters also deal with court documents or judgements and other categories (types) of documents.

I have referred earlier in this section to the credibility of data sourced from documents (cf. 1.5.3.1). This is part of what is referred to as integrity in handling documentary sources. The section below deals with this in more detail.

#### *1.5.4 INTEGRITY IN HANDLING DOCUMENT SOURCES*

Ahmed (2010:9) argues that "the use of documentary research method ... is also a scientific method that requires rigorous adherence to research ethics". This implies that information sourced from documents that adhere to ethical criteria such as authenticity, credibility, representativeness and meaning (Ahmed, 2010:3; Mogalakwe, 2006:224; McCulloch: 2004:35), may also imply that the integrity of the data and sources are acceptable. In upholding ethics with regard to the handling of documents, Scott (1990) seems to have been quite helpful to a number of researchers who are in favour of the use of documents in research. Scott's four highly recommended criteria include authenticity, credibility, representativeness and meaning (Ahmed, 2010:3; Mogalakwe, 2006:224; McCulloch: 2004:35). I will test the documents I have consulted against these criteria (Scott's criteria as understood and presented by Ahmed, McCulloch, and Mogalakwe).

#### 1.5.4.1 AUTHENTICITY

“Authenticity refers to whether the evidence is genuine and has integrity” (Ahmed, 2010:3; also Mogalakwe, 2006:224). In this regard, I am convinced that the sources I have used can be trusted, as most of them have been published by reputable publishers or the State, or they have been peer reviewed. I have used court judgements and South African legislation as well as national education policies in the greater part of this thesis, and hence accept that they are from well trusted sources. I have also checked whether the documents were produced by authoritative sources, in other words prepared and produced by the author(s) (Platt in Ahmed, 2010: 3). Furthermore, I did not detect any “internal inconsistencies” (Platt in Ahmed, 2010:3; Platt in Mogalakwe, 2006:225), forgery or anything that may have compromised the truthfulness and integrity of the documents (Ahmed, 2010:3).

#### 1.5.4.2 CREDIBILITY

“[C]redibility refers whether the evidence is typical of its kind” (Ahmed, 2010:3; Mogalakwe, 2006:224; Scott in McCulloch, 2004:37). The documents I have referred to in the section above (cf. 1.5.3.2), have not been produced for my study, but mostly as national policies. I have neither tampered with them in any way, and therefore they could be regarded as being credible (Ahmed, 2010:3). When consulting newspaper articles, I did not necessarily take what has been reported as fact, but used its contents in my study. While analysing them I tried to keep in mind that there could be possible bias (Ahmed, 2010:4).

#### 1.5.4.3 REPRESENTATIVENESS

“[R]epresentativeness refers to whether the documents consulted are representative of the totality of the relevant documents” (Ahmed, 2010:3; Mogalakwe, 2006:225). The manner in which the documents have been prepared seems consistent with how legislation, policy and court judgements are produced in SA, therefore they are representative (Ahmed, 2010:4).

#### 1.5.4.4 MEANING

Meaning “refers to whether the evidence is clear and comprehensible” (Ahmed, 2010:3; Mogalakwe, 2006:227; Scott in McCulloch, 2004:37). I found the documents to have been clear and unambiguous. I tried to derive an understanding of what the documents aimed to provide, and did not try to infuse my own meaning in the analysis of the documents (Scott in Ahmed, 2010:5; Mogalakwe, 2006:227). This might be difficult to prove, however, I tried to

remain true to the contents of the documents while still acknowledging the CT paradigm I am working from (McCulloch, 204:36).

From the exposition above, I have tried to demonstrate that I have attempted to uphold integrity in handling documentary sources. In this regard, I have identified documentary sources that provided data that was trustworthy, that was not tempered with to suit my situation, that were typical of the sources, and that could provide clear and unambiguous data.

I have attempted to not only ensure that the data is clear and relevant to the study, but also that this study is properly demarcated within Policy Studies in Education.

## 1.6 SCIENTIFIC DEMARCATION

In this study, I explored concepts that are linked to policy, education policy, the analysis of (education) policy, as well as what each of these entail. When such concepts are present, it implies that this study is located within Policy Studies in Education (PSE). In this regard, Fox and Meyer (in Roux, 2002:424) define policy as “authoritative statements made by legitimate public institutions about the way in which they propose to deal with policy problems”. In contextualising public policy, Hartshorne (1995:5) asserts that education policy is *inter alia* about the government taking action through legislation and policy to provide and support education (cf. 1.5.3.3). The expectation from this is that in some point in time, an assessment of how these education policies have achieved their objective, would become necessary (Dye in Roux, 2002:426-427). This assessment is also defined as the analysis of policy. Hanekom’s definition (in Roux, 2002:427) of policy analysis includes an “enquiry” to produce relevant information that may be used. Quade (in Roux, 2002:428) posits that policy analysis may also include “research to illuminate or provide insight into an anticipated issue or problem”. The implication is that the enquiry can be in the form of research. In this regard, the SA government also requires that these education policies should be researched to determine its impact (cf. 1.5.3.3).

In line with the above, Codd, (1988:236-236) contends “that an enquiry or investigation on the effects or consequences that such policies have on groups, as well as the values, assumptions and ideologies underpinning the policy process”, and such an enquiry is referred to as the analysis of policy (cf. 1.5.3.3). Since policy is also *inter alia* about the exercise of

(political) power (Codd, 1988:235), Anderson (in Berkhout & Wielemans, 1999:404), supported by De Clercq (2010:92), recommends that a critical policy analysis (CPA) approach be used (cf. 1.5.3.3). Troyna (in Taylor, 1997:24), who equates critical social research to CPA, asserts that “critical social research is interested not only in what is going on and why, but ... is also concerned with doing something about it”. This is in line with what has been mentioned regarding the CT paradigm (cf. 1.5.1.1 & 1.5.1.2). In this regard, Diem, Young, Welton, Mansfield, & Lee (in Cahill, 2015:303) define CPA as referring “to a form of education policy studies where the focus is upon exposing inconsistencies between what policy says and what policy does, particularly in terms of power relationships in society”. The power imbalance and undemocratic practices are well articulated in the rationale and problem statement (cf. 1.2). Arguments were made in support of the application of CT in exposing such oppressive practices and power imbalances, and also in recommending corrective action (cf. 1.5.3.3). This demonstrates the close bond between CPA and CT. Firstly, CPA accommodates PSE. Secondly, it has been argued that this study can best be undertaken through employing CT (cf. 1.5.3.3). In other words, not only is PSE acknowledged in CPA, but also that CPA also plays a pivotal role in this study.

PSE further “relate to a series of policy concepts as social justice, inclusion and the fight against discrimination on the basis of race, gender and ability” (Lall, 2007:7). Since social justice includes *inter alia* equal treatment of citizens regarding their rights (Miller in Lall, 2007:9), these concepts have been extensively illuminated in the rationale and problem statement of this study. Issues of inclusion/exclusion and discrimination have also been mentioned in the court cases referred to in this study. This corroborates the demarcation of this study within PSE. PSE is also fundamentally based on Education Policy, which is comprised of key concepts that are linked to policy studies in general and education policy in particular. Lall (2007:3-9) notes a number of key concepts that are important in PSE. Besides noting those that are critical and relevant in this study, I will demonstrate their link and relevance. The key concepts include the definition of policy, the role of the state in policymaking, policy as discourse, critique and debate, and social justice. As I have already elaborated on power and social justice, I will not repeat them in the discussion that follows.

In the opening paragraphs of this section I have explained what policy is, and now I will attempt to explain why policies are needed. The role of the state in policymaking in SA is central in this study. It acknowledges this role, but in line with the *Constitution* tries to include

all stakeholders in the generation of policies. Various groups and stakeholders involved in education and SG demonstrate their involvement or lack thereof through research reports and court judgements that are also reflected in this study (cf. 1.1-1.2). The concepts of policy as discourse and critique and debate of education policy were addressed in the CT section (cf. 1.5.3.3), as well as other sections of chapter one. The critique and debate of education policy are more prominent in chapters 4-7, particularly chapters 6 and 7, which deal with CPA. In addition to these key education policy concepts, this study has also noted other concepts that can be used to strengthen the argument that this study falls within PSE. These concepts include *inter alia* democracy, SG, education policy, CPA and CT. It should also be noted that the concepts such as social justice, comprising *inter alia* inclusion/exclusion and discrimination, are human rights and democracy issues (cf. 1.1-1.2). In other words, issues of social justice resonate with the focus of this study, which includes democracy in SG practices and policies.

In addition, I have stated that SA is a democratic country, and this is evident in its adoption of *inter alia* the *Universal Declaration on Democracy* (1997) and the fact that this concept (democracy) is enshrined in the *Constitution* (RSA, 1996a: Chapter 1) (cf. 1.1). It follows that democracy should be a way of life (cf. 1.1) which all citizens in the country should aspire to. The expectation is that democracy will be practised in education settings in general and SG in particular (cf. 1.1). Apart from the *Constitution*, democracy through SG practices also finds prominence and expression in various legislation and policies in SA, including the *WPET*, *NEPA*, *SASA*, as well as the *EEA* (cf. 1.1). The overall purpose of these documents is to entrench and promote democratic values and a democratic culture in SG in SA. Since these documents essentially deal with SG, it can be implied that they function in the context of education policy.

*SASA* lays the foundation for the democratisation of education through the establishment of governance structures in schools. These (SG) structures have a responsibility “to determine policy and rules by which schools are to be organised and controlled, which includes ensuring that such policies and rules are carried out effectively in terms of the law and budgets of the schools in which they operate” (Maile, 2002:326; DoE, 1997a:11) (cf. 1.1). Buckland and Hofmeyer (in Maile, 2002:326) add that governance in education involves the entire process, from policy formulation, adoption and implementation to the monitoring of education policies. This acknowledges issues of democracy, SG and education policy. Since Codd asserts that these education policy processes have to be critically analysed, CT can also be added to

the acknowledged issues. These issues in education policy require research in order for the study to be demarcated within PSE. In other words, there should be an exercise of seeking relevant information in order to make informed decisions. This is also applicable and evident in this study in that a derived comprehensive framework for democracy will enable the provision of information that can be used to make a determination on the behaviour and practice of SG stakeholders. The importance and relevance of the foregoing was to highlight the need for education policy to be researched, as well as the role that CPA can play in this regard. Another issue was also to note the need for exposing weaknesses, and consequently endeavouring changing the situation for the better, implying the use of CT.

From the exposition above, it was demonstrated that the characteristics of PSE are present in this study. I have also demonstrated that democracy, SG, education policy, CPA and CT as reflected and demonstrated in the study, resonate with what PSE entails. Furthermore, it has been demonstrated that CPA accommodates PSE, and by implication, corroborates my justification that this study is scientifically demarcated within PSE.

## **1.7 IMPORTANCE OF THE STUDY**

I believe the study will be valuable for a number of reasons:

- It should contribute to the expansion of knowledge in the fields of PSE, specifically on the subject of democracy in SG practices and policies as a contested education phenomenon in SA.
- It should contribute to the establishment of scientific knowledge that can be used by education planners and policy makers to critically evaluate SG practices and policies in SA. This can lead to improved policy development, implementation, and evaluation.
- School officials and school governors can use the framework to evaluate and reflect on their SG practices.
- The study will hopefully provide critical perspectives on current and ongoing contentious issues facing school communities, such as how to reflect and deal with perceived racism in school admissions and language choices in schools, e.g. Hoërskool Overvaal in Gauteng province (Fengu, 2018:8; Mashigo & Tshikalange, 2018:3).



## 1.8 LAYOUT OF THE STUDY

Chapter 1 sketched the problem statement and rationale of the study (cf. 1.2). The research questions, aim and objectives further clarified the reason for and importance of the study (cf. 1.3 & 1.4). The paradigmatic perspective, research approach and research design explicated the lens through which the study would be undertaken, and how data were to be collected and analysed (cf. 1.5). Ensuring and attaining integrity regarding the handling of document sources were clarified (cf. 1.5.4). The chapter concludes by providing a scientific explanation of its demarcation (cf. 1.6), importance of the study (cf. 1.7), as well as the layout of the rest of the chapters of the study (cf. 1.8).

In Chapter 2, a combination of a literature study and a document analysis were used to explore the different perspectives and theories on democracy (cf. 1.4, Objective 1.1).

The objective of Chapter 3 is to use a literature study and document analysis to derive a theoretically grounded and legally aligned comprehensive framework on democracy to critically evaluate SG practices and policies in SA (cf. 1.4, Objective 1.2).

In Chapter 4 a document analysis was conducted to determine to what extent the derived framework elements of a conducive environment for democracy resonates with the South African legal framework (cf. 1.4, Objective 2.1).

Chapter 5 required that a literature study and document analyses be undertaken to analyse how the derived framework's essential principles of democracy resonate with the South African legal framework for education (cf. 1.4, Objective 2.2).

In Chapter 6 a combination of a literature study, CPA and document analysis were used to apply the derived and improved comprehensive framework on democracy to analyse the *Admission Policy for Ordinary Public Schools (1998)* (cf. 1.4, Objective 3.1).

In Chapter 7 a combination of a literature study, CPA and a document analysis were used to apply the derived and improved comprehensive framework on democracy to analyse the *Norms and Standards for Language Policy in Public Schools: Language in Education Policy (1997)* (cf. 1.4, Objective 3.2).

Chapter 8 was used to provide critical comments on the theoretically grounded and legally aligned comprehensive framework on democracy to critically evaluate SG practices and policies in SA (cf. 1.4, Objective 4).

## 1.9 CONCLUSION

In this chapter I have sketched a scenario in which SA as a state and member of the UN has embraced democracy. Democracy as a concept is addressed through the practices of school governors in SA. These practices depict undemocratic tendencies in the cases cited in the problem statement.

Such undemocratic practices are in contrast to the relevant education legislation and policies that direct that democracy should be upheld and promoted in South African schools and communities. These documents include *inter alia* the *Constitution*, *WPET*, *NEPA*, *SASA* and the *EEA*. A need for intervention through the development of a comprehensive framework on democracy was identified.

In order to respond to the broad research question, the secondary questions which have been turned into objectives, serve as chapters in this study.

In Chapter 2 different perspectives and theories on democracy will be reviewed. This exploration will attempt to broaden our understanding of how democracy is perceived elsewhere in the world, as well as in SA. The product of Chapter 2 will form the basis for the comprehensive framework on democracy in Chapter 3.

## CHAPTER 2: PERSPECTIVES AND THEORIES ON DEMOCRACY

### 2.1 INTRODUCTION

The previous chapter depicted undemocratic behaviour in SG practices that different stakeholders were engaged in (cf. 1.2). This brings their different interpretations of democracy and human rights into focus, and as a result, invites some scrutiny and enquiry. In this regard, a review of literature on different perspectives and theories on democracy that can guide SG practices and policies in SA will be undertaken (cf. 1.4, Objective 1.1). I need to clarify that although the aim is to guide SG practices and policies in SA, this chapter will only review literature on democracy. To achieve this I will explore democracy from various perspectives. This exploration and review will entail the origins of democracy, and how democracy is perceived and defined from an Athenian, world, African and South African perspective. I will also include important declarations on democracy and human rights, experiences and perceptions of citizens, as well as contributions by scholars and eminent personalities, who have made a contribution towards the struggle for democracy in the world, and for a democratic SA. To achieve this, a literature study and document analysis is undertaken in an integrated manner.

In line with the exposition above, some perspectives and the origin of democracy follows below.

### 2.2 SOME PERSPECTIVES ON DEMOCRACY

It is asserted that democracy is a way of life (Bassey, 2009:59; Pace, 2009:12; Nieuwenhuis, 2006:125; Steyn, Du Plessis & De Klerk, 2005:15; Koch in Hansen, 2004:87; Organisation of American States, 2001: Article 26; Dewey, 1916:87). Pace (2009:12) further adds that democracy “is a culture, it is a way of thinking”. Democracy as a concept should not be considered at mere face value, but rather through the way citizens think, behave and respond (Sugawara, Hermoso, Delale, Hoffman & Lupšić, 2012:451; Mattes & Bratton, 2007:192). Since democracy is an abstract concept, it can be experienced or observed, through what Rossouw (2003:18-19) refers to as characteristics that can be associated with a concept. In this study, the term characteristics refer to essential principles of the concept democracy.

Carson (1960:186) advises that before you use the word democracy, you first need to provide a clarification or conceptualisation and be consistent in its application, *and possibly provide context* [my emphasis]. However, Dewey (in Carson, 1960: 180-182) gives almost thirty different interpretations of the concept democracy, and then asserts that he still is not sure what democracy specifically is. In line with the foregoing, Crick (in Mathé, 2016:272) succinctly concurs, and expands on how democracy is perceived by stating that “[d]emocracy is both sacred and a promiscuous word. We all love her but see her differently. She is hard to pin down. Everyone claims her but no one can possess her or even name her fully”. This confirms that there are clearly many meanings and interpretations of democracy (Meyer-Resende, 2011:6; Ouwaseyi, 2009:215; Mattes & Bratton, 2007:192-193; Matlosa, 2005:3; Steyn, 2005:2 & 4; Habermas, 2001:766; Chabal, 1998:295; Poncelet, 1997:2-3; Carson, 1960:180; Prothro & Gricc, 1960:282), as well as the types and forms of democracy (Heywood, 2007:72 & 76-88; Ober, 2007:1 & 7). The apparent lack of consensus among scholars on the subject may make its interpretation and concomitant practice more burdensome for the ordinary man. Although it may seem to be the case particularly with regard to school governors from poor backgrounds and low literacy levels (Mncube & Mafora, 2013:14), it is not exclusively the case. I contend that this lack of consensus and understanding has the potential to complicate and compound the problem.

In order to reach some agreement on the interpretation of democracy, it would be prudent to explore where the concept originates from and how it is understood and practised elsewhere in the world. Since democracy is perceived to have started in ancient Greece (Vodovnik, 2017:41; Ouwaseyi, 2009:216; Heywood, 2007:71-72; Ober, 2007:1; Steyn, 2005:3; Ober, 2003:2), I will approach it from this perspective.

## 2.3 DEMOCRACY: AN ATHENIAN PERSPECTIVE

Ouwaseyi (2009:215) is of the view that the confusion of the concept democracy may be as a result of it not being properly defined. Furthermore, Ouwaseyi (2009:215), like Carson (1960:186), thinks that democracy needs to be properly contextualised. This refers to considering the place and period of its origin in relation to the understanding and practices of democracy. Democracy originated in the city-state of Athens in Greece around 508 BC (Nieuwenhuis, 2006:135; Ober, 2003:2). According to Ober (2003:2), the Greeks “had no historical model from which they might hope to learn”. This implies that challenges would emerge as they went along practising it. The Greek word *demokratia* comes from *kratos*,

which means power, and *demos*, referring to the people (Ouwaseyi, 2009:215-216; Heywood, 2007:72; Ober, 2007:1; Steyn 2005:3). In other words, it implies “rule by the people” (Opuamie-Ngoa, 2010:132; Behrouzi, 2008a:1; Schmidt, 2002:147). It was rooted in the idea that the people participate in decision-making in the affairs of their lives (Mathebula, 2013:1; Heywood, 2007:72; Ober, 2007:1; Matlosa, 2005:3; Walker, 1966:285 & 289; Carson, 1960:185). This suggests that participation was regarded as the foundation of democracy, without which it cannot exist (Behrouzi, 2008a:6; Carson, 1960:185). Although participation seems to have been the focus, it did not include everybody. Only native males were allowed to participate (Ober, 2007:5; Nieuwenhuis, 2006:135; Ober, 2003:2) while foreigners, women and children were not (Vodovnik, 2017:45; Markoff, 2013:15-16; Mathebula, 2013:1; Nieuwenhuis, 2006:135). The exclusion of some members of the community from participation in the affairs of the community demonstrates one challenge in the interpretation and implementation of democracy.

This exclusion of some members of the community was seemingly supported by sections of the influential citizens in Athens. This can be observed in the manner in which violence and sometimes coercion was utilised. In this regard, various forceful removals and takeovers of those in power in Athens took place. Governance structures were toppled twice around 411 - 410BC and 404 - 403BC, and were replaced by a select few rulers. This is referred to as an oligarchy (Ober, 2003:9). It seems as if Plato preferred this system, because he regarded these leaders as capable (Topaloğlu, 2014:73), but not so the general populace. In fact, Plato's view was in congruence with that of Socrates (who is often regarded as his mentor), as well as that of Aristotle (who Plato was regarded as mentor).

Both Plato (in Dewey, 1916:88-91 and also in Topaloğlu, 2014:77-80) and Socrates (Behrouzi, 2008a:11-12) seem to differ with the view that all people, irrespective of their level of education or social standing, should participate in the governance of their society. In other words, Plato and Socrates are critical of democracy as a system of involving all citizens in matters that affect them as a society. They believed that people are naturally endowed with different aptitudes, and therefore categorised people into three different classes. Plato asserted that there are those who are endowed with the aptitude to provide for the various wants and needs of the community, like building houses and other forms of labour and trades. This class of citizen is only able to contribute to society by providing for the wants and needs of the community. Plato referred to a next class of citizen as the defenders or guardians of

the state. This would probably refer to the service providers in the community, like police, nurses, teachers, etc. These two classes do not possess the aptitude or capacity to be involved in the governance of the state, as they do not have the required knowledge. The third class of citizen was regarded as those who possess the required knowledge and competencies to be involved with governance in their respective communities or states. They can become legislators, while the others cannot, and they can also not be trained or taught to acquire those skills. This view that citizens are incapable of acquiring the knowledge that would equip them to participate in a democracy is refuted by a number of scholars (Mattes & Bratton, 2007:192; Downs, 1957:139 & 148). In fact, Rousseau as well as Mill (in Heywood, 2007:79) contend that it is through participation in decision-making that citizens develop in societies. This suggests that citizens can acquire the knowledge that enables them to participate in democratic processes, which is contrary to Plato's conception of democracy.

An analysis of Plato's exposition means that not all people will be able to take part in the governance of their society, but only those who are perceived to be capable of reasonable thought. Furthermore, it implies that either not all citizens will be able to participate in the elections of legislators, or that not everybody will be able to stand for political positions. In this regard, Plato's conception of democracy can be construed to be contrary to the Athenian conception (Heywood, 2007:71). According to Momoh (in Owaseyi, 2009:218), Plato and Aristotle compared democracy to "mob rule". In emphasising Plato's criticism of democracy, Momoh further asserts that Plato described democracy "as a system of government which violates fundamental principles of justice, according to which men being born with different capabilities should do only which they are fitted" (Momoh in Owaseyi, 2009:218).

Furthermore, Plato's conception of democracy - that only a specific class has the aptitude to participate - seems to concur with what is referred to as an elitist view of democracy. The elitist view suggests that there are only two classes, those who rule, and those who are ruled (Mosca in Heywood, 2007:83). Taking this two-class issue further, Downs (1957:148) asserts that democracy favours the advantaged, as is the case with those who produce products over those who consume. This seems to concur with Plato's conception.

The ancient Athenian conception of democracy spread to other parts of the world (Ober, 2003:18). Due to the different historical, cultural, economic, and social contexts of the other countries, nations and continents, different interpretations of democracy should be accommodated. The European, American, British and other societies that seem to have

embraced democracy, have adopted and adapted democracy to suit their respective contexts. I explore some of the experiences and interpretations in the next section.

## 2.4 THE SPREAD OF DEMOCRACY IN THE WORLD

After starting in Athens in the 5<sup>th</sup> century BC, democracy then spread to other parts of the world, albeit in different forms (Ober, 2003:18). The 18<sup>th</sup> century brought with it many variations of democracy (Markoff, 2013:14). These variations resulted in different meanings and interpretations of the concept of democracy. Heywood (2007:72) lists other meanings that are attached to the word democracy, including *inter alia* majority rule, while Steyn's list (2005:3) includes "power to the people" and "one man one vote". Carson (1960:185) emphasised that "participation is the essence of democracy." Dewey (in Carson, 1960:182) asserts that "democracy is about reaching decisions by discussion, voting and the acceptance of the majority view, participation in decision, its goods, the formulation of its ideas and aims, and to which all may contribute". Mattes and Bratton (2007:192) describe democracy as a system that emphasises rules and procedures, where competition for power is allowed, and free and fair elections of representatives take place so that these elected representatives make decisions that bind all. From this description by Mattes and Bratton, it seems that participation is only limited to voting, and that decision-making is in the hands of the representatives. This type of democracy would lean more towards a representative type of democracy (Heywood, 2007:74). Furthermore, it implies that a country may be democratic, while emphasising one or more characteristics over others. My understanding from this is that democracy can be viewed from a political perspective, and that the emphasis on various characteristics of democracy has a fundamental bearing on the type of democracy adopted and practised.

Though the political perspective of democracy manifests through issues of voting, state power and political rights (Smit, 2013b:3), in other words, used at state level, democracy also has a proceduralist inclination (Habermas, 1996:326). Democracy as a political system, includes liberal, republican, social and elitist types of democracies (Smit & Oosthuizen, 2013a:9). At the level of schools, parent meetings, community gatherings, and SGBs it is *inter alia* used to resolve problems and develop policies (Smit, 2013b:3). The foregoing requires participation and deliberation on those issues that have to be resolved, or in the development of policy. At this level of schools and SGBs, participation, deliberation and direct forms of democracy

become evident, and is referred to as grassroots or organisational democracy (Smit & Oosthuizen, 2013a:9).

These different forms of democracy can be observed in the various definitions, names or labels that are attached to them. Those that have become prominent during the 20<sup>th</sup> and 21<sup>st</sup> centuries include *inter alia* liberal, representative, participatory, social, constitutional, elitist (realist), republican, and deliberative democracies.

#### 2.4.1 TYPES OF DEMOCRACIES

Although I will be referring to eight, there are actually many. It is however not the intention of this study to discuss or explore in great detail the different types of democracies that are practised in the different countries, but merely to give some information regarding the main types. One notes that they overlap as far as specific principles or characteristics are concerned, and it seems that they are often applied in combination. Like Mattes and Bratton's description of democracy, the emphasis is on participation as well as representation, which in some instances may be regarded as a type of democracy on its own. In other words, one type of democracy may also include another type as a constitutive characteristic. This idea will become clear when I explore the different types of democracies below. Since all types of democracies have weaknesses (Smit & Oosthuizen, 2013a:16 & 24-25), it would be prudent to briefly highlight those. Taking note of weaknesses may enable one to be cognisant of potential implications and the misapplication of the principles of democracy in a particular situation. Furthermore, the intention of the review is to explore the prominent and dominant types of democracies used around the world, and to identify their constitutive characteristics. This exercise may be helpful as it can empower citizens to be aware if and when some characteristics of democracy in their country are not promoted or are for some reason undermined.

*Liberal democracy* is defined as:

*a political system of governance with a representative form of government based on a constitution, containing some fundamentals such as individual rights and liberties, the rule of law, formal equalities, a system of checks and balances, and a separation of powers, and the principles of accountability of the government to the electorate and the sovereignty of the people, enforced through periodic elections (Behrouzi, 2008a:5; also Heywood, 2007:88).*



Mukandala (2001:2) concurs with Behrouzi and Heywood, but adds participation and accountability to the definition of liberal democracy. Though it is regarded as a system which offers its citizens freedom the most, its disadvantage is that it “[t]ends to favour the rich and talented” (Smith & Oosthuizen, 2013a:16). It can be noted that in the definition of liberal democracy, two types of democracies are also referred to. These are representative and participatory democracy. However, their own definitions will be offered.

*Representative democracy* is defined as “a limited and indirect form of democracy”, where those who have been elected into power rule on behalf of the voters (Pace, 2009:6; Heywood, 2007:74). The potential advantage deduced from the foregoing is that if the elected representatives are honest and capacitated, and do not ignore the interests of the citizenry, then it would be beneficial to the society. However, if they look after their own selfish interests, then it would expose representative democracy’s weakness, particularly if there is no consequence management. It originated in Europe in the 19<sup>th</sup> and early 20<sup>th</sup> century, but also underwent some transformations in the 21<sup>st</sup> century. Some of the countries that embraced representative democracy at that time included India and other Asian and Pacific countries (Keane, ND:2). Keane (ND:2), also suggests that representative democracy has migrated to Japan, Taiwan and SA, which will later be the focus of the study.

*Participatory democracy*: According to Smit and Oosthuizen (2011:60), “participatory democracy refers to a form of direct democracy that enables all members of a society to participate in decision-making processes in organisations, institutions, societal and government structures”. This relates to where all citizens are directly involved, for example, in mass meetings (Heywood, 2007:74). Due to it encouraging broad participation, its advantage is that it elicits the most buy-in, and as a consequence also elicits feedback and responses (Smit & Oosthuizen, 2013a:16). On the contrary, participatory democracy demands a lot of time, and requires committed and educated citizens to make meaningful and substantive contributions (Smit & Oosthuizen, 2013a:16). An example of participatory democracy is Switzerland (Lutz, 2006:46). Participation, which is critical to participatory democracy, also resonates with social democracy.

*Social democracy*: Heywood’s conception of social democracy seems to involve two areas, namely an economic and a broadly social one. Economically, social democracy has to do with an attempt to strike a “balance between the market and the state”, and at a social level a “balance between the individual and the community” (Heywood, 2007:59). According to

Heywood (2007:59-60), the main characteristic of social democracy is that the weak and vulnerable should be cared for, and that it elevates the values of compassion, common humanity and a liberal commitment. Matlosa (2005:3) describes social democracy to be more “participative, inclusive, representative, accountable, and developmentally social welfarist”. Through its attempt to provide to all citizens, implies that it envisages equality (Smit & Oosthuizen, 2013a:16). A potential weakness “is that it tends to support welfarism, and creates a sluggish and wasteful state” (Cunningham in Smit & Oosthuizen, 2013a:15). Some of the countries that are perceived to be social democracies include *inter alia* Great Britain, France, Germany, the Netherlands, Sweden, and Denmark (Merkel & Petring, 2007:125). There are countries that also use constitutions to legitimate their democracies. In other words, they use laws, which are enshrined in constitutions. In such cases, some go to the extent of defining their democracies as being constitutional democracies.

*Constitutional democracy:* According to Heywood (2007:76-77), “a constitutional democracy operates within a set of formal or informal rules that check the exercise of government”. This ensures that “there is separation of powers via the creation of separate executive, legislature and judiciary, and by the maintenance of basic rights and freedoms, such as freedom of expression, freedom of movement and freedom from arbitrary arrest”. From the foregoing, it can be implied that if the prescripts of the constitution are followed, then the citizens would benefit from the services and basic human rights enshrined in the *Constitution*. However, if not, then the citizens will be disadvantaged (cf. 3.2.1 & 4.3.1). Examples of countries or regions practicing constitutional democracy that gives collective care to its citizens include *inter alia* Northern Europe, Benelux, France and Germany (Schmidt, 2002:148).

*Elitist (realist) democracy* seems to be better explained through Schumpeter’s criticism of classical democracy which regards elitist democracy as governance by “elected officials along with the non-elected political party and bureaucratic attendants (Smit & Oosthuizen, 2013a:15). This implies governance by a minority as opposed to the majority (Heywood, 2007:84). Sometimes the elite is also referred to as “the highest, the best, or the excellent” (Heywood, 2007:84). Elitist democracy prioritises “efficient and effective government”, but regard accountability, *especially to the majority* [my emphasis], as “unrealistic and overrated” (Cunningham in Smith & Oosthuizen, 2013a:17). The disadvantage of elitist democracy is that it “tends to create conditions in society that favours excessive bureaucracy, corruption, and a tendency towards authoritarianism (Smit & Oosthuizen, 2013a:17). In addition, it also allows

for the manipulation and control of the majority (Heywood, 2007:83). Since elitist democracy is regarded as governance by an elected few or group, this seems it is also prevalent in republican democracy, albeit with its own peculiarities.

*Republican democracy* recognises that society is constituted by conflicting groups, and in this regard, consistently makes stability and peace a priority (Cunningham in Smit & Oosthuizen, 2013a:13). This type of democracy relies heavily on the separation of powers to deal with conflicting interests, hence, government power is separated “into executive, legislative and judicial authority” (Smit & Oosthuizen, 2013a:13-14). As a consequence of the checks and balances, its advantage is that it can be regarded as being accountable (Smit & Oosthuizen, 2013a:16). Its potential weakness is that a particular interest group may abuse power, and in this regard a Bill of Rights and the supremacy of the Constitution are constructed (Smit & Oosthuizen, 2013a:14). SA and the United States of America are examples where characteristics of a republican type of democracy are evident (Smit & Oosthuizen, 2013a:14). That republican democracy allows for the adherence to the supremacy of a constitution, implies that it can coexist with deliberative democracy (Bohman, 1998:402; Habermas, 1996:327). In other words, in one way or the other, deliberation and dialogue will be employed in argumentation for validity claims, or in pursuance of some consensus. In light of the foregoing, the discussion on deliberative democracy will be more and expanded.

*Deliberative democracy* is defined as “the notion that legitimate political decision-making emanates from the public deliberation of citizens” (Smit & Oosthuizen, 2013a:18; Smit & Oosthuizen, 2011:61). The envisaged deliberation is one that is open, inclusive, that can lead to informed decision-making, consensus, and mutual agreements (Samuelsson & Boyum, 2015:76-79; Bohman, 1998:400; Benhabib, 1996:74 & 81-84). Adams and Waghid (in Smit & Oosthuizen, 2011:61) regard “participation, community engagement, rationality, consensus, equality and freedom as the constitutive principles of deliberative democracy”. The foregoing features are also present in the liberal and republican forms of democracies (Smit & Oosthuizen, 2013a:16). Deliberative democracy relies on transparent communication to reach consensus, as well as other conditions or rules proposed by Habermas (cf. 3.2.3) (Smit & Oosthuizen, 2013a:16). In other words, if deliberation had been conducted in a transparent and equal manner, then its advantage would be that it would be able to solicit the most buy-in and responses (Smit & Oosthuizen, 2013a:16). Its weakness is that it is difficult to implement “in poor economic conditions and illiterate citizenry” (Smit & Oosthuizen,

2013a:16). Another potential weakness is that it is silent on the influence of power, and in this regard, Marion Young as well as Michael Foucault seems to be vocal in their critique of deliberative democracy (Kangei et al., 2018:51-52). But the foregoing can be addressed through the election of proper and able representatives (Guttmann & Thompson in Kangei et al., 2018:52). Furthermore, the power neutrality principle of deliberative democracy provides that neither administrative, economic nor cultural power should determine the force of an argument (Smit & Oosthuizen, 2013a:20). In other words power should not be used to influence decisions, hence democratic procedures of deliberation are recommended.

Manin (2005:2) finds it useful and desirable that whenever collective decisions are to be taken, these should have been preceded by argument and honest (democratic) deliberation. Since the types of democracies discussed in this section all require some form of collective decision-making, implies that deliberation will be relevant and beneficial. In this regard, the Habermasian discourse as an ideal deliberative procedure is proposed. These seem to be widely used, however, I used those as derived by Wiklund (2005:285) who has used them in an environmental impact assessment perspective and Smit and Oosthuizen (2013a:20-23) who used them in an education perspective. In this study, the education perspective will be more emphasised in line with the objective of the study. The procedure to promote or implement democratic decision-making or deliberative democracy rests on four principles, and they include generality, autonomy, power neutrality, and ideal role-taking (Smith & Oosthuizen, 2013a:20-21; Wiklund, 2005:285). It is also important to note that failure to adhere to these principles may impede deliberative democracy, and as a consequence have implications for democracy. The foregoing may manifest through undemocratic behaviour. The potential barriers are also highlighted in the discussion of the principles below.

*Generality:* It states that “all affected parties must be included in the deliberative process”. In education and school governance the exclusion of important stakeholders, or participation that is not authentic can serve as barriers to the implementation of democratic decision-making (Smit & Oosthuizen, 2013a:22).

*Autonomy:* It states “that participants in discourse must be granted the autonomous right to take sides with or against the validity claims”. A potential barrier in implementing autonomy, is that in the case of school governance, there is generally a limitation that only elected members are usually the ones privileged to engage in discourse (Smit & Oosthuizen, 2013a:22). In other words, to take sides.

*Power neutrality:* “The principle of power neutrality stipulates that only communicative power shall be allowed to sway participants” (Smit & Oosthuizen, 2013a:20). In this regard, Habermas advises that “neither administrative, economic nor cultural power should determine the force of an argument”, but only the provision of rational argument (Smit & Oosthuizen, 2013a:20). However, legislation, administrative power, financial resources, as well as cultural power may be used to advance particular interests to the detriment of some or particular minorities, and by so doing, may exacerbate opportunities for the abuse of power in democratic deliberation (Smit & Oosthuizen, 2013a:22).

*Ideal role-taking:* “The ideal role-taking principle stipulates that participants should adopt attitudes of reciprocity and impartiality”. The foregoing implies that participants should listen when others make their point, just as they would expect to be attended to, and that they should be honest in their engagement to find common ground (Smit & Oosthuizen, 2013a:21). Potential barriers to ideal role-taking may manifest through participants deliberating in a dishonest manner; or harboring “hidden agendas to further political aims stifle ideal role making”; or when “participants are not committed to finding a collective solution”; or when participants’ interests are not in finding a common solutions but lying elsewhere (Smit & Oosthuizen, 2013a:22).

Through a careful reading and analysis of the above, a number of observations can be made. These include that democracy means different things to different people. There are different types of democracies, but some of them share common constitutive principles. For example, the principle of participation is implicit in almost all the listed types of democracies. Representation is also part of liberal and representative democracy. Furthermore, constitutional democracies may also enshrine participation and/or representation, as in the case of SA. With reference to constitutional democracy, I refer to a type of democracy that has been entrenched in a legal and binding document. Such a document, according to Gowder (2014:36-37), is a constitution, which is regarded as supreme and as being the highest guiding document in the land in terms of the law. Also, a constitution is important for the survival and sustaining of democracy (Chabal, 1998:296-297).

Another important observation or implication that can be drawn from the discussion on the different types of democracies is that the level of participation does not always enjoy the same level of importance. As a result, participation may appear to be limited to some extent. This is what Behrouzi (2008a:3) seems to be concerned about. For example, Behrouzi’s

criticism (2008b:42) of liberal democracy is that “there is a complete absence of any form of genuine and substantive participation and input on the part of the citizen”. In this regard, Behrouzi, (2008a:3) states that:

*democracy is not merely a political system of government based on representation, universal suffrage, and periodic elections, but is essentially a moral idea, and a much broader and deeper social-political conception, which is about empowering citizens to participate in decision-making in actual, direct and ongoing ways on agendas, priorities, policies and legislative matters that affect their lives in profound ways.*

Behrouzi’s criticism implies that no type of democracy is perfect. Each type has strengths and weaknesses. The weaknesses as highlighted in this section above, may give rise to the misapplication of democracy, or may have implications for the experience of democracy both politically and at grassroots (school governance) level. What is, however critical, is the level and how citizens are empowered to be involved in genuine participation in decision-making, irrespective of the type of democracy. Being empowered also includes being able to participate in democratic deliberation, as this seems to be common in all types of democracies. Furthermore, the issue of power should be managed, if not, this may hamper democratic deliberation, and consequently democracy.

The above is evident in countries that are democratic, but practice different types of democracy. These include countries like the USA, India, Australia, Germany, Great Britain and Argentina (Keane, ND:1). The discussion on democracy so far demonstrates the wide range of meanings and perspectives attached to it. In an attempt to address issues related to the interpretation and practice of democracy and human rights, the United Nations (UN) has adopted a number of declarations and resolutions. In recognition of the importance that these UN instruments play, the content of some of these important and relevant declarations and resolutions will be considered below. However, a brief context of the UN is first sketched.

#### *2.4.2 UNITED NATIONS: BACKGROUND, DEMOCRACY AND HUMAN RIGHTS*

The United Nations (UN) was the originator of a plethora of resolutions, declarations and covenants. This implies that a brief history of the UN will add value to this study. However, the UN also has agreements with other regional organisations with similar aims. These organisations include *inter alia* the Inter-Parliamentary Union (IPU), European Union (EU), and

African Union (AU) (African Union, 2018:180-188; AU-EU/Decl.1(v), 2017:1; Kissling, 2011:23 & 56; United Nations, 2008:72; Inter-Parliamentary Union, 2006:6).

The UN Conference on International Organization met on 26 June 1945 in San Francisco to sign the Charter of the UN (UN Charter, 1945: Introductory Note). This signified the birth of the UN, in the period after the wars that ravaged and humiliated citizens and countries (UN Charter, 1945: Introductory Note). The *UN Charter of 1945* deals with issues of peace and human rights, and also with operational issues regarding the UN. These include *inter alia* the purposes and principles (Chapter I), membership (Chapter II), organs (Chapter III), the general assembly (Chapter IV), etc. Furthermore, a number of articles particularly relating to the Security Council (SC) were amended leading up to other major conventions, as well as the adoption of the *UN Universal Declaration on Human Rights in 1948* and the *International Covenant on Civil and Political Rights in 1966*. Although the UN is seen to be responsible for noble ideas in the world (United Nations, 2008:5), there are those who hold different views about the organisation, due to human rights violations by peacekeepers (refer to Gevirtz & Charbonneau, 2015:25; Guardian News & Media, 2015:26; Hamilton, 2015:18).

Muhammed El Baradei, former head of the UN nuclear watchdog and a Nobel peace laureate, accused the UN of “structural deficiencies, lack of authority and resources”, and that the UN has become polarised (Ramothwala, 2015:4). In other words, some feel that the UN is dominated by certain powerful states, and that it takes sides. This accusation of bias was also raised by the government of Burundi. In the case of Burundi, the UN is blamed for having reported that the parliamentary election of 29 June 2015 was not free and fair (TNA Reporter, 2015a:2). The government declared that the elections were free and fair, despite the opposition having boycotted the polls and having problems accepting the president’s bid for a third term. These are some examples of the types of concerns that some people and states have with the UN. The UN is however prepared to respond to these concerns and complaints when brought to its attention, like the allegations of sexual crimes. Furthermore, in the absence of other global mechanism to deal with global peace and conflict, the UN still seems to be the legitimate structure, as will be seen further on in this study.

It is through the existence of the UN that the subsequent resolutions, covenants and declarations exist. Some of these include *inter alia* declarations and resolutions pertaining to democracy and human rights.

### 2.4.3 DEMOCRACY AND HUMAN RIGHTS

It is often stated that democracy cannot exist without human rights (Nieuwenhuis, 2006:149; Bollen in Keith, 1999:107). This implies that human rights are also regarded as the foundation of democracy. A deeper understanding of the origin of human rights and democracy is encapsulated in international and regional declarations. It is unfortunate that these instruments are usually only developed and adopted after some violations against human beings at some point in time, at some place in the world, have occurred (Ahmad, 2013:46). One such instrument is the Universal Declaration on Human Rights.

### 2.4.4 DECLARATIONS ON DEMOCRACY AND HUMAN RIGHTS

The principles of democracy, like the interpretation of democracy, also seem to have various interpretations. Meyer-Resende (2011:5), in referring to the 2004 UN General Assembly, identifies *seven* essential elements of democracy. These are “the *separation and balance of power; independence of the judiciary; a pluralistic system of political parties and organisations; respect for the rule of law; accountability and transparency; free, independent and pluralistic media; and respect for human and political rights; e.g., freedoms of association and expression; right to vote and to stand in elections*”. The Association for European Partnership (AEP) (N.D:2), a body aligned with the EU (which by implication shares similar values as the UN) (cf. 2.4.2), refers to *thirteen* basic principles of democracy. These principles, which are also referred to as signposts of democracy, include “*citizen participation; equality; political tolerance; accountability; transparency; regular, free and fair elections; economic freedom; control of the abuse of power; accepting the results of elections; human rights; multi-party systems; the rule of law; and Bill of Rights*” (AEP, N.D:6-14). Other important documents have also been adopted by organs of the UN that entrench democracy, although it must be stated that these are not the only documents available. These include *inter alia* The UN Universal Declaration of Human Rights of 1948 (UNUDHR), The International Covenant on Civil and Political Rights of 1966 (ICCPR), The Universal Declaration on Democracy of 1997 (UDD) adopted by the Inter-Parliamentary Union (IPU, 1997), The UN General Assembly Resolution 59/201 of 2005, and The African Charter on Democracy, Elections and Governance adopted by the AU in 2007. I however, consider them to be relevant and thus make reference to them. Since it seems that the declarations build on the preceding ones, I choose to discuss them in chronological order. Following on the UN Declaration of 1945, is the International Covenant



on Civil and Political Rights (ICCPR) the *International Covenant on Economic, Social and Cultural Rights* of 1966 (ICESCR).

#### 2.4.4.1 UNIVERSAL DECLARATION ON HUMAN RIGHTS (1948)

Among the resolutions adopted by the General Assembly (GA) of the UN which seems to play a pivotal role, is the *Universal Declaration of Human Rights* (UNUDHR). The UNUDHR, resolution 217 A (iii), was adopted and proclaimed on December 10, 1948 (UNGA Res 217 A (iii), 1948: Note). Besides its emphasis on the respect for the “inherent dignity and of equal and inalienable human rights of all members of the human family” (UNGA Res 217 A (iii), 1948: Preamble), it also pronounces and supports elements that are important in creating a conducive environment for democracy, as well as the essential principles of democracy.

The UNUDHR calls for the promotion of healthy and friendly relationships amongst members (UNGA Res 217 A (iii), 1948: Preamble). This can be construed as promoting a conducive environment for both human rights and democracy. It also promotes teaching and education that can enhance human rights and democracy (UNGA Res 217 A (iii), 1948: Preamble & also Art. 26 (1 & 2)), and even calls for the dissemination and advocacy on human rights information in educational institutions such as schools and school communities (UNGA Res 217 A (iii), 1948: Note).

It promotes essential principles that are relevant to democracy. These include participation in political activities, representation, as well as participation and the promotion of “periodic and genuine elections, which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures” (UNGA Res 217 A (iii), 1948: Art. 21 (1 & 3)). It also promotes participation in cultural activities and ceremonies in communities (UNGA Res 217 A (iii), 1948: Art. 27 (1)). Participation may also include participation in decision-making issues that affect the community. Another principle of the promotion of democracy is that when needed, “human rights should be protected by the rule of law” (UNGA Res 217 A (iii), 1948: Preamble). Furthermore, all should be treated equally before the law, and if someone is alleged to have committed a misdemeanour, they should be entitled to a fair hearing (UNGA Res 217 A (iii), 1948: Art. 7 & 10). A fair hearing may imply that the *audi alteram* principle be respected.

The exposition above confirms and demonstrates that the UNUDHR contributes and strives to support the requirements of a democratic society (UNGA Res 217 A (iii), 1948: Art. 29). The

foregoing is evident in its contribution towards highlighting the importance of a conducive environment for human rights and democracy.

#### 2.4.4.2 INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR) AND ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)

Two treaties were adopted in 1996. These are the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* of 1966 (ICESCR) (Keith, 1999:96). Since most of the issues in these two treaties also appear in the UNUDHR, they will not be repeated here. What does however emerge is that the ICCPR gives more clarity to the UNUDHR, by allowing for the establishment of a Human Rights Committee (HRC) (Keith, 1996:96). This HRC would then be able to deal with reported cases of non-compliance or non-observance of human rights.

#### 2.4.4.3 THE UNIVERSAL DECLARATION ON DEMOCRACY

The Inter-Parliamentary Union<sup>2</sup> (IPU) (1997: Preamble) reaffirms its commitment through the *Universal Declaration on Democracy* (UDD) to *inter alia* “the strengthening of the democratisation process and representative institutions” (IPU, 1997: Preamble). It also acknowledges other declarations that promote the respect and practice of basic human rights, free and fair elections, and the elimination of all forms of discrimination (IPU, 1997: Preamble). Furthermore, the UDD broadly articulates various principles which relate to human rights, promoting a conducive environment for democracy, and promoting essential principles of democracy. These are listed below:

1. That “[d]emocracy is a universally recognised ideal as well as a goal, which is based on common values shared by people throughout the world, ... and is a preferred mode of government” (IPU, 1997: Sections 1-2). It is regarded as being able to play a pivotal role in promoting basic human rights (IPU, 1997: Sections 1);
2. That democracy should be exercised under conditions conducive for its practise and experience. Some of the elements it regards as important are “conditions of freedom,

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<sup>2</sup> The Inter-Parliamentary Union (IPU) is a global voice and facilitator of multilateral contacts for parliamentarians from over 140 national parliaments. It was established in 1889 to *inter alia* contribute to peace and prosperity (IPU, 2006:2).

equality, transparency and responsibility, with due respect for the plurality of views” (IPU, 1997: Section 3). Furthermore, the *Universal Declaration on Democracy* to a large extent acknowledges that the practise and experience of democracy depends on a conducive climate (IPU, 1997: Sections 8 & 18). This includes that citizens’ enjoyment of democracy will be negatively affected if, for example, government officials are not honest in the advancement of economic rights (IPU, 1997: Sections 13 & 20). There should also be guarded against inhibitors such as acts of corruption which may impede “economic, social and cultural development” (IPU, 1997: Section 8). It further asserts that democracy “requires a democratic climate and culture constantly nurtured and reinforced by education and other vehicles of culture and information” (IPU, 1997: Section 19). This implies that education and socialisation play a critical role with regard to creating a conducive environment for democracy. It also discourages acts that may impact negatively on the enjoyment of economic rights, such as acts of corruption; and

3. That democracy is characterised through *inter alia*:

- The promotion of authentic partnerships between different genders in all spheres of community life (IPU, 1997: Section 4);
- That all citizens should be allowed to meaningfully take part in matters of mutual interest, and that their participation should be in accordance with the rule of law (IPU, 1997: Sections 5 & 11);`
- All are equal before the law, and should be treated as such (IPU, 1997: Section 7).
- That elections should be held under free and fair conditions, after regular intervals (IPU, 1997: Section 12); and

4. That governance will be practised in a transparent and accountable manner (IPU, 1997: Sections 13-15).

The exposition above emphasises that democracy is dependent on a conducive environment which allows information to be freely available (education) and learnt (socialisation) (IPU, 1997: Section 19). This calls for practical ways and means to make education in democracy possible (IPU, 1997: Section 19). In this regard, the UN has continued to adopt new resolutions

that attempt to improve and reaffirm the practice of democracy, especially in relation to education. Some of these include resolutions that were adopted in 2005, 2007, and 2012.

#### 2.4.4.4 UN RESOLUTIONS IN PROMOTING AND CONSOLIDATING DEMOCRACY

I have selected three UN resolutions that relate to the promotion of democracy, because they are relevant to this study. These are the UNGA Res 59/201, of 2005, which deals with enhancing the role of regional, sub-regional and other organisations and arrangements in promoting and consolidating democracy; UNGA A/Res/62/7 of 2007, which supports the promotion and consolidation of new or restored democracies; and UNGA A/Res/67/18 of 2012, which deals with education for democracy. I will deal with them in an integrated manner. However, UNGA Res 59/201, 2005 will be the focus, as it contributes profoundly to the study. Like the section above, it will reflect on human rights, a conducive environment for democracy, and principles of democracy, not necessarily in that order. I will also emphasise specific issues related to a particular UN resolution.

##### 1. UNGA Res 59/201, 2005. Most importantly:

*“it declares that the essential principles of democracy include respect for human rights and fundamental freedoms, inter alia, freedom of association and peaceful assembly and expression of opinion, and the right to take part in the conduct of public affairs, directly or through freely chosen representatives, to vote and to be elected at genuine periodic free elections by universal and equal suffrage and by secret ballot guaranteeing the free expression of the will of the people, as well as pluralistic system of political parties and organisations, respect for the rule of law, the separation of powers, the independence of the judiciary, transparency and accountability in public administration, and free, independent and pluralistic media” (UNGA Res 59/201, 2005: Section 1).*

Besides spelling out the principles of democracy, the UNGA Res 59/201, 2005 also reaffirms its resolve to *inter alia* “implement the principles and practices of democracy”, and acknowledge the plurality of diverse types of democracies (UNGA Res 59/201, 2005: Preamble).

In acknowledgement of the critical importance of human rights, the resolution confirms that “the promotion and protection of all human rights is a basic prerequisite for the existence of a democratic society” (UNGA Res 59/201, 2005: Section 2). This implies that

without the respect of human rights, democracy cannot exist. In an effort to give guidance as to how an environment for democracy can be improved, enhanced or created, appropriate and relevant education and socialisation is recommended (UNGA Res 59/201, 2005: Section 12).

2. UNGA A/Res/62/7 of 2007: This resolution “reaffirms that while democracies share common features, there is no single model of democracy, and that democracy does not belong to any country or region” [*or organisation or structure, my emphasis*] (UNGA A/Res/62/7 of 2007, 2007: Preamble). In other words, no one can lay claim to democracy, but everyone should try to exercise and respect it.
3. UNGA A/Res/67/18 of 2012: This resolution reaffirms that democracy is not a concept that is forced on people, but adopted out of choice (UNGA A/Res/67/18 of 2012: Preamble). This choice implies that the populace should adhere to its principles and expectations. In this regard, it is the intention of the resolution “to ensure and reiterate that the fundamental link between democratic governance, peace, development and the promotion and protection of all human rights and fundamental freedoms, which are interdependent and mutual reinforcing”, are promoted (UNGA A/Res/67/18 of 2012: Section 1).

The sharing of best practices and experiences in the field of education for democracy, including but not limited to civic education with each other is encouraged (UNGA A/Res/67/18 of 2012: Section 4). In this regard, the decision of declaring that on 15 September of each year, an International Day of Democracy should be observed and celebrated by all people (UNGA A/Res/62/7 of 2007: Section 6), and this can also be construed as efforts towards educating and socialising. I also contend that not only best experiences should be shared, but those that are unpleasant as well, so as to learn from the mistakes of others, and not to repeat same.

From the exposition above, the implication is that different organisations and countries adopt and practise different types (or combinations) of democracy, based on their contexts (Isoba in Imoh, 2013:44). It can be expected that Africa as a continent consisting of more than fifty countries (Imoh, 2013:44), and as part of the broader world, also has different interpretations of democracy.

## 2.5 AN AFRICAN PERSPECTIVE OF DEMOCRACY

The history of democracy in Africa seems to be characterised by opposing views. There are scholars that believe that democracy is alien to Africa (Ouwaseyi, 2009:221), and those that believe that the traditional African life was reasonably democratic (Imoh, 2013:44; Du Preez, 2003:16). The latter seems to be more prevalent. In this regard, it is believed that before the colonisation of Africa, communities used to hold meetings where issues relating to all spheres of the community were discussed and resolved, and this involved all members of the community who were of a certain age (Imoh, 2013:44). This recognises and depicts participation as an essential element of democracy. However, even at that stage, women and children were excluded. This is also acknowledged in the South African context and will be dealt with later.

The spread of democracy after colonisation was confronted by traditional and cultural ways of governance, which made the adoption western democracy a bit problematic and challenging (Imoh, 2013:44). Imoh (2013:44) states that the democracies of 53 African countries “are at the infantile stage compared to the western liberal democratic standards”. Imoh (2013:44) also acknowledges that the situation seems to be improving, and that Botswana, for example, is showing signs of improvement. In this regard, Adejumobi (2000:8) posits that “three quarters of African countries were under democratic rule” by 1997, however, what that means might be different in different contexts.

The current situation seems to be improving and this is evident in the increase in the attempts to observe more of the essential principles of democracy. Elections are regarded as the founding pillars of democracy (Bratton & Houessou, 2014:3; Mesfin, 2008:1; Joseph in Adejumobi, 2000:5). Muna (2006:5) suggests that democracy should be characterised by the reaching of agreements and compromise in an effort to promote participation, and collective decision-making. To achieve this, some scholars (Muna, 2006:7; Downs, 1957:138 & 148; Dewey, 1916:87; AEP, ND:3) advocate for education and awareness, and Adejumobi (2000:9) calls for the “nurturing of democratic principles and values”. Furthermore, Ouwaseyi (2009:217) agrees on elections and participation, but also adds that representation, rule of law, the protection of rights and liberties of individuals, and accountability are also important.

The features of democracy that emanate from the above exposition, suggest that various types of democracies seemed to be preferred or prevalent in the African context. One van

observe participatory, representative, liberal, deliberative as well constitutional democracies. Imoh (2013:44) acknowledges that Southern Africa, and particularly Botswana, stands out as a good example of a liberal democracy. SA, which is also part of Southern Africa, is also acknowledged as an example of a constitutional democracy (Du Preez, 2013:2, 165 & 203; Imoh, 2013:42; Terblanché, 2012:78-90).

The above exposition demonstrates that Africa has embraced democracy, albeit with a plethora of challenges (Markoff, 2013:14; Ouwaseyi, 2009:295; Muna, 2006:4; Mukandala: 2001:3; Chabal, 1998:295) ranging from rigged elections and human rights violations, to undermining the rule of law and constitutions. As in the case of the UN I believe that Africa has mechanisms in place to assist in resolving of these challenges. One of these mechanisms is the African Union (AU), of which I present a brief context below.

### *2.5.1 THE AFRICAN UNION: BACKGROUND, DEMOCRACY AND HUMAN RIGHTS*

Having reflected on a brief history on the origin of the UN (cf. 2.4.2), I posit that a brief history of the African Union (AU) will also shed some light, and give clarity and context to the study. It will illuminate on the current thinking and emphasis of the AU regarding *inter alia* issues of human rights and democracy.

The Organisation of African Unity (OAU) was founded in 1960 and was a precursor to the AU (Isanga, 2013:269; Magliveras & Naldi, 2006:187). The OAU was later accused of not being able to deal with the necessary swiftness and success on a number challenges that confronted member States, and the African continent as a whole (Isanga, 2013:269; Magliveras & Naldi, 2006:187; Kioko, 2003:810). Some of the issues seem to be indicative of deep rooted concerns, which *inter alia* include the scourge of conflicts, human rights violations, HIV/AIDS, globalisation, unconstitutional change of governments, lack of promoting cooperation and support amongst the various spheres of government, community organisations, segments of society, as well various socio-economic challenges (Kioko, 2003:807-811). These and other challenges caused discontentment in some member States, to the extent that they openly criticised the OAU.

In expressing their dissatisfaction, some member States referred to the OAU's failure to intervene in gross human rights violations experienced in Africa in the past (Isanga, 2013:269; Kioko, 2003:812), such as the Central African Republic in the 1970s, the killings in Uganda in

the 1970s, as well as the genocide in Rwanda in 1994 (Kioko, 2003:812). In this regard, some perceived the OAU to be ineffective. This was evident when former President Museveni of Uganda accused the OAU, at the Ordinary Session of Heads of State and Government in 1986, of having failed the Ugandan people during the 1970s brutal extermination by Idi Amin (Kioko, 2003:813). This accusation was further confirmed by Eritrean President Awerferki of not having intervened in the conflict they experienced in 1993 (Kioko, 2003:813). Furthermore, Kioko (2003:814) asserted that the Heads of State were not prepared to openly criticise one another, implying that they were serving their own interests. This situation was compounded as a result of the consent that was needed from parties in conflict for intervention. In other words, the OAU was to some extent incapacitated due to its constitutional or legal constraints. A combination of all these challenges, plus the current and 21<sup>st</sup> century context, necessitated a debate with a view of doing some introspection regarding effectiveness of the OAU's presence and its existence. At the 4<sup>th</sup> Extra-Ordinary Session of the Assembly of Heads of State and Government of the OAU, on 9 September 1999 in Sirte, Libya, it was resolved that a new organisation be established, replacing the OAU with the purpose and intention of dealing with the identified challenges in Africa (Magliveras & Naldi, 2006:187; Kioko, 2003:811).

In order to respond to the identified challenges, the 36<sup>th</sup> Ordinary Assembly Session of the OAU meeting in Lomé, Togo adopted the *Constitutive Act of the AU* in 2000 (Magliveras & Naldi, 2006:187). Subsequent to the adoption of the *Constitutive Act of the AU*, the 5<sup>th</sup> Extraordinary Assembly Session of the OAU, the AU was declared established on 21 March 2001, once again in Sirte (Magliveras & Naldi, 2006:187). On the 26<sup>th</sup> May of 2001, the Constitutive Act came into force, and the launch took effect in July 2002 in Durban, SA (Magliveras & Naldi, 2006:187-188). As a consequence, the birth of the AU brought with it many expectations to citizens of member States, and to the continent in general. Along with addressing the challenges of the OAU, the AU seems to have a number of other intentions. Some of these include *inter alia* that member States adhere to and observe agreed upon values and standards (such as human rights), introducing new ways of doing things with regard to accelerating socio-economic development, promoting and consolidating African unity, and promoting peace (Kioko, 2003:807 & 810-811). I notice that the issues raised in this paragraph have a bearing on democracy. One can then assume that interventions to address them are relevant to democracy, which is the focus of this study.



To enable the AU to do and to achieve the above, the organisation would adopt instruments such as resolutions (Kioko, 2003:814). In this regard, the African Charter on democracy, elections and governance is an example of such an instrument.

### 2.5.2 AFRICAN CHARTER ON DEMOCRACY, ELECTIONS AND GOVERNANCE

The *African Charter on Democracy, Elections and Governance* (Hereafter the *Charter*), as adopted by the AU in 2007 at its eighth Ordinary Session held in Ethiopia, has deemed it fit to reassert Africa's commitment to *inter alia* the ideals of democracy and human rights. This is evident in the manner in which the preamble, objectives and principles of the charter is articulated, and calls for *inter alia* its commitment, determination, inspiration, guidance, and desire.

The *Charter* (AU, 2007: Preamble) emphasises the importance “of good governance, popular participation, the rule of law and human rights”. The *Charter* is not only committed to the promotion of human rights, but also “the values and principles of democracy, good governance”, as well as the opportunity for growth. (AU, 2007: Preamble). Being cognisant of the “historical and cultural conditions of Africa”, the *Charter* seeks to inculcate into the citizens a paradigm of accepting results of elections that were conducted in an open, free and fair environment (AU, 2007: Preamble).

It is the desire of the AU to embrace all other relevant Declarations and Decisions that would generally promote the attainment of the issues raised above, as well as human rights and democracy (AU, 2007: Preamble). The *Charter* further agreed on other important objectives and principles (AU, 2007: Chapters 2 & 3). An attempt is made to only refer to those that are relevant to the aim and objective of this study.

#### 2.5.2.1 PRINCIPLES OF THE CHARTER RELEVANT TO THE STUDY

What has been stated in the preamble and objectives are essentially reemphasised in the principles. Since the principles have been presented in a clear and concise manner, I list them as such. From the 11 principles, numbers one to ten are relevant. The Charter (AU, 2007: Chapter 3, Article 3: Sections 1-10) calls for adherence and the implementation of the following principles:

*Respect for human rights and democratic principles; Access to and exercise of state power in accordance with the constitution of the State Party and the*

*principle of the rule of law; Promotion of the system of government that is representative; Holding of regular, transparent, free and fair elections; Separation of powers; Promotion of gender equality in public and private institutions; Effective participation of citizens in democratic and development processes and in governance of public affairs; Transparency and fairness in the management of public affairs; Condemnation and rejection of acts of corruption, related offences and impunity; and Condemnation and total rejection of unconstitutional changes of government.*

The contents of particularly the declarations and resolutions raise the expectations to those who are signatories to the international and regional bodies. One of the main expectations is that member States should at least adhere to what is contained in them. These relate to *inter alia* democracy and human rights issues, which are the focus areas that are relevant to this study. SA as a member of the AU is supposed to be compliant with regard to the declarations adopted by the AU. In this regard, a South African perspective it perceives and deals with human rights and democracy is necessary.

## 2.6 A SOUTH AFRICAN PERSPECTIVE OF DEMOCRACY

Democracy, which has participation as one its essential principles, also touched the southern tip of Africa. Even though the majority of Blacks were excluded from governance during the 19<sup>th</sup> century, a period in which SA was regarded as a Boer Republic, there were still claims that SA was democratic (Bryce in Markoff, 2013:18-19; Hartshorne, 1999:18). From about the middle of the 20<sup>th</sup> century, SA formally adopted a system of governance known as apartheid (Hartshorne, 1999:17). Ntloedibe (1995:2) contends that apartheid was characterised by segregation, separate development and a system of homelands for the various ethnic groups in SA. During this period, Blacks were officially excluded from participating in the governance of the country. This implies that political participation by all its citizens, which is regarded as one of the cornerstones of democracy, was not practised during this period.

Subsequent to a protracted and sometimes bloody struggle, negotiations led to a settlement and ultimately a transition to democracy in 1994 (Nijzink & Piombo, 2004:2). This transition was made possible by the adoption of an interim constitution in 1993, to allow for national elections for the people of all races in SA in 1994 (Hartshorne, 1999:106). The final constitution of SA was adopted in 1996 (Nijzink & Piombo, 2004:2). Although the *Constitution* of SA has currently been in force for just over two decades, the country and its *Constitution*

seem to mean different things to different people. I explore some of the opinions and perceptions of how some people generally perceive the South African *Constitution*, and the country, in terms of democracy. I contend that these perceptions have a bearing in the way the citizenry respond to and live out democracy (cf. 2.2)

Since the ushering in of democracy in SA by the 1996 *Constitution*, the South African democracy and its *Constitution* have been labelled with a variety of different descriptions and characterisations. These include *inter alia* that SA is democratic (Pauw, 2017:109; Du Preez, 2013:2 & 203; Feinstein, 2007:31; Hartshorne, 1999:109); that it has the best constitution in the world (Wa Afrika, 2014:68); that it has one of the most liberal constitutions in the world (Mazrui, 2002:22); that “South Africa’s *Constitution* includes an unequivocal commitment to representative and participatory democracy incorporating the concept of accountability, transparency and public involvement” (Smit & Oosthuizen, 2011:60); that SA is a representative democracy (Nijzink & Piombo, 2004:1); that SA is a constitutional democracy (Madonsela, 2015:33; Serfontein & De Waal, 2015:3; Terblanché, 2012:78-90; Smit & Oosthuizen, 2011:55; Nieuwenhuis, 2006:149) and that SA practices social democracy (Pauw, 2017:83). The South African constitution enshrines the Athenian type of participation of citizens in government (Mathebula, 2013:1). Schoeman (2006:129) suggests that in order to acquire the knowledge and skills to develop the dispositions that underlie a constitutional democracy, it is important that the new generation learn the constituents of democracy. Since the historical past of SA acknowledges eminent figures and personalities who have contributed immensely to the realisation of the now “democratic state”, I contend that their experience and knowledge would be useful in this regard.

Wrong (2009:17-18) contends that citizens do consider what their leaders think and do, and therefore their opinions, public statements and utterances, and behaviour may influence how the general citizenry respond, following the example of their leaders. Behrouzi (2008b:6) emphasises that “people trust good willed, benevolent, honest, just, prudent, competent members, leaders, politicians”. In this regard, the perceptions and behaviour of respected figures are explored below. The intention to highlight the various essential principles of democracy in SA they espouse should be respected and emulated, particularly by those involved in SG practices and policy issues.

World icon and former President Nelson Mandela (1994:24-25) regarded the right of all citizens to have a say as one of the most important constituents of democracy. To him, this

was important, as he had experienced that during his early days at tribal meetings chaired by chiefs. Lessons that can be learnt from former President Mandela's experience, is that ordinary members of the community should be treated equally, and that participation should be promoted. Members of the community were respected and valued by the leaders (Mandela, 1994:24). Unfortunately, like in Athenian democracy, women were excluded from tribal meetings, and former President Mandela admitted this. The emphasis on participation was confirmed at his renowned trial in 1964 (The Rivonia Treason Trial). He stated that from the village he came from, all members of the tribe were allowed to participate in deliberations that affected their lives, and that he believed in the principles of freedom and human rights (Mandela, 1994:629).

The issues raised by the former president in his autobiography, were done so in the light of the majority of black people having been deprived of political participation in the governance of their country. It should be noted that the lessons Nelson Mandela learnt from his community were the culture and traditions that had been practiced since centuries before his birth. This suggests that the black people in SA can claim that democracy was already practised centuries ago, contrary to assertions that Africans do not have a democratic culture (Steyn, 2005:2).

Furthermore, although Mr. Mandela was conscious about the fact that Africans are in the majority, he still felt that domination was not appropriate. He even asserted as much at the Rivonia Treason Trial (23 April 1964) in his renowned speech, where he stated:

*During my lifetime, I have dedicated myself to the struggle of the African people. I have fought against white domination; I have fought against black domination. I have cherished the ideal of a democratic and free society, in which all people live together in harmony and with equal opportunities. It is an ideal which I hope to live for and to achieve, but if needs be, it is an ideal for which I am prepared to die (Mandela, 1994:438; Kathrada, 2004:176).*

Much can be deduced from the above quotation from Mandela's renowned speech. For example, living in harmony, implies that the dignity and human rights will be respected. The publicity that the speech received locally and abroad, suggests that the media played a role. In this regard, Wa Afrika (2014:116) reported that Mandela once remarked that "critical, independent and investigative media is the lifeblood of any democracy". This is also an

essential principle of democracy. Furthermore, it can also be deduced that Mandela was against majoritarianism, and was rather in favour of deliberation, negotiation and compromise. This speech actually says much more than one appreciates at first glance. This is evident in the negotiations that preceded the democratic *Constitution*, and the subsequent historic elections under a free dispensation. The new *Constitution* and subsequent elections were preceded by the adoption of an interim *Constitution* in 1993. It implies that the change from apartheid rule, negotiations, deliberation, and compromise took place in an environment of the rule of law. The interim *Constitution* paved the way for the transition from apartheid to democracy in the spirit of the rule of law.

An enabling environment that allowed for peaceful negotiations were also legitimated by the attendance and participation of all important stakeholders in the country. These included all recognised political formations, church leaders, labour organisations and others. Legitimate and genuine representation was recognised, in other words a visible principle of democracy that was promoted. These democratic principles are what Mandela called “ideals”, for which he was prepared to die. Mr. Mandela was not the only one, nor the first leader, who advocated for such principles. Another respected world leader and Nobel Peace Prize winner, Chief Albert John Luthuli, shared the same sentiments regarding the experience and practices of democracy and human rights by and for Africans.

Former President Thabo Mbeki (in Luthuli, 2006:viii) regards Chief Luthuli as a leader of immense character and stature. According to Mbeki, Chief Luthuli was respected in many roles. He was “an educator, leader within the church, a traditional leader, a President of the ANC, and also the first African to be awarded the Nobel Peace Prize in recognition of his outstanding efforts to the cause of human freedom, human dignity, non-racialism, democracy and peace”. He further stated that Chief Luthuli’s life was “inextricably linked to the striving of our people for democracy” (Luthuli, 2006:viii).

An example to illustrate Chief Luthuli’s acceptance of democracy was with his involvement in the church at Groutville in Kwazulu-Natal. According to Luthuli, the head of the church was elected democratically, and could also be removed in the same way (Luthuli, 2006:6). In addition, he felt that all should participate in matters related to governance without considering race. Besides being in favour of participation, he also embraced non-racialism (Luthuli, 2006:77). He however also observed that people did not understand the act of reasoning and argument, as well as the principles of democracy (Luthuli, 2006:81).

In an account of his involvement of the drafting and adoption of the Freedom Charter (FC) in Kliptown, Johannesburg in 1955, he observed several democratic principles. The FC was a document drawn up by all race groups that detailed a new way of life for all the people of SA, as opposed to the apartheid government's policies of exclusion (Luthuli, 2006:152). It was a document that attempted to give meaning to democracy, freedom and liberty (Luthuli, 2006:152). The FC also sought to secure human rights for all (Luthuli, 2006:153). He stated that delegates from many organisations in the country participated in both the planning and adoption of the FC (Luthuli, 2006:149). As a religious elder, he even prayed that SA should become "a true democracy and a true union in form and spirit of all the communities in the land" (Luthuli, 2006:235). Chief Luthuli truly embraced democracy and human rights, but it was also his wish that we truly and genuinely adopted it as a lifestyle.

To a large extent, these principles of democracy, as enshrined in the FC and verbalised by Mandela and Luthuli, are incorporated in the *Constitution* of SA. This is the important role that democracy and human rights have played and is still playing in the lives of South Africa's people. The extent to which these principles of democracy and human rights are interpreted and experienced is an area that this study will attempt to critically explore. It should also be noted that the *Constitution* is not a perfect document, and hence, its limitations may be misunderstood which may potentially have implications for the application of democracy. In the next section a brief reflection of how the *Constitution* directs human rights and democracy in SA, and the (potential) misapplication of democracy as a consequence of how the *Constitution* is (mis)interpreted will follow.

### 2.6.1 THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA

Some of the achievements of the struggle for democracy and human rights, as reflected in the FC and accounts by Mandela and Luthuli, are reflected in the *Constitution*. In other words, in theory this seems to have been achieved. It is stated that SA is first and foremost a united and democratic State, "established on democratic values, [and] social justice" (RSA, 1996a: Preamble). Also, the respect for human rights is highly pronounced in South Africa (RSA, 1996a: Preamble & Chapter 2). This reinforces the expectation that South African citizens exhibit behaviour that is consistent with democratic values and principles (cf. 2.2). In other words, they should be seen to practise democracy and human rights in their everyday lives where and when they are involved in social structures, such as SG practices and policies in SA. Democracy at the level of schools and SGBs, is regarded as grassroots democracy (Smit &

Oosthuizen, 2013a:9), and comprises representative democracy (RSA, 1996a: Section 19), participatory democracy (RSA, 1996a: Section 195(1)(e)), and direct democracy (RSA, 1996a: Sections 19(1)(b) & 3(b)) (Smit, 2013:262). Besides the exposition of democracy and human rights in the *Constitution*, the *Constitution* also has some limitations. The manner in which two of the limitations in the *Constitution* are dealt with, may impact on the application of democracy in SA. These limitations may also be susceptible to manipulation and abuse. I will reflect on two, and share some experiences that could be attributed to this misunderstanding or misinterpretation.

The first limitation relates to parliamentarians who are not directly elected by voters (Mattes, 2002:24), which affects accountability, transparency and deliberation, and these are all directly related to democracy (Niewenhuis in Smit, 2013b:41; Smit & Oosthuizen, 2013a:16). In other words, this limitation within the *Constitution* constraints democracy instead of promoting it. This has been a contentious issue, particularly during periods of elections in SA (Louw, 2014:21). In this regard, cabinet resolved in 2002 to set up a task team to investigate and report its findings and recommendations (Louw, 2014:21). The Electoral Task Team under the chairperson of Dr. Van Zyl Slabbert submitted a report in 2003, but it has since never been adopted (Louw, 2014:21).

The second limitation arises from the silence of the *Constitution* to deal with members of the executive if they have failed to uphold the *Constitution* or failed to act in the interest of the community regarding *inter alia* service delivery matters (Mattes, 2002:24). On the contrary, what seems to prevail is the passing of a formal vote of no confidence (Mattes, 2002:24). This limitation seems to impact on *inter alia* human rights, and opens up opportunities for various nefarious activities such as corruption, cronyism, patronage, poverty, inequality, which is predicted will “remain a predominant feature of South African politics in the future” (Beresford, 2015:23). If corruption persists, this will pose “a threat to both the quality of South African democracy and the country’s prospects for socioeconomic development” (Beresford, 2015:1-2). Since South African citizens’ understanding of democracy is dependent on the provision of socioeconomic goods and services (Mattes, 2002:33), corruption, especially when it is not curbed, will have an impact on democracy. In this regard, it is noted that SA experienced a fairly healthy service delivery in terms of *inter alia* health, education and housing (Mattes, 2002:23), however, as from around 1999, the situation seemed to change for the worse. For example, in 1999, a decision by parliament to purchase arms, a process

which was later found to have been fraught with “allegations of nepotism, cronyism and conflict of interest” emerged. However, an investigation into this was rather frustrated (Mattes, 2002:23). Corruption, patronage and nepotism effectively hamper service delivery (Taylor, 2016:3; Taylor, 2011:3; Taylor, 2006:2), which include the provision of quality schooling. This phenomenon also affect education (schools, and education departments (cf. 3.1 & 4.3.1) (this is also reported across this thesis). Though not directly related to the *Constitution*, but occurring in a democratic SA, issues of nepotism regarding teacher appointments, promotions and even the selling of educator posts by some teacher unions and some departmental officials have also been reported and investigated (DBE, 2016b:7; Zengele 2014:470-472; Smit in Smit, 2013d:257; Zengele 2013:609). The situation has now deteriorated to the extent that the President of South Africa instituted a Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State, chaired by the Deputy Chief Justice Raymond Zondo of the RSA (commonly known as the “Zondo Commission”) (RSA, 2018).

Irrespective of the limitations of the *Constitution*, the implication of the section above is that the *Constitution* assumes that SG stakeholders will be exposed to programmes that will teach them democratic values. The extent to which these principles of democracy and human rights are interpreted and experienced is an area that this study will attempt to critically explore.

The exposition in this chapter explored the different perspectives on democracy through examining and analysing different theories and literature on democracy. A brief summary and discussion is presented below.

## 2.7 SUMMARY AND DISCUSSION

In summary, I have tabulated the principles of democracy and other important inputs from each of the sections and sources consulted. In Table 2.1 that follows, the principles of democracy that are regarded as important to each section in terms of the world, Africa, and SA be presented in summary. The table will also highlight the common principles. This is imperative as the contents of the table will be used to identify those principles regarded as essential to the derivation of the comprehensive framework.

The overarching principle in this study is that international and regional declarations, covenants, and treaties that were voluntarily adopted, should be the guiding documents



regarding clarity on issues that may seem to be difficult to comprehend, and where common interpretations seem contentious. As part of the global world, stakeholders are also expected to conform to and respect international laws, such as international treaties, agreements and declarations of international and regional bodies. From an international perspective, it is particularly important that members of society, including SGB stakeholders and the government, should refrain from any conduct that undermines or violates matters relating to democratic and human rights, particularly in SG practices and policies. I posit that in this regard, SA should be no exception, but should rather adhere and comply. Below I display the table depicting the principles and main points:

**Table 2-1: Main points and summary of the essential principles of democracy**

Section	Title	Comment/Summary
2.2	Some perspectives on democracy	There are different perspectives and definitions of democracy.
2.3	Democracy: An Athenian perspective	Participation in decision-making was important. Foreigners, the landless, women and children did not participate in governance.
2.4	The spread of democracy in the world	Some of the dominant types of democracy were <i>inter alia</i> representative, participatory, liberal, deliberative, social, and constitutional democracies.
2.4.1	Types of democracies	The list is not exhaustive, but the main types in this study include liberal, representative, participatory, deliberative, social and constitutional democracies
2.4.2	UN: Background, democracy & human rights	Prioritised world peace and human rights.
2.4.3	Democracy & human rights	Asserts that democracy cannot exist without human rights.
2.4.4	Declarations on democracy & human rights: UN GA Resolution 59/201 of 2004/5	Adopted seven essential principles of democracy: <i>“Separation of powers; independent judiciary; a pluralistic system of political parties and organisations; respect for the rule of law; transparency and accountability; free, independent and pluralistic media; and respect for human and political rights, right to vote in elections”</i> .
2.4.4.1	Universal Declaration on Human Rights (1948)	Regarded as one of the most important resolutions adopted by the UN. Principles: Human rights, rule of law and participation in elections. Also, promotes education on democracy and human rights; respects the <i>audi alteram partem</i> principle.
2.4.4.2	ICCPR & ICESCR of 1966	Championed the establishment of the Human Rights Commission to deal with cases of non-compliance.

2.4.4.3	The Universal Declaration on Democracy of 1997	Protection of human rights, free and fair elections, genuine participation, transparency and rule of law.
2.4.4.4	UN Resolutions in promoting & consolidating democracy (UN GA Res 59/201 of 2004/5; UN GA A/res/62/7 of 2007; and UN GA A/Res/67/18 of 2012)	Notes that democracies share common. <i>“Essential Principles of democracy: Respect for the rule of law; human rights; separation of powers; independence of the judiciary; transparency and accountability; free, independent, and pluralistic media; and participation”</i> . Recognises education as an important vehicle towards the promotion of democracy, electoral systems, types of democracies, assessment, etc.
2.5	An African perspective of democracy	Types of democracies prevalent in Africa: Participatory, representative, liberal, deliberative, and constitutional. Recognise important principles of democracy: Participation; free and fair elections; representation; respect for the rule of law; respect for human rights; and accountability.
2.5.1	The AU: background, democracy & human rights	AU was initiated based on the challenges of the OAU. Promotes human rights.
2.5.2	African Charter on Democracy, Elections & Governance of 2007	Principles: Popular participation, the rule of law, human rights and free, fair and transparent elections.
2.5.2.1	Principles of the charter relative to the study	Principles: Human rights, rule of law, free and fair elections, transparency and accountability, representation, separation of powers and participation. Calls for the condemnation and rejection of corruption.
2.6	A SA perspective of democracy	History of apartheid and segregation. Now a democratic state accommodating representative and constitutional democracy. Important principles of democracy: Participation, representation, transparency and accountability human rights, independent and free media, rule of law, separation of powers, and free and fair elections. Deliberation is also regarded to be important.
2.6.1	Constitution of RSA	Promotes democracy (values and principles) and human rights

Based on the perspectives and theories on democracy that were explored from the sources consulted in this chapter, some deductions can be made. This includes *inter alia* that different definitions and types of democracies exist, and this seems to be common across the world. I have also learnt a valuable lesson, based on Behrouzi’s contribution. This suggests that what is most important in any type of democracy is that democracy should be about the participation of all citizens in decision-making. The participation is also extended to include *inter alia* decision-making in policy and legislative matters that have a fundamental bearing on people’s lives.

After a thorough consideration and analysis of the contents of this chapter, and in line with the review of the literature, I contend that information towards the derivation of the framework is now accessible and ready. However, the identification and listing of the essential principles of democracy and elements conducive for democracy cannot be considered as part of the framework at this stage of the study. An academic argument first needs to be advanced in order to come to the conclusion that they do form part of a framework. In this regard, an argument will be made in the following chapter that will help in the derivation of the framework. The identification of the essential principles of democracy and the elements of a conducive environment for democracy will be done when those are discussed in the next chapter.

## 2.8 CONCLUSION

The objective of this chapter was to review literature on different perspectives and theories on democracy to critically evaluate SG practices and policies in SA. Towards achieving this, I explored the origins and definitions of democracy in different parts of the world, Africa, and SA in particular. Various interpretations emerged, and these were explored, identified and highlighted. The role of the UN and the AU, as well as their declarations, conventions, and agreements regarding issues related to democracy and human rights, were also explored. The purpose of this exercise was to get more clarity on the definition, and how democracy is experienced. Having noted the important roles that world leaders and icons play in the democratisation of their governments, perspectives and perceptions from two eminent personalities were explored and included in the study. The exercise above yielded a plethora of definitions and interpretations of democracy, as well as some information regarding the different types of democracies that exist. It emerged that the constitutive principles of democracy as compared to the type of democracy is a key aspect for countries or organisations. It further emerged that a conducive environment for democracy is paramount. All the inputs from the chapter's main points and essential principles of democracy were tabulated. The elements of a conducive environment and essential principles from this table will be identified, in order to advance an argument to justify their inclusion in the comprehensive framework on democracy, and this will be done in the next chapter (i.e. Chapter 3).

# CHAPTER 3: A FRAMEWORK ON DEMOCRACY TO GUIDE SCHOOL GOVERNANCE PRACTICES AND POLICIES

## 3.1 INTRODUCTION

In Chapter 2, different perspectives and theories on democracy were explored (cf. 1.4, Objective 1.1), and these essentially yielded a number of deductions. These include *inter alia* that democracy is defined in different ways, that there are different types of democracies, and that it can best be observed through essential principles. It was also noted that failure to take care of a conducive environment may have the potential to impede the experience of democracy. The foregoing perspective and theories on democracy will be used to derive a comprehensive framework on democracy that can guide SG practices and policies in SA (cf. 1.4, Objective 1.2). The implication is that such a comprehensive framework depends on perspectives and theories, and establishing a link between democracy and SG practices. I have summarised the perspectives and theories in Table 2.1. From the summary and discussion, it was concluded that democracy can best be described through identifying its constitutive principles, and that a conducive environment for democracy is imperative and is a prerequisite for the experience and practice of democracy. In this regard, I will identify those elements that I perceive to be conducive for democracy, as well as those principles that I perceive to be essential for democracy. The link between democracy (through its elements and essential principles of democracy) and SG practices in South Africa will permeate through the argument that will be advanced to justify their inclusion in the derivation of the comprehensive framework on democracy.

The data to derive the comprehensive framework on democracy will be sourced through conducting a literature study and document analysis. In this chapter, the literature study will comprise refereed journal articles, theses, edited books, referred papers, academic books, and other scholarly published or refereed material. The document analysis will include declarations and resolutions from the UN and AU, non-academic books such as biographies, autobiographies and non-fiction books, material from Corruption Watch, and newspaper articles. I need to point out that even the material considered to be non-academic, have a bearing on the topic. These documents will contribute to providing valuable data, as the credibility of documents has been reasonably attended to (cf. 1.5.4.2). As most of the material

that is considered to be non-academic falls into the category of mass media (cf. 1.5.3.2), these can still be helpful in this study. In this regard, the assertion that “media reports are not rigorous scientific sources” is acknowledged (Madonsela, 2010:19). Furthermore, the notion that the impact of mass media on democracy is debatable is also acknowledged. It is however also acknowledged that it is an important feature of democratic governance (Heywood, 2007:235).

I will start by discussing the elements of a conducive environment, and thereafter the essential principles of democracy. I will finally present the derived comprehensive framework in a diagram (cf. 3.4).

## 3.2 DEMOCRACY IN A CONDUCTIVE ENVIRONMENT

The Universal Declaration of Democracy (Inter-Parliamentary Union, 1997: Section 19) states that “[a] sustained state of democracy thus requires a democratic climate and culture constantly nurtured and reinforced by education and other vehicles of culture and information. Hence, a democratic society must be committed to education in its broadest sense of the term, and more particularly civic education and the shaping of a responsible citizenry”. In line with the foregoing, Behrouzi (2008a:16) asserts that “[a] genuine democracy cannot function properly without politically educated citizens who are capable of deliberating.” This implies that a conducive environment to enhance democracy is acknowledged and imperative. In this regard, Behrouzi concurs and asserts that education, and also elevating deliberation, would be some of the many effective ways of ensuring that citizens are conscious and vigilant, and, as a consequence, making democracy “alive and vibrant” (Behrouzi, 2008a:17). Furthermore, Ober (2003:3) mentions that Aristotle once questioned the conditions which would “promote, sustain, and threaten democracy as a form of governance.” In the section that follows, I identify five elements from the discussion on perspectives and theories, particularly Table 2.1 (cf. Chapter 2). They are *condemnation and rejection of acts of corruption, prioritisation of education and socialisation for democracy, promotion of deliberation and dialogue, promotion and display of trust and the creation of a learning organisation (transforming SGBs into learning organisations)*.

One of the five elements of a conducive environment for democracy that seems to be garnering a lot of attention is the issue of corruption, especially in the education space. In

addition, its impact seems to be so devastating that it warrants urgent attention, as will be evident from the exposition below.

### 3.2.1 CONDEMNATION AND REJECTION OF ACTS OF CORRUPTION IN SCHOOL GOVERNANCE PRACTICES

Corruption is about enriching oneself financially, materially or otherwise through illegal means, sometimes by using one's position or power (Corruption Watch, 2018:8; Madonsela, 2016:9-10; Madonsela, 2015:33; Corruption Watch, 2012:1; Heywood, 2007:389). As the poor, needy and most vulnerable normally end up as victims (Corruption Watch, 2012:13; Madonsela, 2010:3), the UN decided to intervene. The former Secretary-General of the UN, Kofi A. Annan, stated in the foreword of the *United Nations Convention Against Corruption* (2004:iii) (UNCAC) that corruption has become a disease the world over. Furthermore, he mentioned that corruption affects and "undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish" (UNCAC, 2004:iii). He also stated that corruption critically hurts the poor the most, and undermines the efforts that governments might implement to address poverty and development (UNCAC, 2004:iii). The UNCAC is intended to address corruption. It encourages countries to institute measures, standards and rules to address acts of corruption by individuals, groups, or officials in and across countries (UNCAC, 2004:iii).

The UNCAC (2004: Preamble) addresses a number of issues. Some of them include "that corruption has the potential to cause some instabilities within institutions and societies, values of democracy, ethical values and justice and jeopardising the sustainable development and the rule of law"; its concern that corruption may encourage other forms of crime (UNCAC, 2004: Preamble); "that it is convinced that the illegal acquisition of personal wealth can be particularly damaging to democratic institutions, and the rule of law" (UNCAC, 2004: Preamble); that it acknowledges that all members and organs of society should be involved in the prevention and eradication of corruption (UNCAC, 2004:6); and that note should be taken of available instruments to combat corruption wherever it might occur (UNCAC, 2004:6). Noting the claim that African states are generally corrupt (Madonsela, 2010:3), measures have been adopted to address this scourge. In this regard, The African Charter (2007: Chapter 3) and AU (2002:Par. 4) are quite emphatic in its condemnation and rejection of acts of corruption. To demonstrate corruption's international footprint, the UN resolved in

2003 to designate 9 December as *International Anti-corruption Day* (Corruption Watch, 2017:41; Corruption Watch, 2014:16). The aim of International Anti-corruption Day “is to raise awareness” (Corruption Watch, 2014:16).

Despite the instruments that condemn and offer assistance in combating corruption, many scholars assert that corruption seems to be on the increase, particularly in SA (Corruption Watch, 2018:13; Mahlangu, 2018:136; Corruption Watch, 2017:31; Serfontein & De Waal, 2015:1; Lewis in Du Preez, 2013:144; Corruption Watch, 2012:1). It is however important to note that acts of corruption should not be viewed as a post-apartheid phenomenon only, but rather as an impediment towards the realisation of “a vibrant and successful democracy” (Mahlangu, 2018:136). The concerns and outcry against acts of corruption can be deduced from statements made in the public arena regarding the misuse and looting of state funds in society in general, and also specifically in the education sphere (Serfontein & De Waal, 2015:1; Corruption Watch, 2012:5). It is acknowledged that corruption mostly affects the needy and the poor, and, as a result, historically poor learners and societies will be affected the most (Corruption Watch, 2018:2; Corruption Watch, 2012:13; Madonsela, 2010:3). Some former Public Protectors in South Africa have raised the issue of corruption on different platforms, times and places (Serfontein & De Waal, 2015:1; Madonsela, 2016:8-9; Madonsela, 2013:1). A civil society organisation known as Corruption Watch, which was launched in January 2012 in response to widespread concerns about corruption in schools, began to pay specific attention to this scourge (Corruption Watch, 2018:7; Corruption Watch, 2017:3; Corruption Watch, 2014:10; Corruption Watch, 2013a:2; Corruption Watch, 2012:1).

Corruption Watch’s aim is to see greater participation in combating corruption through reporting through the internet, mobile technology and other methods (Corruption Watch, 2013:2; Corruption Watch, 2012:9). Its findings through investigations between 2012 and 2013 in a number of schools are not encouraging. These include *inter alia* theft from the National School Nutrition Programme food for needy learners (Corruption Watch, 2018:2; Corruption Watch, 2013a:11); carelessly using the money of the school, sometimes using the money for their own personal gain, payments to staff members who have been illegally employed (Corruption Watch, 2018:7 & 9; Corruption Watch, 2013a:13; Corruption Watch, 2012:5); misappropriation of funds, “manipulation of results and the selling of exam papers”(Corruption Watch, 2013a:14) ; and dealing with illegal transactions (Corruption Watch, 2014:13; Corruption Watch, 2012:5). Another concern is the allegation that teachers

are implicated in stealing the food meant for learners (Corruption Watch, 2018:12; Corruption Watch, 2013a:11). To prove that corruption in schools is on the increase, the 2014 report seems to unravel more corruption. It reported that since the launch of the organisation, over a thousand cases of corruption have been reported (Corruption Watch, 2014:10), and that about 20% of schools reported on corruption in 2014 (Corruption Watch, 2014:9). Furthermore, the latest analysis of corruption trends allude that corruption in schools has increased from 9.9% in 2017 to 10.8% in 2018 (Corruption Watch, 2018:8). What is worrisome is that this increase occurs despite corruption being exposed almost on a daily basis. In addition, sexual favours by educators from learners for marks and promotion are now prevalent, as well as learners dying in pit toilets (Corruption Watch, 2018:13; Corruption Watch, 2017:2 & 43).

The Board Chairperson of Corruption Watch, Archbishop Njongonkulu Ndungane, stated that it seems “corruption has become a way of life”, and that it is “corrosive, and robs of the youth inheritance” (Corruption Watch, 2014:5). Furthermore, to prove that schools have become centres of corruption, all nine provinces in SA were identified and implicated (Corruption Watch, 2017:43; Corruption Watch, 2014:11). The types of corruption highlighted in the 2015 report include *inter alia* financial matters (37%), theft of goods (4%), theft of funds (22%), tender corruption (13%), employment corruption (8%), and other types of corruption (16%) (Corruption Watch, 2014:11). Based on the general increase in the percentage of corruption, it is clear that incidents have increased, as well as the types of corruption. Considering the millions of learners, and the number of schools in the country (Beckmann & Prinsloo, 2015:1), this translates into billions of Rands. These are funds that should have been better utilised, especially since the country has high poverty levels (Corruption Watch, 2018:12; Corruption Watch, 2012:12), as well as high illiteracy rates. This has dire consequences for the quality of education that is so critical for development, to SG, as well as to democracy (Serfontein & De Waal, 2015:2). I argue that, based on this situation, this leads to discontentment in society, leading to service delivery protests both in schools and communities, as is being witnessed in the country (Corruption Watch, 2012:1). As a consequence, the blame would be put on democracy. The alarm bells regarding corruption in SA were not only being sounded by civil society organisations, but senior government officials as well.



Senior government officials highlighted the issue of corruption in various fora. In March 2007, Former Minister of Public Administration Fraser Geraldine Moleketi (in Feinstein, 2007:248) addressed the African Forum on Fighting Corruption in Ekurhuleni. She stated:

*We cannot [allow] a permissive environment for corruption to flourish. Corruption is detrimental to long-term sustainable development. Corruption costs and grand corruption costs even more. Corruption is inimical to development, it perpetuates inequality. It reproduces conditions of underdevelopment and poverty. It is morally wrong and offensive; it is illegal and it can no longer be tolerated. We collectively must dedicate ourselves to its eradication.*

According to Mpofu-Walsh (2017:13), the above will effectively render democracy to failure, and cause it to become an illusion. Similar sentiments were reiterated in Sandton at the 5<sup>th</sup> Global Anti-Corruption Forum in April 2007. According to Feinstein (2007:262) President Mbeki cautioned that democracy is regarded as the beacon of hope to the poor and marginalised. They believe that it will take them out of the doldrums of disillusionment and squalor, and that corruption in whatever form would impede that dream and realisation (President Mbeki in Feinstein, 2007:262). It may also lead to the poor being deprived of basic services such as quality education, and this fuels and increases service delivery protests across SA (Mpofu-Walsh, 2017:11).

It is important to note that not all officials are corrupt, as some do condemn it whenever they come across it. Various eminent and senior government officials publicly denounced corruption, including officials like Pikoli (2013:183-185), Kasrills (2013:325), who wrote about corruption in pre-democratic SA, Kathrada (2004:172), Wrong (2009:17-18 & 55); Du Preez (2013:143-144 & 157) and Moeletsi Mbeki (in Wrong, 2009:325). Corruption in society and schools seems to have reached critical proportions, to the extent that authors now even give their books titles depicting corruptive practices. Wa Afrika (2014) who is an award-winning journalist who risked his life in pursuit of exposing corruption in defence of the principles of democracy, named his book "Nothing left to steal". Wrong (2009) wrote about corruption in Kenya, naming hers "It's our time to eat", and Ayi Kweyi Amar's book about corruption in Ghana immediately after independence is titled "The Beautiful Ones Are Not Yet Born". Others refused to be tempted. Feinstein (2007:41) was for example offered a bribe, but he refused to accept it. He stated that "I was beginning to realize the importance of public

accountability and transparency in political life” [He was referring to the shenanigans with regard to the application of gambling or casino licenses].

The negative impact of corruption has been highlighted above. It also affects democracy, however, as well as other essential principles of democracy such as the rule of law and human rights, and, most importantly, the education of the learners in SA (Corruption Watch, 2018:13; Ncobela, 2016:18). Since corruption has been detected in schools, according to Corruption Watch, it therefore also affects SG. Furthermore, David Lewis, the executive director of Corruption Watch, alluded to the escalation rate of corruption in schools. Lewis reported that corruption in schools had become widespread, and referred to a school in Soweto whose principal had approved and written out to herself and the SGB chairperson cheques to the value of R176 000.00 (Du Preez, 2013:144). In addition to this, he also referred to widespread tender fraud, where millions of Rands were stolen through various means in the Eastern Cape around 2012. Furthermore, corruption was reported across the provinces in SA, and almost R9 billion could not be accounted for, particularly in the EC, Limpopo, Mpumalanga, NW, and the FS provinces (Du Preez, 2013:144). Though corruption was reported to be occurring across the provinces, the EC seems to have been a corruption haven.

A 2012 investigation revealed that quite a number of corrupt activities took place in the EC, where millions of Rands were stolen from the department’s bank accounts (Du Preez, 2013:144). It pointed out that senior officials in tandem with well-connected politicians took part in these reported fraudulent and corrupt activities in the EC province (Du Preez, 2013:144). The impact that corruption has on education is serious, as it means that goods and services that were supposed to be spent on education, are not available. I argue that the billions of Rands that cannot be accounted for and the stolen funds will result in learners being deprived of learning and teaching material (Corruption Watch, 2017:43; Corruption Watch, 2012:12). Furthermore, this situation will leave SGBs underfinanced, and unable to support schools, the learners, and the department. Besides the financial loss, other principles will inadvertently be impacted upon. Since education will to some extent be compromised, human rights in terms of learners’ right to education will therefore be affected, as will the rule of law, transparency and accountability. The overall impact will consequently affect democracy, as well as SG practices and policies in SA. This scourge needs attention, and needs it urgently.

Corruption Watch as a corruption fighting organisation generally calls for greater participation in reporting it (Corruption Watch, 2017:49; Corruption Watch, 2014:10; Corruption Watch, 2012:1), and this implies that the different stakeholders need to work in partnership (Corruption Watch, 2014:10 & 12; Corruption Watch, 2012:1). An effective partnership that will be for the good of society, the education of the learners, as well as a democratic society is envisaged. Inputs from various individuals and organisations, both local and international, demonstrate that acts of corruption are condemned and rejected. Also, its impact on *inter alia* schools, education, democracy, and SG practices and policies in SA has been highlighted. It could also be observed that SG practices through the flouting of school and finance policies regarding corruption related issues were prevalent. I argue that the condemnation and rejection of acts of corruption qualifies to be regarded as an element of a conducive environment, and consequently as part of the comprehensive framework on democracy. It plays out in SG practices, and impacts on democracy. The implication is that if corruption is not critically evaluated, and if it is left unchecked, it may continue to negatively affect the fruits of democracy. This negative impact will manifest in the experience of democracy through its essential principles. In order to nurture an environment for democracy in SG practices and policies, some actions can be initiated. Such actions may be in the form of a related element of a conducive environment.

In an attempt to solve this challenge of corruption to create or improve a conducive environment, a few actions are suggested. I posit that all stakeholders need some form of education that will enable them to learn about corruption, how it manifests itself, its consequences, as well as how to manage or combat it (Corruption Watch, 2017:34-35; Corruption Watch, 2012:14). Corruption Watch conducted many campaigns against corruption, but I believe such information should be publicised at a greater scale in schools and communities, through all available mass media platforms. It is therefore vital that education, particularly regarding the essential principles of democracy as practised in different spaces or institutions, should be made a priority (Vavi in Corruption Watch, 2012:14), in the event that such issues are found to be deficient. In situations where democracy seems to be a challenge, and where the society or community will become the victim, I contend that Dewey's theory of education for democracy might be of assistance.

### 3.2.2 PRIORITISATION OF EDUCATION AND SOCIALISATION FOR DEMOCRACY

Du Preez (2013:28) asserts that many citizens and their leaders “have limited understanding of democracy and even our constitution”, and this implies that they may not fully be democracy compliant. To enjoy and experience democracy, citizens need to have some understanding of that concept (Muna, 2006:7; Downs, 1957:138). In an effort to enhance understanding of democracy and human rights related matters, the various UN declarations have suggested education to be the tool to achieve it (UN Resolution, 2007: Section 3; Muna, 2006:7; UN Resolution 59/201, 2005: Sections 8a-f & 12; Inter-Parliamentary Union, 1997: Section 19; Organisation of American States, 2001:Art. 16 & 27; UNGA Res 217 A (iii), 1948: Preamble). According to Dewey (1916:83) “any education given by a group tends to socialize its members, but the quality and values of the socialization depend upon the habits and aims of the group”. From Dewey’s explanation, it can be deduced that education and socialisation are implicit in each other, and that their quality and value is dependent on the aim and habits of particular stakeholders.

Education and socialisation are implicit in each other. Meyer (1977:58) defines education “as an organized set of socializing experiences”, and Wynne (1979:464) defines socialization as “a form learning”. Furthermore, adults can also benefit from education in that they can learn values, gain information and improve on attitudes (Meyer, 1977:58). Through socialisation, SG stakeholders can also learn communication and other skills relevant to SG by spending time in conducive environments (Wynne, 1979:464). In this case, conducive environments includes schools and SG settings. Saldana (2013:228) regards agents of socialisation “as people, groups, or institutions that influence self-concept, emotions and behaviour” *that is consistent with democratic principles* [my emphasis]. This implies that the skills, knowledge, attitudes, and behaviour that may enhance democratic (SG) practices can be learnt from other stakeholders (people and groups), as well as schools as institutions (Meyer, 1977:58). Saldana (2013:231) asserts that “[t]he school system is a public space where some individuals are encouraged to try to conduct and determine the behaviour of others”. Also, the purpose of the school is to promote commonness in the society (Saldana, 2013:229). I argue that this commonness should also include and be based on habits and aims which may contribute towards compliance with democratic principles in SG practices and policies in SA.

Since SGB members are inducted and trained after their election, this exercise can be regarded as some form of education that they receive. It however appears that the training

is more focused on the functions of school governors, and sometimes on financial matters (Mncube & Mafora, 2013:22; Duma, 2010:129; Joubert, 2009:235; Maile, 2002:234). Having noted in this study that democracy and human rights in SG practices seem to be areas of concern, the education that is referred to is not only intended to address this, but also to socialise, i.e. to learn a way of life. In this regard, Dewey (1916:83) provides what I call working towards the creation of a “democratically constituted society”. I use society as the environment in which schools and SG function (Meyer, Wynne and Dewey). In describing what constitutes a democratically constituted society, Dewey (1916:83) asserts that the quality and value of socialisation depend on the habits and aims of the group(s), which in this study are SGBs. In order to do this, Dewey advances an explanation that I prefer to term “the two traits of a democratically constituted society.” The two traits comprise a determination of how numerous and varied the common interests of members of a society are; and how full and free interaction and cooperation are shared with other groups. From the application of these two traits, a number of benefits can be gained.

Dewey (1916:83) asserts that in a family, members will in a reciprocal manner enjoy a variety of benefits. They may have common interests in relation to material, intellectual and aesthetic areas or issues. I think it can be deduced that the family may enjoy each other’s company, emotions like love, laughter, ideas, appreciation, behaviour, respect, and others. This implies their interests will be numerous, varied and common. In other words, each member will be able to make a positive contribution to the others’ life experience. Unlike in a criminal gang, the family is not isolated. It is able to enter into relationships with other families, the church, schools, cultural agencies, political organisations and others. Through such relations and cooperation, members will be able to participate in the broader society. They will also be able to enjoy the support from other members within and outside the family structure. The education or socialisation that can be experienced from such a society will be characterised as being democratically constituted (Dewey, 1916:86-87). This “democratically constituted society theory” is relevant in this study, and in particular the environment that will enable democracy.

My contention is that education as mentioned in the various declarations (cf. 2.7), can be complemented with the two traits of a democratically constituted society theory. I believe that education as elucidated through the two traits of a democratically constituted society would assist in bringing about some clarity, if it is found to be deficient. Furthermore, it

directs that the group, in this case the SGBs, should work towards having common interests, habits and aims. It also calls for working, sharing and having interaction and cooperative communication, which are critical for the promotion of democracy and human rights in a democratic society (cf. 3.2.5). Through the exposition on the declarations, scholars and inputs from individuals, the importance of education and socialisation regarding democracy can be emphasised. As a matter of fact they also assert that the absence of knowledge about democracy will obstruct its application and practice. In the other words, the environment for the experience of genuine democracy in SG practices and policies in SA will be constrained. It is therefore vital that education be incorporated into making certain that democracy can be freely experienced in SG. Van Vollenhoven *et al.* (2006:122) concur and posit that citizens who are knowledgeable will be able to confidently defend their points of view regarding democracy. Knowledge may be in the form of relevant information, and this is regarded as the “fundamental prerequisite to the capacity to participate democratically in decisions that affect individuals and groups”, such as SGBs (Zulu, 2001:161). It can therefore be accepted that when stakeholders are educated and socialised regarding democracy in SG practices and policies in SA, then a conducive environment for democracy can be created. Armed with relevant education and socialisation, SG stakeholders will be able to distinguish democratic from undemocratic practices. I posit that when SG stakeholders are, as a consequence of relevant education and socialisation in the context of democracy, able to distinguish democratic from undemocratic practices, then such education and socialisation for democracy can be regarded as a form of critical pedagogy, which would be essential in this study.

A critical pedagogy *inter alia* includes conscious attempts to identify those impediments in education regarding democracy, and also acknowledges undemocratic practices and social injustices with the aim of addressing them (Barry in Zulu, 2001:169). Zulu (2001:170) succinctly states that “[i]f democracy is about freedom of choice, equity and justice, then education *and socialisation* [my emphasis] is a precondition for democracy”. This is what this study is about. Based on the above, education and socialisation for democracy can be regarded as elements of a conducive environment for democracy, and therefore qualify to be part of the framework on democracy.

I argue that in order for citizens to defend their views (as stated by Van Vollenhoven *et al.* above), they also need to be ready and open to engage in dialogue and deliberation. In this

regard, Gutmann and Thompson (2004:35) posit that “[a]n important part of democratic education is learning how to deliberate well enough to be able to hold representatives accountable”.

### 3.2.3 PROMOTION OF DELIBERATION AND DIALOGUE

With regard to the promotion of deliberation and dialogue, Gutmann and Thompson (2004:12) succinctly note the following:

*It is all too easy to assume that we already know what constitutes the best resolution of a moral conflict, and do not need to deliberate with other citizens. To presume that we know what the right resolution is before we hear from others who will also be affected by our decisions is not only arrogant but also unjustified in light of the complexity of the issues and interest that are so often at stake. If we refuse to give deliberation a chance, not only do we forsake the possibility of arriving at a genuine moral compromise but we also give up the most defensible ground we could have for maintaining an uncompromising position that we have fairly tested our views against those of others.*

From the quotation above, three important issues that are relevant to the study can be deduced. These are the importance of deliberation and dialogue to democracy, and by implication SG practices and policies in SA, the conditions that can enhance the promotion of deliberation and dialogue for democracy, as well as behaviour that may impede deliberation and dialogue.

Eminent scholars have attested to the importance of deliberation in democracy (Adams & Waghid, 2005:31; Gutmann & Thompson, 2004:35). In corroborating this view, Lindsay (in Gutmann & Thompson, 2004:9) remarked that deliberation can be regarded as an important enabler of democracy, particularly in a constitutional democracy as in the case of SA (Smit, 2013c:53; Gutmann & Thompson, 1996:1). Teise (2016:78) contends that dialogue can “strengthen democracy”. In adding his contribution to the idea, Steyn (2005:8) asserts that democracy can only thrive in a conducive environment. Corruption Watch (2012:2) emphasises this point and contends that “having a voice is a requirement of democracy”. Other advantages of dialogue and deliberation are that it can “ensure peaceful co-existence” (Steyn, 2005:8), citizens can be kept involved, aware and vigilant (Behrouzi, 2008a:17), it provides a conducive environment to deal with past and present misdemeanours (Umbrect

in Teise, 2016:77), it provides an opportunity for reflection (Teise, 2016:77) and it is vital for partnerships (Poncelet, 1997:13). Gutmann and Thompson (2004:30) further assert that when citizens actively participate in deliberation, they can develop and enhance good citizenship, and be able to take interest in broader public issues. Citizens who are able to engage in dialogue and debate will have a better grasp of other citizens' ideas, and would as a consequence be better equipped to deal with disagreements and conflict (Benhabib, 1996:73; Poncelet, 1997:13).

From the above, the relation of dialogue and deliberation with partnerships, education and most importantly democracy is highlighted. It should however not be taken for granted that citizens are necessarily socialised to comprehend what deliberation entails, as well as what the principles of democracy are (Luthuli, 2006:47). Furthermore, Behrouzi (2008a:17) is of the view that citizens who are able to engage in fruitful deliberation, need to be appropriately socialised. This need to be properly socialised suggests that in order to enhance the promotion of deliberation and dialogue requires that some conditions have to be satisfied.

The space where citizens can be prepared for proper and genuine deliberation in order to enjoy democracy is the education system (Waghid, 2008:198-199; Gutmann & Thompson, 2004:35 & 1996:359). SGBs are legally situated in schools to be institutions where citizens are encouraged to participate in open debate, in order to reach decisions in an amicable manner to the mutual benefit of all stakeholders (Steyn, 2005:8; Gutmann & Thompson, in Englund, 2000:311; Gutmann & Thompson, 1996:359). Furthermore, when citizens are involved in a discussion or deliberation where input from all is appreciated, they will be able to learn from one another, and as a consequence ultimately produce policy products that can withstand criticism (Waghid, 2008:198-199; Gutmann & Thompson, 2004:12). Citizens will also be able to gain invaluable knowledge that they could use to the best interest of those they serve (Guttmann & Thompson, 2004:12). However, citizens or stakeholders can only benefit from dialogue or deliberation that subscribes to favourable conditions and ethics. Since discourse is a procedure for conducting argumentation which subscribes to particular ethics, it is referred to as ethical discourse or discourse ethics (Habermas in Smit & Oosthuizen, 2013a:18; Habermas in Kettner, 2006:303). In other words, there are rules that can be applied when deliberation takes place, and in this regard, the rules that are proposed by Habermas are "widely accepted and can be applied in various contexts", such as in this study (Smit & Oosthuizen, 2013a:19). The Harbermasian rules have been widely used and



various researchers seem to have common emphasis and interpretations (Kangei, Nyabul, & Muhenda, 2018:49; Smit & Oosthuizen, 2013a:18-19; Kettner, 2006:301-303). I will briefly refer to the Habermasian rules and thereafter from other sources.

The Habermasian (1996:305-306) discourse ethics or ground rules include ensuring that all participants should be allowed to actively participate in deliberation, particularly in matters that affect them. In other words there should be no exclusions. Participants in deliberation should be given equal time and space to articulate their positions or opinions, and should reciprocate in listening to them. No participant should be pressurised to accede to a particular view, either within or from external sources. All participants should feel free to initiate, interject, or continue with the deliberation of issues at a later stage. Participants should feel free to address any issue that may affect them. Participants should have accepted that their points would need to be tested through argument and reason, and that only the best should prevail. Should a need arise for participants to vote on any issue to influence a decision, this should be done freely. It is imperative for participants to act cooperatively and understand that a common and shared vision in pursuance of common goals can be attained only if there is common agreement that is based on deliberation (Habermas, 1987:126; Habermas, 1983:134). Besides the foregoing exposition on the Habermasian ground rules, there are also other researchers who identify and emphasise other and similar conditions for fruitful deliberation.

SG representatives should participate in deliberation in an honest manner, and not for selfish and narrow interests. They should continue to deliberate and reason together, until they can find amicable solutions (Adams & Waghid, 2005:28; Gutmann & Thompson, 1996:1). Gutmann and Thompson (1996:132) believe that those who are involved in deliberation, such as representatives, become knowledgeable and experts in being able to convince others during discussions and decision-making processes. The lesson is however, not to be selfish, dishonest, and malicious when engaging with deliberation and dialogue opportunities, particularly if one is conscious of the vulnerability and possible ignorance of other stakeholders (Habermas in Smith & Oosthuizen, 2013a:20-21; Young in Kangei et al., 2018:51).

The exposition above serves as encouragement that opportunities for dialogue and deliberation for democracy should be created. If situations to discuss decisions that affect stakeholders are not created and encouraged, participation in decision-making will be

negatively affected. This will also have a negative impact on democracy. Steyn (2005:8) advises that deliberation and debate should take place in an environment free of coercion and intimidation. If this is not adhered to, democracy will also be affected negatively. The opinions of less knowledgeable participants should not be suppressed. The interests of the broader community, as opposed to narrow interest and self-interest, should be respected and considered.

Although deliberation is about reaching decisions through reasoning or argument, it can be threatened by allegiances to either the constituency, or the substance of the issue (Adams & Waghid, 2005:31; Gutmann & Thompson, 1996:128). In this regard, I contend that a fair balance between satisfying a party or structure and the substance and value to the broader community should be maintained (Guttman & Thompson, 1996:128-131). A disturbing trend in my view is that participants can sometimes take advantage of their superiority in numbers, and will decide to go for votes knowing that their preference will prevail. This practice is discouraged and it is asserted that voting should not replace deliberation, as this implies that manipulation can take place (Adams & Waghid, 2005:32; Gutmann & Thompson 1996:128). Gutmann and Thompson (1996:132-133) further acknowledge that weak participants, both socially and economically, can sometimes be overwhelmed by deliberation. They advise that if deliberation is properly structured, the effects of these inequalities can be diminished. This does not imply that the differences in social status of the different stakeholders will vanish when involved in deliberation, but that these should be acknowledged and considered when deliberation takes place (Gutmann & Thompson, 1996:132). The opinions of those perceived as being less capable of verbal engagements, should be respected (Gutmann & Thompson, 1996:139). Gutmann and Thompson (1996:132) further propose that deliberation will be effective when the discussion is “rational, moderate, and not selfish”. It is imperative to note that all parties should attempt to deliberate and motivate the decisions they make, especially to those whom the decisions will bind and affect (Bohman, 1998:400; Gutmann & Thompson, 1996:128).

Gutmann and Thompson (2004:35) make the comment that deliberation can sometimes be time consuming, and this suggests that time should not be wasted on inconsequential issues. Another potential hindrance can manifest itself when some parties believe they are more knowledgeable, to the point that they become complacent, arrogant, and even disrespectful.

This occurs when people consider themselves as experts, and others as mere spectators (Gutmann & Thompson, 2004:30).

I also contend that the exposition above highlights the importance that deliberation and dialogue can play in facilitating an environment conducive for democracy. The absence of deliberation and dialogue will probably create an unproductive environment for democracy. I contend that the promotion of deliberation and dialogue can serve as an important element towards creating a conducive environment for democracy, and qualifies to be part of the framework on democracy.

#### *3.2.4 PROMOTION AND DISPLAY OF TRUST IN SCHOOL GOVERNANCE PRACTICES IN SOUTH AFRICA*

Trust, like democracy, seems to be differently defined, understood, and used. This phenomenon is highlighted by Hardin (1992:159; 1996:28), who asserts that trust is often confused with trustworthiness, even by esteemed scholars and philosophers. This implies that if scholars can confuse the two concepts, so much more in the case of lay people, who usually serve in SGB structures. Harris (in Mahlangu, 2014:315) defines trust as an “expectation that another party will not act opportunistically, will be honest and will make a good faith effort in accordance with previous commitments”. In addition, Yamagishi, Kanazawa, Mashima and Terai (2005:277) define trust as “an act that voluntarily exposes oneself to greater positive and negative externalities by the actions of others”. Gambetta (in Stolle, 2002:400) in simple terms suggests that “when we trust someone, we assume that the probability of that person’s actions being beneficial or at least not detrimental to us will be high enough to risk engaging in some sort of cooperation with the person”. Scholars such as Baier and Luhman (in Hardin, 1992:154) posit that trust entails a “three-part relation”. An example is where the parents in a school (Part. 1) trust that the SGB executive (Part. 2) will use the funds of the school in a responsible manner (Part. 3). It is also suggested that trust entails risks, benefits and past experience (Hardin, 1992:152). Following the example of the parents and the executive regarding the usage of school funds, it may be either properly used, or misappropriated. There is in other words a probability of a benefit or a loss. Behrouzi (2008b:8) also cautions that trust can be affected in various ways. Some of these support trust, while others hinder it. Aspects that might enhance trust include past experience, levels of participation, and character traits. Those that may hamper trust include deception, manipulation and false pretences, and power and gullibility.

Past experience: This relates to knowledge of the past experiences of the different members of SGBs that need to be considered. Marschall and Stolle (2004:127) note the importance of trust, particularly from people from different backgrounds, as can be found in SG structures. Hardin (1996:27) posits that it happens that the different members may know one another, or they may be total strangers. This has the potential to impact on trust. If SGB members bring negative past experiences into the structure, this may affect trust among members of SGBs. It is critical in this study to note the historical past of SA, where different people were legally separated, and treated differently economically, politically and socially (cf. 2.6). If members were socialised to believe that other members are inherently corrupt or incapacitated to fulfil SG functions and responsibilities, such orientations could negatively affect trust, and as a consequence, participation, cooperation and partnerships.

Behrouzi (2008b:35) posits that where there is a high level of participation, “there would be a high level of trust”. Furthermore, the presence and promotion of trust enhances meaningful interactions (Behrouzi, 2008b:1). In other words, the more SG stakeholders work together, the greater the trust will be.

If members of SGBs would wish to increase their levels of trust, Behrouzi (2008b:8) suggests that they should possess character traits such as “good will, benevolence, honesty, fairness, integrity, dependability, accountability, prudence and competence”. Behrouzi (2008b:6) further posits that if people possess those character traits, they would trust the leaders. Stolle (2002:399) asserts that social interaction that is characterised by trust is beneficial to democracy, while Tyler (in Stolle, 2002:399) asserts that it can be deemed to be good for the public. In light of this, Tyler (in Stolle, 2002:399) contend that “trust increases people’s desires to take risks for productive social change”. This social change could be to enhance democracy in SG practices and policies in SA. The foregoing shows and corroborates the importance of trust in democracy.

Besides touching on the advantages of trust in organisations or structures, I contend that it is important to highlight those situations that may inhibit or stall trust.

Deception, manipulation and false pretences may come about when governments or their leaders fabricate situations, or manipulate already existing events (Behrouzi, 2008b:8). Behrouzi (2008b:9) further asserts that “when the leaders of the government fail to perform their responsibility of attending, caring for, protecting, and nurturing the common good at

some acceptable levels, or when the prevailing ideology fails to deliver to the people what it promised, trust may plummet". Although Behrouzi refers to governments in broad terms, I contend that the same applies to SGBs, as they are also entrusted with governance, albeit at school level.

It is important to note that people from different backgrounds functioning in SGBs may wield different levels of power, and this may impact on trust (Hardin, 2007:7), and therefore also on democracy, cooperation, participation, and partnerships. It is imperative that the issue of power is regularly checked, so that members of the SGB are not manipulated, deceived or abused, as cautioned by Behrouzi (2008b:8). I also contend that it is important for members of the SGB not to be gullible, and just blindly trust those who are in positions of authority, because those in authority could abuse the trust of SGB members. Such abuses of trust can be observed in cases of corruption, where principals or chairpersons of SGBs were either accused or charged for misusing school funds (cf. 3.2.1). An example of the abuse of trust at an international level, involves a Danish double agent, Morten Storm, who was involved in intelligence operations and counter-terrorism in various parts of the world. Storm (Storm, Cruickshank & Lister, 2014:332) intimated that the Danish State was taking transparency in its democratic institutions too far, to the extent that it became too trustful, almost to the point of complacency. This resulted in serious consequences for the Danes, as Danish laws were violated by some intelligence officials, due to unchecked trust. Storm (Storm, Cruickshank & Lister, 2014:338) also acknowledged that he took advantage of another agent's trust in him, and abused this trust by selling out the other agent. There are various other ways trust can be abused in SG practices and policies in SA, and as a result it is imperative that members of SGBs are aware of this.

The exposition above shows the impact that the presence or absence of trust can have on democracy and SG practices. Essential elements of democracy that include *inter alia* participation and cooperation and genuine partnerships, seem to be vital for trust. It was also demonstrated how vital the promotion of trust is in SG practices, and in the implementation of policies in SA. Based on the foregoing, the promotion of trust can also be regarded as an important element that can impact on a conducive environment for democracy. It therefore qualifies to form part of the comprehensive framework on democracy.

If trust is not at the level where it should be in order to enhance SG practices and policies in SA, both Hardin (1992:154) and Luhman (in Hardin, 1992:154) contend that trust can be

learned. When Dewey's socialisation theory (1916) is considered, it can be complemented by trust. Trust should also be taken into consideration when striving to transform an SGB into a learning organisation. Since learning organisations have to do with learning (Serrat, 2010:2; Giesecke & McNeil, 2004:55; Confessore, 1997:2; Senge, Roberts, Ross, Smith & Kleiner, 1994:6; Senge, 1990:16), it is expected that participants would trust *inter alia* that the learning process, content, and intended outcomes would be beneficial to SG practices and policies in SA.

### 3.2.5 TRANSFORMING SGB STRUCTURES INTO LEARNING ORGANISATIONS

The context within which organisations, including SGBs, operate, is continually changing, as can be observed in today's flow of information via communication technology (Basim, Sesen & Korkmazyurek, 2007:368; Serrat, 2010:5) and the introduction of new policies (Duma, 2010:119; Beckmann & Prinsloo, 2009:171; Carr & Williams, 2009:69; Mabovula, 2009:219; Mncube, 2009:83; Mncube, 2008:77). In order for SGBs to respond to these 21<sup>st</sup> century challenges, they need to respond promptly and accordingly to remain relevant and effective (Rijal, 2009:131; Confessore, 1997:5). To respond to this, the learning organisation concept, which was made popular by Peter Senge (Rijal, 2009:131; Giesecke & McNeil, 2004:54; Confessore, 1997:5), is proposed. Since a learning organisation has to do with learning, it is important to note that learning entails *inter alia* "experience, reflection, theoritization and experimentation" (Noubar, Rose, Kumar & Salleh, 2011:853). Although different scholars define learning organisations differently (Rijal, 2009:133; Roberts, Ross & Klein, 1994:50-51), it would make sense to consider Peter Senge's ideas.

Senge's definition (1994:4) includes a number of expectations that needs to be considered when defining a learning organisation. These include *inter alia* that "people must be willing and prepared to learn", that people should be prepared to make the organisation effective and to realise their personal visions, and that they need to equip themselves with the necessary skills, methods, and tools to change their organisations for the better (Senge, 1994:4). Senge (1994:4) posits that learning these skills will enable the organisation to better deal with the challenges stated above. To a large extent, other scholars (Marquardt in Rijal, 2009:133; Basim *et al.*, 2007:368; Giesecke & McNeil, 2004:55; Confessore, 1997:5) concur with Senge's definition. Although not substantively different, Rijal (2009:133) emphasises the importance of the collective, as well as learning "within and outside the organization", and in this regard states that:

*[a] learning organization is one which has the potential to transform itself by; harnessing the individual and collective learning of organizational members, empowering people both within and outside the organization; managing knowledge effectively, utilizing technology efficiently so as to better adapt and succeed in the changing environment.*

This learning organisation concept seems to be quite relevant in SG practices and policies in SA.

SGBs experience change almost all the time. New members with their different skills and talents replace those who have left on a continuous basis, and this may impact on the availability of skills in the structure. These changes have the potential to affect the dynamics of SGB operations, and sometimes the functions of SGBs are reviewed as legislation is amended, which may also impact on policies. Technological advances and communication tools and methods may also compound the issue of change. All these factors necessitate that the implementation of transforming SGBs into learning organisations is amplified, and are therefore worthy of being considered for implementation. The proponents of the learning organisation concept purport a number of advantages, some of which are noticeable from the definitions considered in this study.

From the definition of a learning organisation, some of the advantages include *inter alia* individual and collective learning of knowledge, skills and tools to solve problems, and to be able to adapt to global change (Watkins & Marsick in Noubar, Rose, Kumar & Salleh, 2011:853). Giesecke and McNeil (2004:54-55) contend that the advantages of a learning organisation include *inter alia* improved communication, the identification and solving of problems and challenges as they arise, the expectation that the knowledge and skills of individuals and the collective will be used to the service and improvement of the organisation, members feeling appreciated and respected, and that the sharing of information is encouraged. Other advantages generally include *inter alia* the accessing and sharing of information, people learning to appreciate their strengths and weaknesses, the encouraging of teamwork, as well as an aspiration to have common visions and aspirations (Serrat, 2010:2-5). I contend that these same advantages can be construed to elicit an enabling environment for a learning organisation. This enabling environment is informed by people, knowledge and technology (Serrat, 2010:1).

Serrat (2010:2-3) further asserts that a learning organisation needs people who are largely self-driven, willing to learn, prepared to acknowledge their strengths and weaknesses, able to share their skills and use them to the service of the organisation, as well as being prepared to work and contribute in a group or team setting. This assertion concurs with an earlier interpretation of Basim *et al.* Basim *et al.*, (2007:368) interpreted that Argyris and Schon maintained that it is not enough for organisations to just identify and acknowledge their weaknesses and failures, but that they should put in practice measures to rectify the situation. In other words, they should endeavour to remove those obstacles that may prevent the organisation from reaching its goals and outcomes. In this regard, Giesecke and McNeil (2004:60) suggest that organisations need to be creative and innovative to create a conducive environment to transform the organisation.

Serrat (2010:3) further posits and emphasises the importance of knowledge in a learning organisation. He states that the learning organisation is “a product of both knowledge and its source”. This implies that the learning organisation is a reflection of the knowledge it possesses and transmits, as well as the people contributing to and making use of it. Learning organisations need to be able to effectively use current communication technology. This refers to *inter alia* social media (Twitter, Facebook, etc.), radio and television, print media, and the internet in order to access and disseminate information to a great number of members on almost any topic. As suggested above, the three enabling conditions are important to bring about the existence of a learning organisation. They are, however, not ends in themselves, and I contend that the list is not exhaustive. This contention is informed by the acknowledgement that organisations are fraught with challenges (Kierman in Rijal, 2009:131), and their willingness to embrace the concept of a learning organisation, may be helpful.

The exposition above suggests that to transform traditional organisations into learning organisations is no easy task. Sometimes the idea to implement it may be easier said than done. Certain skills and strategies would come in handy (Noubar *et al.*, 2011:852) to facilitate this. Senge (in Giesecke & McNeil, 2004:56-57; in Confessore, 1997:6; in Senge *et al.*, 1994:6-7), who is highly regarded for his contribution to the concept of a learning organisation, proposes the application of five disciplines to bring about a learning organisation.

Senge (Senge *et al.*, 1994:6-7) identifies the five disciplines as “shared vision, personal mastery, mental models, group or team learning, as well as systems thinking”. It may be



prudent to firstly and briefly explain how the word “discipline” is used by Senge. He explains discipline as “a body of technique, based on an underlying theory or understanding of the world that must be studied and mastered to put into practice” (Senge *et al.*, 1994:7). It implies that the five disciplines can be construed as the manner in which these techniques are understood and employed to transform an ordinary traditional organisation into a learning organisation, as envisaged by all members of the organisation. It is important to note that these disciplines need thorough understanding and mastering. This also suggests that in order for them to be understood and mastered, they need to be learnt (Noubar *et al.*, 2011:853; Basim *et al.*, 2007:368). Furthermore, the implication is that what is learnt should be continually put into practice.

**Table 3-1: Transforming traditional organisations into learning organisations: The five disciplines**

Disciplines	Main ideas
Personal mastery	The acquisition of this discipline enables the individual members of the organisation to be conscious of the need for them to take responsibility towards their contribution to the organisation as a collective (Giesecke & McNeil, 2004:57; Senge, Roberts, Ross, Smith, & Kleiner, 1994:6). The authors further contend that this responsibility entails acquiring the necessary skills and efforts to assist in the realisation of the goals of the organisation. Giesecke and McNeil (2004:57) identify the required skills which <i>inter alia</i> include “using technology in communication, patience, negotiation skills”.
Mental Models	This discipline attempts to shape the mental picture that members may have about their envisaged organisation (Giesecke & McNeil, 2004:57; Senge <i>et al.</i> , 1994:6). The authors advise that negative past experiences should be continually improved, so that creative ways of addressing challenges should rather be created (Giesecke & McNeil, 2004:57; Senge <i>et al.</i> , 1994:6).
Shared vision	The attainment of sharing a common vision, which would be due to the commitment by members of the group, would help them in exhibiting a common picture of where and what type of organisation they aspire to create (Giesecke & McNeil, 2004:57-58; Senge <i>et al.</i> , 1994:6).
Team learning	Giesecke and McNeil (2004:58; also Senge <i>et al.</i> , 1994:6) assert that teams are important learning units, and that more can be achieved in teams. Giesecke and McNeil (2004:58) contend that team learning has the potential to discourage individual and selfish tendencies, and that it can create and encourage an environment to promote dialogue.
Systems thinking	The idea of thinking about and looking at the bigger picture is referred to as systems thinking (Giesecke & McNeil, 2004:57-58; Senge <i>et al.</i> , 1994:6-7). Besides looking at the bigger picture, the individuals and small parts that make up the whole are equally crucial, especially their interrelatedness (Giesecke & McNeil, 2004:57-58; Senge <i>et al.</i> , 1994:6-7; Senge, 1990:15).

	Giesecke and McNeil (2004:58) suggested that “the individual, the cause of the problem, and the solution to the problem are all parts of the same system”. This implies that members should not distance themselves from the, but should acknowledge if they are part of the problem, and ensure that they become part of the solution (Senge, 1990: 15).
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The above exposition endeavoured to explain how traditional organisations can be transformed into learning organisations, where people are valued and learning prioritised (Rijal, 2009:132). The exposition above demonstrates that if organisations (such SGBs) are reluctant to acclimatise, this may hamper their experience of democracy in SG practices and policies in SA. The advice is therefore that each member and the collective should be able to acknowledge the importance of being up to date with the latest information to advance the interests of the structure. It should be open to new innovations and ideas. Like the previously referred elements, the creation of a learning organisation also satisfies the requirements to be regarded as an element for a conducive environment for democracy. Based on the argument advanced in this whole section, I contend that all five elements are relevant, necessary and crucial to play an important role in the creation of a conducive environment for democracy. In the event that nothing is amiss with the elements of a conducive environment, or what has been found was addressed, then the essential principles can be investigated. The comprehensive framework on democracy can only be complete if the essential principles have been confirmed to be part of the framework. Like the elements of a conducive environment, I now address the essential principles of democracy.

### 3.3 RELEVANT PRINCIPLES OF DEMOCRACY WITHIN THE SG CONTEXT

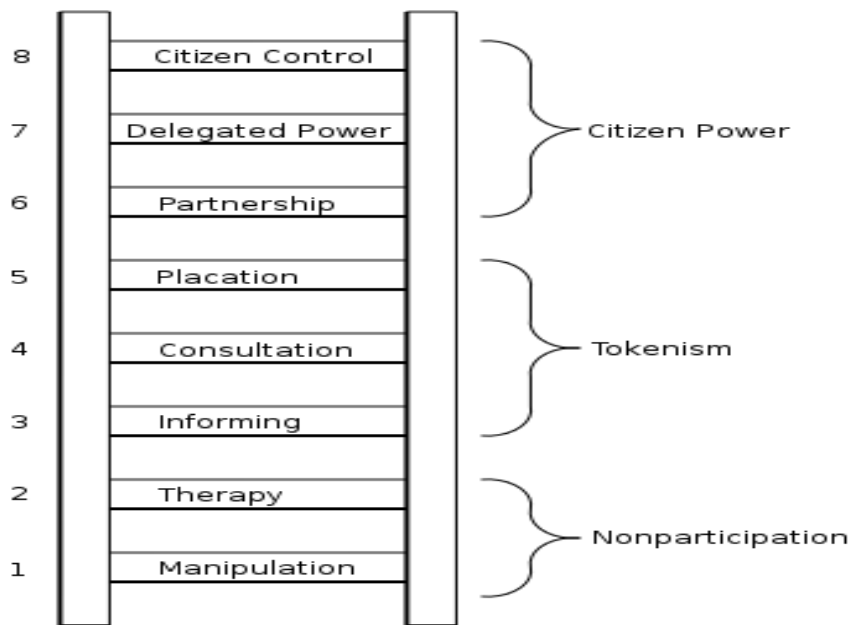
In order to demonstrate whether an essential principle of democracy should form part of the comprehensive framework, three criteria will be investigated. These include the link of democracy with SG practices and policies in SA, what the essential principle entails and what standard it sets, and examples of current SG practices. It should be noted that these were thoroughly discussed in Chapters 1 and 2, and therefore I will only list and discuss those that I consider to be vital and relevant. I have already advanced an argument that links democracy with SG practices and policies in SA, and so only the last two will be discussed in this section. The identified nine essential principles of democracy include participation, representation, free and fair elections, respect for human rights, respect for the rule of law, separation of

powers, transparency and accountability, free and independent media, and promotion of authentic partnerships.

### 3.3.1 PARTICIPATION

Participation is also regarded as “the essence of democracy” (cf. 2.4; 2.5 & 2.6), and almost all the sources consulted in this study concur and validate the importance of democracy (and also in SG practices and policies) (cf. 1.1). The following was demonstrated: that participation (particularly in SG practices and policies) is important as it is *inter alia* about decision-making in policy formulation and implementation (cf. 2.3); that the effectiveness of democracy can be determined in checking how far or how near citizens’ participation in the affairs of their lives is (Behrouzi, 2008a:5); that participation should be genuine, and should also be practised in the development processes in the governance of public affairs (cf. 2.3 & 2.4.4.1); that participation should be empowering, should include *inter alia* participation in decision-making on an on-going basis, and the development and implementation of policies that affect their lives in important ways (cf. 2.4 & 2.5.2.1); and that participation should be more than just being involved in general decision making, but should include the determination of vision, purpose and values (O’Brien in Senge, 1990:20).

Practice seems to suggest that actual participation may be limited. Examples of current participation practices include: limited participation is prevalent (cf. 1.2); SG practices do not seem to promote genuine participation (cf. 1.2), and as a result do not seem to promote genuine democracy where all participate (Behrouzi, 2008a:18; 2008b:42); citizens’ participation in governance is sometimes constrained (cf. 1.2 & 2.3); democracy becomes distorted or weak the further it moves away from genuine participation (Behrouzi, 2008a:5-6); and the absence of participation has the potential to lead to violence (Biko, 2013:208; Ober, 2003:17). In an effort to address these challenges, I suggest that Arnstein’s ladder of citizen participation should be considered. This may improve the quality of participation, particularly in SG practices and policies in SA, especially when SG stakeholders become conscious about the various categories of “participation”.



**Figure 3-1: Eight rungs on a ladder of Citizen Participation (Arnstein, 1969:217).**

Arnstein asserts that citizens should be aware of the manner in which their participation can either be enhanced, or made meaningless. In illustrating this point, I refer to Arnstein's ladder of participation, which tries to show how genuine participation can be enhanced or inhibited, and its impact on democracy. Arnstein (1969:217) uses a ladder consisting of eight rungs, clustered into three sections. The bottom section is made up of rungs one (manipulation) and two (therapy). The second section is made up of rungs three (informing), four (consultation), and five (placation). The top section consists of rungs six (partnership), seven (delegated power) and eight (citizen control). The first section basically defines non-participation, the second indicates tokenism, and the third is an effort at genuine participation.

The first section, which deals with manipulation and therapy, describes non-participation. Manipulation is when members are only expected to rubberstamp decisions that were taken (Arnstein, 1969:218). They are not genuinely involved in actual decision-making. Therapy is when participation is allowed, but with malicious intent. In other words, participation in some activity may not necessarily assist the members, but in fact perpetuate non-participation (cf. 1.2). This non-participation may also mean that members may be tricked into believing that they are participating, while in reality, they are not.

The second section describes tokenism. This is when members are provided with limited information, but not actually participating with authoritative decision-making, as can be observed in informing, consultation, and placation (Arnstein, 1969:219-221). Informing has to do with being provided with information, without feedback being required (Arnstein, 1969:219); consultation is when members are approached on an issue, but their ideas are not taken into consideration (or their use is not guaranteed) (Arnstein, 1969:219-220). Arnstein (1969:219) refers to this as “window dressing participation”. Another type of tokenism is placation, where members may be co-opted into some structure, without genuinely taking part in policy-making responsibilities (Arnstein, 1969:220). Although it may seem as if participation, in comparison to the other lower rungs, may be visible, Arnstein posits that it is actually a distorted type of participation. Although the third section denotes some form of participation, the different rungs in this section also differentiate on the level of participation.

Partnership (the sixth rung) allows for participation through negotiation and power sharing, as well as the sharing of responsibilities (Arnstein, 1969:221). The delegated power rung (the seventh rung) allows for more authoritative decision-making as opposed to partnership (Arnstein, 1969:222). The citizen control rung (eighth) denotes a movement towards genuine participation in policy formation, as well as the implementation and monitoring levels (Arnstein, 1969:223). It does not, however, mean that there will be no limitations, but the level of participation will be much better than in the seven lower rungs (Arnstein, 1969:223).

Arnstein’s theory implies that members should be aware when and how their participation can be enhanced or inhibited. This theory is also able to help members to be vigilant when they are co-opted into structures. I therefore assert that Arnstein’s theory (1969) on citizen participation can be helpful, as it implies that if participation is constrained, then members will be aware that democracy will suffer as a consequence. While it has been acknowledged that poorer school governors’ participation in SG is constrained, (Smit & Oosthuizen, 2011:55; Woolman & Fleisch, 2009:210-211), knowledge about Arnstein’s theory may be helpful, if considered and implemented.

In light of the above, I contend that the role and importance of participation in democracy, SG practices and policies in SA are adequately reflected in this study. In this regard, I suggest that participation as an essential principle of democracy should be accepted and used as a principle that can inform the comprehensive framework on democracy to guide SG practices and policies in SA.

Those who would be afforded the opportunity to participate on behalf of others need to represent them well. This brings the principle of representation into focus.

### 3.3.2 REPRESENTATION

The 20<sup>th</sup> century saw a number of international bodies adopting documents in which the concept of representation received attention (cf. 2.7). Representation is regarded as a feature of democracy (Ouwaseyi, 2009:217), when someone acts on behalf of and in the interests of others (Heywood, 2007:248). It can also be useful in cases where many people are involved, and the burden of governance is transferred to a small but skilled and knowledgeable group. This relieves other members of the community to concentrate on other areas of interest the community (Heywood, 2007:74). It should however be meaningful and substantive, and not only symbolic (Rorty in Shushu *et al.*, 2013:21), as practice seems to suggest.

It is asserted that the lack of representation has the potential to lead to violence (Biko, 2013:85-86; Heywood, 2007:248). Other practices show that representatives may prioritise their own selfish interests over those of the general citizenry (Manin, Przerworski & Stokes, 1999:29). Representatives may find themselves coerced into toeing party lines, failing which they are deployed to other tasks. They might even lose their current positions (Booyesen, 2013:16; Terblanché, 2012:84). The threat of deployment negatively impacts on representatives' inputs and service to their structures, hence the prevalence service delivery protests (Booyesen, 2013:16). Representatives are forced to support dubious mandates (Booyesen, 2013:16). This demonstrates the intricacies of representatives who might not necessarily advance the interests of the organisation, irrespective of whether such acts are valid or not. The implication is that incompetent representatives, who will toe the party line without question, may be imposed on structures. Sometimes there may be biases in terms of gender. In this regard, women were poorly represented on the executive committee elected at the ANC Youth league elective conference held at Gallagher Estate in Midrand, Gauteng Province, from 4 - 6 September 2015 (Dlamini, 2015:1; Motseothata, 2015:2). Only one of the five elected officials was female. The implication is that there is a gender imbalance, and this may impact on other essential principles such as participation. It may therefore negatively impact on democracy. As in the point stated above, only one woman was elected to the top six of the National Conference of the ANC at NASREC, Gauteng Province from 16 - 20 December 2017 (Kwon Hoo, 2017:2).

It was demonstrated how representation is critical in SGBs, for democracy, and for SG practices and policies. Its challenges were also highlighted. I have also referred to two cases where only one female was elected to executive structures at ANC Conferences. This could imply that the participation of women in decision-making may be limited, even though it is claimed that they are in the majority in South Africa. This is also a phenomenon found in SG practices. Based on the above, I posit that representation can be included in the comprehensive framework on democracy. According Manin *et al.* (1999:29) the claim connecting democracy and representation is that “under democracy governments are representative because they are elected; if elections are freely contested, if participation is widespread, and if citizens enjoy political liberties, then governments will act in the best interests of the people”. This brings free and fair elections to the fore.

### *3.3.3 FREE AND FAIR ELECTIONS*

There seems to be general agreement in ensuring that regular, transparent, free, and fair elections, which are consistently held at agreed upon times, promote democracy (cf. 2.4.4.3). Feinstein (2007:31) asserts that free and fair elections are vital for democracy. In an African context, scholars seem to be in agreement that elections are regarded as the founding pillars of democracy (cf. 2.5). However, to positively contribute to free and fair elections, favourable conditions should be created. These conditions entail that elections be conducted by secret ballot so that the general citizenry is able to cast their vote without due influence, coercion or intimidation (cf. 2.4.4.1); that people be mindful that voters may come from different and diverse constituencies, and therefore, any dubious actions in relation to voting and or the results, may prejudice the whole process (Habermas, 2001:774; Adejumbi in Mesfin, 2008:2); that the abuse of power should be discouraged, and that the results of elections be accepted (cf. 2.5.2); and where possible, guidelines spelling out the behaviour and conduct expected for credible elections to be attained should be provided (DBE, 2012).

It has been highlighted that democracy is brought about through elections, and this suggests that elections as a principle is highly recognised (cf. 3.3.2). However, as much as elections are critical to democracy (Mesfin, 2008:1), it should also be noted that regular elections do not necessarily equate or translate to democracy (Matlosa, 2005:7; Steyn, Du Plessis & De Klerk, 2005:15). In other words, practice may not necessarily resonate with theory. In this regard, current practice shows that the rigging of elections in Africa remains a concern (Mogoeng, 2013:3; Mukandala, 2001:3). Concerns regarding elections in Africa frequently dominate the

media at a continental level (Mukandala, 2001:3; Chabal, 1998:295). Elections being nullified are prevalent, for example in Sierra Leone (1997), Nigeria and also Algeria (Adejumobi, 2000:8). On a positive note, SA has not yet experienced such problems, which is a good sign.

Apart from national elections in SA, the second biggest elections are those of the SGBs (TNA Reporter, 2015b:6). In this regard, free and fair SGB elections were held in 2015 in the Northern Cape (Beangstrom, 2015:10; Ntuane, 2015:18). However, some parents did not show willingness to participate in SGB elections, even though the NCDoe tried its best to encourage them to do so (Ntuane, 2015:18). Feinstein (cf. 3.3.3) has intimated that free and fair elections are vital for democracy. Questionable SGB election processes and outcomes may undermine democracy, as some members may be aggrieved, and their participation may as a consequence be negatively affected. If their participation is negatively affected, democracy would be compromised (cf. 2.5). This confirms the importance of free and fair elections in democracy, as well as in SGBs. In this regard, I argue that free and fair elections qualify to be included as an essential principle of democracy in the comprehensive framework on democracy. Furthermore, free and fair elections are also a guaranteed human right in SA and the rest of the world, and so the respect for human rights is also critical for democracy, and SG practices and policies in SA.

### 3.3.4 RESPECT FOR HUMAN RIGHTS

The promotion, exercise, and *respect for human rights* have received tremendous attention in the cited sources (cf. 2.4.2 – 2.4.4.1). The UN (Res 59/201 of 2005: Section 1) identifies some of the human rights as “freedom of association and peaceful assembly and expression of opinion, and the right to take part in the conduct of public affairs, directly or through freely chosen representatives”. It is noted that the issue of *participation* and *representation* are also raised here, as it amplifies the interrelatedness of *human rights* and *democracy* (cf. 2.4.4.1). In this regard, it is often stated that democracy cannot exist without human rights (Bollen in Keith, 1999:107). As a result, the concept of human rights is also regarded as the cornerstone of democracy (cf. 2.4.3). However, practice seems to demonstrate either a disregard or misinterpretation for the respect for human rights. Bray (2005:19) provides advice for interpreting basic human rights when he states “[i]n interpreting human rights provisions, a generous interpretation [i.e. one that favours the individual, rather the state] should be followed provided it supports the purpose and underlying values of the Constitution”. This interpretation is also valid where individuals are involved, particularly in SG practices and



policies in SA. However, SG practices seem to be fraught with human rights violations. I cite some examples:

1. The SA Parliament (which is regarded as a leader in respecting human rights) has been found to be a perpetrator. During the opening of the South African Parliament on the evening of Thursday, 12 February 2015, members of one of the minority political party the Economic Freedom Fighters (EFF) were forcibly and violently removed from parliament by alleged gun-carrying security intelligence police (Booyesen, 2015a:13). In this regard a Sunday newspaper ran the headline "Democracy under siege in its citadel". The EFF members were ordered to leave as they were ruled out of order for having asked when the president intended to pay back the money he allegedly unduly benefitted through security upgrades at his private Nkandla residence in Nkandla, KwaZulu-Natal (KZN) province. At least two incidents of human rights violations can be observed. One is that the scrambling of cell phone signal in parliament was regarded as a breach of freedom of speech and access to information, as members of parliament could not access information. This implied that the media could not do their job, undermining press freedom in the process. The usage of the jamming device was acknowledged, but promises were made that it would not happen again (Booyesen, 2015b:13; Rantao, 2015:16; Maluleke, 2015:13). Secondly the *Constitution* guarantees freedom of expression. Members of parliament are protected from arrest by the Powers and Privileges Act for what they articulate and do in parliament, and this seems to have been violated (Devenish, 2015:13). Devenish (2015:13) stated that "what has occurred is not merely a breach of privilege, but presents us with a constitutional crisis, involving the legislative and executive branch as well, when the speaker and the riot police are subject to judicial reviews, which is inevitable."
2. Prevalence of physical attacks on foreign nationals in April 2015 (and before and after that time) in SA put the country in a bad light with regard to the observance of human rights (Semela, 2015:8; Booyesen, 2015c:13). These attacks are not new, as they have been reported as early as May 2008 (Coplan in Jacobs, 2012:28). The Member of Executive Council (MEC) of Sport, Arts and Culture in the NC Province, Mr Lebogang Motlhaping, labelled these xenophobic attacks as an attack on democracy and democratic values (Phillips, 2015a:4). This act in itself goes against many articles of the UN Universal Declaration of Human Rights of 1948 (UNUDHR). Since these attacks and killings were

mainly against citizens from other countries on the African continent, the MEC said that the current freedom South Africans were enjoying was due to the help of other African countries. These incidents sparked an international outcry. Many commentators reiterated their disgust, and a number of opinions were carried in the press (Cele, 2015:6; Harper, 2015:6; Harper & Du Plessis, 2015:1).

3. Human rights violations also occurred in schools in SA. Some racist activities have allegedly occurred at Curro schools, which are regarded as “low-cost” independent schools that are affordable to the low and middle income groups in communities (Kennedy, 2015:7). It is alleged that these racist transgressions occurred in a number of provinces in SA (Chiwashira, 2015:6; Luphahla, 2015a:1). These racist activities include *inter alia* that foul language was used against black pupils, separate toilets being allocated to the different races, the use of corporal punishment, and that the school was making use of the services of unqualified educators (Luphahla, 2015a:1). These incidents were reported to the South African Human Rights Commission (SAHRC), which confirmed that it was busy investigating these reported incidents. Without sensationalising the issue of abuse, a gruesome incident that got the attention of the entire country occurred in an agricultural school in Jan Kempdorp in the NC. In this incident, a black boy was apparently raped by four learners. They allegedly inserted a toothbrush and mop handle into his rectum, after tying him to a bed and smearing a white substance over his naked body. They allegedly also shaved his eyebrows and hair (Wildenboer, 2015a:3). It was reported that the SGB would deal with this matter by instituting disciplinary procedures, by reporting it to the NCDoe, and by instituting a criminal case. The four learners were subsequently expelled, and criminal charges are still being pursued, although the parents are seeking to nullify the charges in the High Court (Luphahla, 2015b:1). Without tainting the moral of the story above, it was reported that three of the four accused subsequently pleaded guilty, while charges against the fourth, who was fourteen at the time of the incident, were withdrawn (Phillips, 2016:3).
4. Besides the practices that can be ascribed to some SG stakeholders as demonstrated in the section above (4), school policies and its implementation also seem to compound the problem of human rights violations. Both the NCDoe and the GDE have acknowledged that their schools’ policies need to be reviewed, as they are either outdated or are violating human rights (Beangstrom, 2017:6). In this regard, the Gauteng MEC for education

decided to intervene when it was established that some girl learners at Windsor House Academy in Kempton Park (a private school in Gauteng province) reported that they were discriminated against based on their hairstyles (Beangstrom, 2017:6). The complainants alleged that black girls were asked to leave the school when they failed to adhere to school rules, while their white counterparts were not asked to leave. The principal acknowledged this anomaly and promised to correct the situation.

5. Many other examples of human rights violations were reported (cf. 1.2). Some of these will be discussed in Chapters 6 and 7, in which issues of admission and language in schools will be discussed.

Respect for human rights was adequately addressed, and its impact on democracy was also observable through SG practices and policies in SA. Respect for human rights qualifies to be included in the comprehensive framework on democracy. The discussion on the respect for human rights took a similar approach to that of the respect for the rule of law. Like the respect for human rights and democracy, respect for the rule of law exhibits some acts of violations, particularly in SG practices and policies in SA.

### 3.3.5 RESPECT FOR THE RULE OF LAW

Heywood (2007:326) alludes that the “law is about what can and what cannot be done”. At a global level, the rule of law is defined as “a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards” (The United Nations Security Council, 2004: Section 6). Dicey (in Heywood, 2007:326) as well as Madonsela (2016:12) assert that the rule of law attempts to enforce conduct or behaviour to all members of society, both private individuals and organs of government. In acknowledging that some parties may sometimes have access to power, a call is made that that everyone should be treated equally before the law, and that respect for the rule of law should be upheld (cf. 2.4.4.3; 2.7). The emphasis on “power” is encapsulated by both the *Economic Freedom Fighters v The Speaker of the National Assembly and Others; Democratic Alliance v The Speaker of the National Assembly and Others* [2016] ZACC 11 [Par 75] and quoted by Madonsela (2016:4), where Constitutional Judge President Mogoeng Mogoeng succinctly states that:

*The rule of law requires that no power be exercised unless it is sanctioned by law and no decision or step sanctioned by law may be ignored based purely on a contrary view we hold. It is not open to any of us to pick and choose which of the otherwise effectual consequences of the exercise of constitutional or statutory power will be disregarded and which given heed to. Our foundational value of the rule of law demands of us, as law-abiding people, to obey decisions made by those clothed with the legal authority to make them or else approach courts of law or set them aside, so we may validly escape their binding force.*

It seems that judgements such as the one referred to above have unsettled some politicians in SA. In response to public attacks against the judiciary, the South African Judiciary (2015:2), through the South African Chief Justice, Heads of Court and Senior judges of all divisions, made the following remark: “The rule of law is the cornerstone of our constitutional democracy”. Madonsela (2016:2) seems to concur with this, and further remarked that the rule of law can have an influence on the economy, which can enhance democracy. Whether practice is consistent with the above, is open to interpretation. In this regard, some examples of practice are reflected below:

1. South African institutions, individuals and private bodies were accused of not adhering to the rule of law. Although the rule of law seems to be applied in a socio-political sense, it also affects education in general and SG in particular. It has also been stated that education is a societal issue (Dewey, 1916:87). Furthermore, Beckmann and Prinsloo (2015:1) have referred to a number of cases in education, where the rule of law was not upheld. They (Beckmann & Prinsloo, 2015:1) argue that government organs and officials have a propensity to ignore court rulings. I refer to some of these:
2. The SA government allowed the Sudanese President Omar al-Bashir, who has a warrant of arrest against him by the International Criminal Court for human rights violations against his people in Sudan, to attend an AU meeting in SA in June 2015, and did not facilitate his arrest (Hlophe, 2015:17). Furthermore, it later emerged that the government had appealed a court ruling that President al-Bashir was to be arrested, as the immunity that was allegedly granted by the SA government was legally invalid (African News Agency, 2015:10). A full bench of high court judges ruled against the government’s leave to appeal application, stating that “the government’s stance on al-Bashir could not override the country’s international obligations (Africa News Agency, 2015:10). This implies that the

courts (are prepared to defend the law. What seems to be a concern, however, is when the government does not seem to respect court rulings. In response to this debacle, the ruling party's (ANC) October 2015 National General Council (NGC) resolved that SA would rather withdraw from the ICC (Ramjathan-Keogh, 2015:5).

3. The NCDoE was alleged to have suspended two officials who were employed in Upington one of five districts in the NC Province, in 2013 (Kwon Hoo, 2015a:4). The case was taken to the Education Labour Relations Council (ELRC), and later to the Commission for Conciliation, Mediation and Arbitration (CCMA). These two bodies both ruled that the two officials be compensated to the amount of R1.5 million, and be reinstated. The NCDoE has seemingly not implemented the orders, and attempts to seize the moveable assets of the department were undertaken. Kwon Hoo (2015a:4) further reported that the compensation amount has now risen to about R2 million. The legal counsel of the two officials indicated that they intended to lay a charge of contempt of court against the HOD of the NCDoE, for failing to implement the order. It seems as if this case has still a long way to go, before the order is effected. At issue is that the organs that dealt with this matter are legitimate organs that are provided for by the labour legislation of the country. The matter has serious consequences to the two officials, as well as their families, as they have been suspended without salary since 2013. This case depicts behaviour that suggests that the NCDoE does not respect the rule of law.
4. In the same article as mentioned above, Kwon Hoo (2015a:4) also reported that the NCDoE was not the only official body to have been threatened with charges of contempt of court. Two others included the Department of Roads and Public Works and the Department of Health. Like the two officials in the NCDoE, the Department of Roads and Public Works also suspended an official in 2013 (Kwon Hoo, 2015b:7). Both the MEC and the HOD stand to be charged for contempt of court for failing to implement orders by the Labour Court to reinstate and reimburse the suspended official. This was then taken to the Constitutional Court by the MEC and HOD (Kwon Hoo, 2015b:7). After having failed at both the Labour Court of Appeal and the Registrar of the Supreme Court, the case was once again dismissed by the Constitutional Court (Kwon Hoo, 2015c:5). This case may not necessarily be directly related to education, but I argue that the effect is still the same, as state organs are seen not to be respecting the rule of law.

5. After picketing at the NCDoe district offices in Kimberley to force the department not to interfere with their decision to admit some learners to their school (Young in Pretorius, 2010:247), the SGB, the staff and 23 parents decided to take action to enforce the rule of law. They took the matter to the High Court (Luphahla, 2015c:9; Swart, 2015a:3). They felt that they had legally delegated responsibilities to act on behalf of the SGB and the school (Philips, 2015b:5) to do so. The school had admitted 58 learners, but the department had decided to admit the learners to other schools (Philips, 2015b:5). This implies that the choice of the parents were not taken into account. Although Swart (2015b: 4) reported that “[p]arents, school win case”, as the High Court ruled in the school’s favour, only twenty-one learners’ places were reserved for placement in the school. In light of past experiences regarding legal rulings, it is hoped that this will eventually be respected and implemented by the NCDoe.
6. Schools also seem to follow the example set by the NCDoe of not implementing court orders, and therefore not respecting the rule of law. The South African Human Rights Commission (SAHRC), which is a legal body, investigated cases of corporal punishment in two schools from two districts in the NC, namely ZFM and Pixley Ka Seme (Wildenboer, 2015b:5). Both these two schools and the NCDoe were informed about the alleged complaints, and requested to respond within 21 days. They failed to respond. In response, the NCDoe stated that it was disappointed that the SAHRC did not inform them, or requested a response, and strongly advised that in future they should get into contact with the HOD before continuing with such investigations (Wildenboer, 2015c:4). My point in this matter is that schools should respect legal entities’ interventions, by responding on time. More so as this case also has criminal elements of assault.

It was demonstrated in the exposition above that the rule of law is central in democracy, and SG practices and policies in SA. I contend that it can be included as an essential principle of democracy in this study. I have also noted that the respect for the rule of law seems to encompass disrespect or ignorance of *inter alia* court rulings, and this can possibly be ascribed to issues of power relations. It should therefore be noted that the different stakeholders or spheres of government has their own power in their own right, and by virtue of their legal existence. However, the separation of powers should be borne in mind, so that infringements are limited and taken into consideration.

### 3.3.6 SEPARATION OF POWERS

O'Regan (2005:124-125) asserts that the separation of powers plays a pivotal role in enhancing human rights and democracy, and therefore, is regarded as an essential principle of democracy (Mangu in Munzhedzi, 2017:80; O'Regan, 2005:124-125). Through a constitutional and political perspective, the separation of powers relates to the three spheres of government in SA, which relate to the executive (it executes and enforces the law), judicial (interprets and determines how the law should be applied), and the legislature (making, amending and repealing laws) (Mogoeng, 2013:1; Mojapelo, 2013:37). Mojapelo (2013:37) posits that the three spheres of government has different functions, responsibilities, and duties, and should not interfere with one another. "The main objective of the doctrine (of the separation of powers) is to prevent the abuse of power within the different spheres of government" (Mojapelo, 2013:38). Based on the foregoing, it implies that *non-adherence towards the respect for the separation of powers seems to manifest through interference and the abuse of power* [own emphasis]. In the alleviation of the abuse of power, some of the responsibilities of the different stakeholders are outlined below, so as to avoid infringement by one on the functions and responsibilities of another.

With regard to the South African education system education is a concurrent function, implying that both national and provinces are responsible for it (Davies, 1999:10). However, the school as an institution is also regarded as an organ of state (Prinsloo, 2006:355; Davies, 1999:59). In this regard, the separation of powers manifests through the national education department, provincial education department and local (institution or school based) spheres (Davies, 1999:10 & 75). Furthermore, at school level, there is a governance aspect whose responsibility lies with the SGB, and the professional management aspect whose responsibility lies with the school principal and school management team (SMT) (Davies, 1999:10). The functions of the national Minister of Education are enshrined in the *NEPA*, and includes the proclamation of national policy (Davies, 1999:28). The provincial education department's responsibility, is *inter alia* to provide education to schools, or to make it possible for the provision of education (Davies, 1999:47). In addition, it is also incumbent on the provincial education department that schools are "supported and guided by the departmental officials in regard to matters such as the interpretation, implementation and execution of departmental instructions" (Davies, 1999:51). Schools are the sites at which the community or learners directly receive education (Davies, 1999:51). Furthermore, schools are also juristic persons, implying that they have the legal capacity to perform its functions and

obligations, and “carries all responsibilities and liabilities attached to its status” (Davies, 1999:51). In other words, it can engage in contracts, can sue and be sued. Though these three spheres in the education system are expected to function in harmony, Prinsloo (2006:355-356) notes that there seems to have been an increase of instances of interference in one another’s functions and responsibilities. The foregoing implies that the separation of powers is being violated.

The violation of the separation of powers may include national, provincial and schools, as well as within spheres, such as principals and SGBs. However, in the examples I refer to below, all these infringements seem to have been committed by provincial education departments. In this regard, I use Prinsloo’s court cases as examples to demonstrate both the prevalence and violation of the doctrine of the separation of powers as an essential principle of democracy in this study, albeit that in these examples, the provincial education departments seem to have been perpetrators. In the WC, the provincial education department of education was alleged to have interfered with a school and SGB’s right to determine the admission policy and admissions of learners (Prinsloo, 2006:359-360). The court ruled *inter alia* that the provincial education department had interfered “in the governance and professional management of the school” (Prinsloo, 2006: 359). The foregoing implies that WCDoE violated the separation of powers principle. The KZN provincial education department was accused of having interfered in the code of conduct (safety policy) of a school (Prinsloo, 2006:360-363). The court also ruled in favour of the school and SGB, and like in the previous example, the provincial education department also violated the separation of powers principle. The NCDoe was ruled to have interfered in the appointment of an educator, contrary to the right to recommend (Prinsloo, 2006:363-364). In Mpumalanga, the provincial education department suspended the principal and deputy principal on allegations of mismanagement of school funds (Prinsloo, 2006:364-366). The court ruled that the allegations should have been heard by the SGB, as it is the SGB that they are accountable to. This impacts *inter alia* on participation of the SGBs, and as a consequence negatively impacts on democracy. In addition, it demonstrates undemocratic practices as well as potential misinterpretation of policies, or a complete display of power, precisely which the separation of powers intends to curb.

Based on the exposition above, the separation of powers does qualify to be included in the comprehensive framework on democracy. The expectation is that stakeholders involved in



SG practices and policy in SA in their capacity as different constituents should acknowledge the different powers and responsibilities accorded to each one. There is also a concomitant expectation that they will conduct their SG practices in a transparent and accountable manner.

### 3.3.7 *TRANSPARENCY AND ACCOUNTABILITY*

Declarations (cf. 2.4.4; 2.5.2.1 & 2.6) affirm that democracy should be exercised under conditions of transparency and accountability. Accountability is about being answerable to your responsibilities, performance, and duties to the people you serve, and stresses that information is of the essence (Meyer-Resende, 2011:13; Meyer-Resende, 2009:24; Heywood, 2007:418; Rogers, 2007:3; Inter-Parliamentary Union, 1997: Section 14). The right to access information and inform opinion is further entrenched in the ICCPR (United Nations, 1966:Art. 19). Meyer-Resende (2011:13) asserts that there can be no transparency without accountability, which is indicative of their interrelatedness. Rogers (2007:2) defines transparency as being open in decisions or activities that have been undertaken. If transparency and accountability are strained, people's voices will be silenced, and the democracy that would be experienced in such a situation will just but be a fluke (Freire, 2005:91).

Furthermore, transparency and accountability are regarded as essential prerequisites in a democracy (The International Standards of Supreme Audit Institutions, 2007:3). It is suggested that political principles that include *inter alia* transparency and accountability are implied (Ober, 2007:13). To illustrate this point, I think the issue of elections can be used as an example (Meyer-Resende, 2009:24). The absence of information due to a lack of transparency and accountability would therefore leave the electorate being uninformed, as they would not be knowledgeable about (un)fulfilled promises made during previous elections. This implies that free and fair elections may assist in the promotion of transparency and accountability (Meyer-Resende, 2009:24). Furthermore, as the sharing of information would be in the public domain, information regarding performance will become public knowledge. In this regard, free and independent media may play a crucial role (Heywood, 2007:397). In this manner, the interrelatedness of elections and transparency and accountability, and free and independent media would consequently be enhanced. All of this is related to democracy. I provide examples of current practices below.

1. In an attempt to demonstrate the importance of public accountability and transparency, Feinstein (2007:41) tried to resist the temptation of being bribed regarding the awarding of gambling licenses in the Gauteng Province in the 1990s. I posit that Feinstein was conscious that public knowledge about this would have tainted the image and reputation of the Gauteng government, his ANC party, as well his own image. His behaviour in not accepting the bribe can be construed as a demonstration of a citizen who respects accountability. His decision to reveal this in public also demonstrates transparency.
2. Due to information which is currently in the public domain, Du Preez (2013:43) contends that South Africa is progressing relatively well. This may be indicative of transparency. However, corruption-related information may seem to suggest that accountability needs some focus, particularly in regard to acts of corruption as reported in this study (cf. 3.2.1). Furthermore, one would be sceptical to conclude that stakeholders are always transparent when dealing with school funds, as these issues have been revealed as the topic of certain audit investigations.
3. Many cases about corruption in SG in SA have been reported in the media (as will be demonstrated later in 3.3.8). Meyer-Resende (2011:13), in reference and affirmation to UN resolutions, posits that school governors as public officers should be aware of the importance of transparency and accountability in pursuit of SG outcomes.

It has been argued that transparency and accountability are the prerequisites of democracy. It has further been demonstrated that they are widely prevalent and addressed in this study. Based on the above, they qualify to be included in the comprehensive framework on democracy. I contend that transparency and accountability are also linked to other essential principles of democracy, such as elections, free media, genuine participation, as well as the freedom of expression and the rule of law (Meyer-Resende, 2009:24). Furthermore, transparency has also been acknowledged to deal *inter alia* with being open, and this implies that it is related to some form of free and independent media.

### 3.3.8 FREE AND INDEPENDENT MEDIA

Many structures and scholars assert that free and independent media is important for democracy (cf. 2.4.4; 2.6 & 2.7). Opuamie-Ngoa (2010:134) refers to mass media as “tools, avenues and vehicles of information dissemination”, and these appear “in the form of news,

opinion pieces, advertisements, etc.” Free and independent media is important to democracy because by using it as a vehicle scandals, non-performance and issues of non-accountability can be exposed (cf. 3.2.1). Two other ways include the fostering of public debate and political engagement, and by highlighting the distribution of power and political influence (Heywood, 2007:235). Fostering public debate has the advantage of keeping citizens informed, with the hope that they will be equipped to deal independently with important and sometimes controversial issues (Opuamie-Ngoa, 2010:133; Heywood, 2007:236). Furthermore, citizens will be more energised to freely participate in debates and dialogue, as they will feel competent and confident to engage (Opuamie-Ngoa, 2010:132; Heywood, 2007:236). Free and independent media may also be able to highlight the balance of forces and power, as well as political influence (Opuamie-Ngoa, 2010:134; Heywood, 2007:236). Since this study is also about policy issues, free and independent media may contribute towards making SG stakeholders aware of potential education policy implications (Jacobs, 2012:26). Furthermore, although Jacobs (2012:26) argues from a perspective of school violence in schools, I support her argument to the effect that the media can help expose acceptable or unacceptable SG practices, and expose how decisions are arrived at. The above can be summarised to suggest that free and independent media can actually play an important role in educating the citizenry (Meyer-Resende, 2011:13), and many different parties can be easily reached (Heywood, 2007: 236). This broad reach has the advantage that more people can participate (Opuamie-Ngoa, 2010:132), and this broad and genuine participation can enhance democracy (cf. 2.6). Free and independent media comprises the print media, electronic media, radio, internet and television. It can however also be open to abuse (Opuamie-Ngoa, 2010:134). The implication is that bias and conflict may arise, and this needs to be managed.

In striking a balance in cases of conflict, Opuamie-Ngoa (2010:135) suggests that a balance of broad relationship areas be mediated. These areas include *inter alia* “the media and government, the media and diverse views and opinion sources and the media and the general citizenry or the public at large” (Opuamie-Ngoa, 2010:135). It is noted that the disadvantage of free and independent media is that it can be monopolised or abused by airing the views and opinions of the dominant forces (Heywood, 2007:237). In other words, it may be susceptible to bias (De Wet in Jacobs, 2014:1-2). In this regard, Heywood (2007:236) advocates for a vigilant, educated and informed citizenry that is not easily manipulated (Opuamie-Ngoa, 2010:134). Furthermore, Heywood (2007:238) warns of the impact that television for example can play as far as propagating personal status above the substance of

politics and important social issues. However, the importance of free and independent media cannot be overemphasised, as far as the important role it plays in promoting genuine participation, and as a consequence in democracy. Some reflections to attest to the importance and relevance are reflected below.

1. Feinstein (2007:72) through the reports of the Standing Committee on Public Accounts (SCOPA) unravelled irresponsible spending of public funds as well as corruption by senior ANC officials and others. This exposed them and caused some of them to resign.
2. Alleged misappropriation of more than R8 million by a principal and a SGB chairperson and other SGB members of Glenvista High School in Gauteng Province has been reported (Lesufi, 2015:18). I posit that it is a result of free media in SA that led to the public being informed of this (Du Preez, 2013:263; Louw, 2008:1). This corroborates the two ways in which a free and independent media can help promote democracy, namely checking the abuse of power (Opuamie-Ngoa, 2010:134), and providing a mechanism through which democracy can operate.
3. A vigorous debate is happening in SA, as some analysts, columnists and community commentators assert, with valid reasons and justification, that those who have the power, money, and resources influence and dictate the media agenda (Khoabane, 2015:19; Makgale, 2015:19). Some commentators also accuse the media of being biased, and cite convincing reasons for their opinions. Their tone seems to suggest that they are in favour of some media regulation, or intervention. This seems to concur with the view of the ANC and government.
4. In contrast to the preceding point, there are those who hold a different opinion. One of these is a former press ombudsman and well-respected journalist with an impeccable history in the field, Joe Tlholoe. He shared his thoughts with a regular columnist of The New Age and media lecturer, Jo-Mangaliso Mdhlela, in an in-depth interview (Mdlhela, 2015:21). Tlholoe contends that a move towards regulating the media would go against the very principles on which the struggle against apartheid was waged, including freedom of expression and freedom of the press. In this regard, he stated that “[w]hen we were in the trenches, the cornerstone of our struggle was to fight for the freedom of expression and of the media”. He further asserts that freedom and democracy depend on the pillars of a free press and freedom of expression. Therefore, the intention to regulate the media

would appear to be hypocritical. He commented that it would be a contradiction. To address the issues of abuse and bias, he suggested that the report on a commission that was established to address these concerns be considered.

SA has enjoyed free and independent media for a considerable time (Du Preez, 2013:263; Louw, 2008:1), and SG has also enjoyed the attention of free and independent media. This can be observed through the access to information that citizens have regarding issues of democracy and SG practices and policies in particular. For example, the media has reported on pupils' protests regarding infrastructure (Matlala, 2014:23), teachers and learners striking over security at their schools (Pakade, 2014:3), or pupils being confronted with a situation where upon returning to their 46 schools (after protests) they found no teachers at their school (Bodumela, 2014:1). It is also important to note that the media has and is still continuing to play an important role in informing and educating the public about the importance of standing for elections in SGB elections. Amongst others, the media has raised the importance of electing "skilled, accountable and responsible individuals so that they can make informed decisions that will benefit and assist their school and ultimately their children"; the importance of parents' responsibilities of determining the admission policy; the drafting of the "school budget and decide, with the support of the parents on school fees, recommend staff appointments and provide support for the principal, teachers and other staff"; encouraging parent participation in the nomination and election of SGB members; and issues of quorums as it was noted that parents were reluctant to participate in elections and other important issues related to membership of SGBs (TNA Reporter, 2015b:6).

It has been demonstrated how important free and independent media is to democracy as well as to SG practices and policies in SA. It qualifies to be included in the comprehensive framework on democracy. Where challenges in SG practices and policies in SA have been exposed, I posit that may be alleviated if and when stakeholders work to promote genuine partnerships.

### *3.3.9 PROMOTION OF AUTHENTIC PARTNERSHIPS*

A partnership is when a number of "people, who have a common goal, co-operate with one another by contributing something of value to a relationship with the aim of making a profit" (DoE, 1997a:8). The Inter-Parliamentary Union (1998: Section 4), advocates for "genuine partnership between both men and women in matters of public interests, and that they work

in equality, and complementarity". It implies that the importance of an effective and harmonious partnership is acknowledged. From the perspective of the European Union (EU) (European Commission, 2011:1), partnership is not about being a spectator, but a supporter of and for the benefit of the collective, working with other stakeholders or partners. In this regard, the EU emphasises that "the commitment to democracy, human rights, social justice, good governance, as well as the rule of law must be shared" (European Commission, 2011:1). This implies that partnerships are about doing, striving to achieve with other parties, as opposed to doing for it or them. In an environmental study regarding partnerships, Poncelet (1997:14-16) found that there are both advantages and disadvantages. Some of the constraints include the possible exploitation and abuse of partnerships, particularly in cases where one of the parties wield some form of power (Poncelet, 1997:16).

An authentic, effective partnership manifests through various characteristics. These include mutual trust and respect; shared decision-making; shared goals and values; common vision; open communication; good teamwork; promotion of the interests of the partnership rather than those of the individual; and respect of the roles of different partners (cf. 1.1). The rationale for effective partnerships is the realisation that the State needs the input and support of other SG stakeholders. Parents and members of the community are better placed to be aware of the needs of the school (DoE, 1997a:9). An authentic partnership that is effective, provides an advantage of offering a space for citizen participation and an opportunity for discussion and dialogue (Poncelet, 1997:14-15). Since it has been acknowledged that participation is crucial for democracy (cf. 2.4), efforts such as authentic partnerships, where participation is enhanced, will therefore augur well for democracy. The AU concurs with the idea of partnerships, as articulated by other sources. In this regard, South Africa's commitment to the promotion of authentic partnerships is encapsulated in the proclamation that states: "[t]he democratization of education includes the idea that stakeholders such as parents, teachers, learners and other people (such as members of the community near your school) must participate in the activities of the school" (cf. 1.1).

Other important partners that are expected to work together in SG include *inter alia* the State, special education bodies in education, and the private sector (cf. 1.1). The DoE (1997a:6) further emphasises that participation should be characterised by sharing; in other words, they should work together in partnership. Partnerships may however also be used for the wrong and selfish aims. This can be observed when those involved in partnerships might not

necessarily contribute to democracy, but may only be concerned about satisfying their own agendas (Poncelet, 1997:17). In other words, the elite may use partnerships for their own selfish interests, for example claiming that citizens are involved in decision-making when they are not (Poncelet, 1997:17). Citizens therefore need to be cautious and vigilant of the difference between ineffective and effective and authentic partnerships. Since the aim of education and SG is to provide quality education for all learners, each partner needs to contribute to the success of the partnership (cf. 1.1). This can be achieved if each party is prepared and able to take responsibility and work together, to ensure that the partnership is effective.

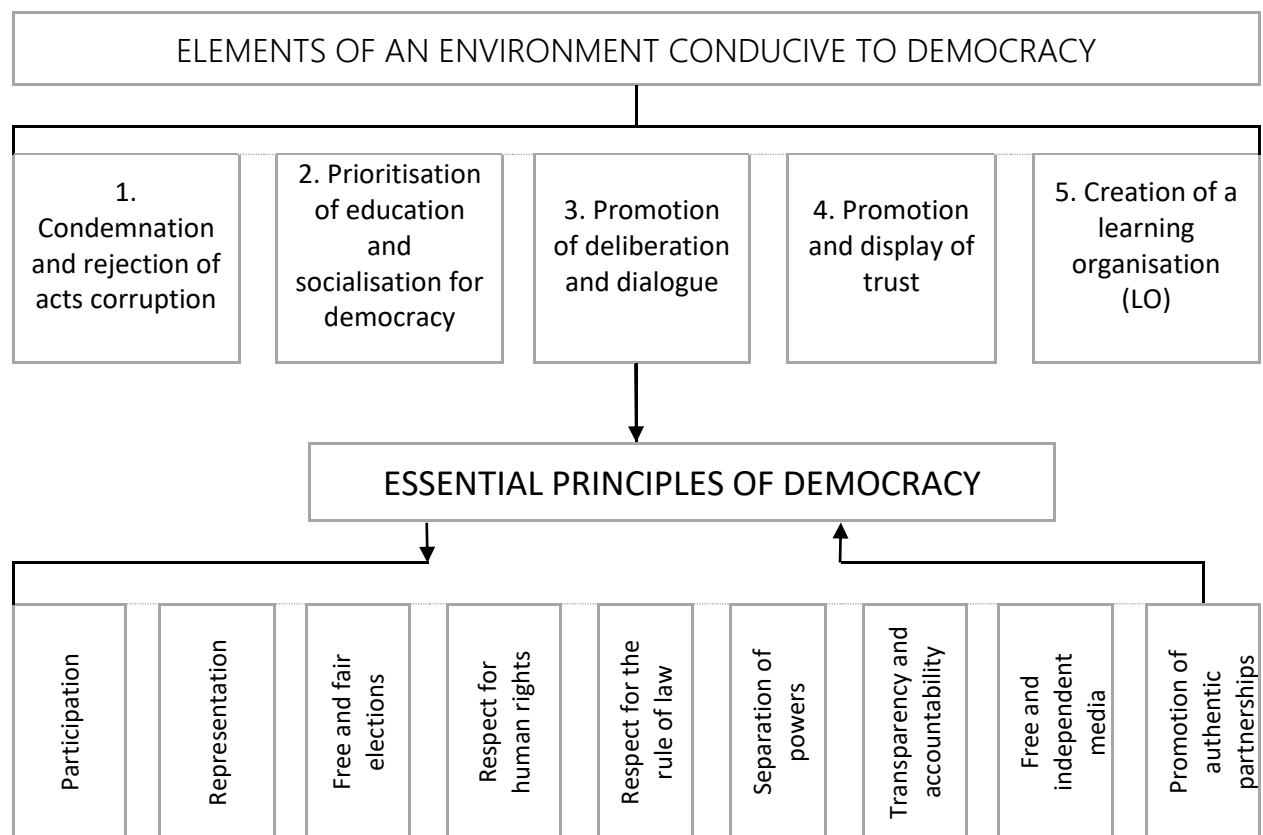
Current practices include that the AU Declaration, adopted in 2002, emphasises the importance of fostering of new partnerships, cooperation and working together between and among the different spheres of governments (AU, 2002: Sections 23, 25-26). This is central to NEPAD (the New Partnership for Africa's Development). SA as a member of the AU has gone so far as to incorporate the AU's commitment of fostering partnerships in its education initiatives. This is evident in its quest for expressly transforming and democratising education in general, and SG in particular (cf. 1.1). Like the other essential principles of democracy, the promotion of genuine partnerships has been shown to be important in and for democracy, and for SG practices and policies in SA. It qualifies to be included in the comprehensive framework on democracy.

From the exposition above, I have argued and demonstrated that the nine essential principles of democracy do qualify to be included in the framework. Furthermore, both components (elements of a conducive environment and the essential principles of democracy) qualify to constitute the comprehensive framework on democracy that can guide SG practices and policies in SA.

### 3.4 THE FRAMEWORK AND DISCUSSION

After engaging with the literature, elements of a conducive environment and essential principles of democracy were derived. These constitute the framework on democracy that can guide SG practices and policies in SA. The conducive environment consists of the *condemnation and rejection of acts of corruption, prioritisation of education and socialisation for democracy, promotion of deliberation and dialogue, promotion and display of trust, and the creation of a learning organisation (transforming SGBs into learning organisations)*. The

essential principles of democracy consists of *participation, representation, free and fair elections, respect for human rights, respect for the rule of law, separation of powers transparency and accountability, free and independent media, and the promotion of authentic partnerships*. The elements and essential principles were thoroughly discussed and an argument was put forward to evaluate their relevance and applicability regarding the framework for democracy, and for this study. In other words, a convincing argument was put forward to ascertain their importance, relevance and identification. From this exercise and engagement, the comprehensive framework on democracy was derived, and it is presented in Figure 3.2 below.



**Figure 3-2: A Framework on democracy that can guide SG practices and policies in SA**

## 3.5 CONCLUSION

In this chapter, the elements of a conducive environment and essential principles of democracy were identified. A convincing argument to justify their inclusion in the comprehensive framework on democracy that can guide SG practices and policies in SA was advanced. The comprehensive framework on democracy is presented in fig. 3.2. However, before it is declared ready for use, it first needs to be legitimated. In other words, it should be ensured that the derived comprehensive framework on democracy is aligned with the SA



legal framework for education. In this regard, the objective of the next chapters (Chapter 4 & 5) will be to evaluate to what extent the derived comprehensive framework resonates with the South African legal framework for education.

# CHAPTER 4: COMPARING THE ELEMENTS OF A CONDUCTIVE ENVIRONMENT WITH THE LEGAL FRAMEWORK

## 4.1 INTRODUCTION

The framework on democracy that can guide SG practices and policies in SA was developed in Chapter 3 (cf. 1.4, Objective 1.2). It comprises a *conductive environment* and *essential principles of democracy*. In this chapter and the next, I evaluate the extent to which the framework resonates with the SA legal framework for education. This is done in order to evaluate the legitimacy of the framework. Towards this, I will use this chapter to analyse to what extent the derived framework's *elements of a conducive environment* resonates with that of the SA legal framework (cf. 1.4, Objective 2.1). In the next chapter the same will be done in terms of the *essential principles of democracy* identified in the previous two chapters (cf. 1.4, Objective 2.2). In this regard, I argue that a conducive environment is a prerequisite for the experience and practice of democracy (cf. 3.2), particularly with regard to how democracy is reflected within the South African legal framework for education. I posit that if the environment is not conducive for democracy, it may be difficult for democracy to be realised, even though principles of democracy are emphasised. This difficulty may manifest through the behaviour and actions of SG stakeholders, as was demonstrated earlier (cf. 1.2 & Chapter 3). This will also be demonstrated in this and later chapters of this study. The derived elements of a conducive environment for democracy provided the structure through which the legal framework will be unpacked to enable me to reflect on how the framework addressed the idea of the creation of a conducive environment upon which democracy is either dependent, or not.

The South African legal framework is informed by a variety of sources. These include *inter alia* the *Constitution*, legislation, case law, common law and relevant literature (Kleyn & Viljoen, 2010:39). The relevant literature includes refereed published journals articles, published books on law cases, the NDP (official document) and newspaper articles relevant to the study. Since policies are often derived from legislation, I will include policies as sources of information. Due to the roles of different sources of law, it can be accepted that they serve as guidelines intended to shape and control the behaviour of citizens (Kleyn & Viljoen,

2010:107), which includes SG practices and policies in SA. This does not imply that all SG stakeholders will necessarily adhere fully, partially, or even at all to these provisions. It is precisely where case law becomes relevant, because the courts assist in legal interpretation and provide corrective measures. The examples in Chapter 1 illustrated that SG practices have been found to be fraught with contestations and differences of opinion and interpretation, needing the courts' interpretation of some legal principles in general and relevant legislation and policies in particular. Some of the disputes involve *inter alia* matters related to acts of corruption, admission of learners, appointment of educators, learner pregnancy, school uniforms, language of instruction and matters related to religion. These disputes are prevalent across communities in all provinces (cf. 1.2). It should be noted that there are many such cases, and the judgements can be voluminous. The manner in which such issues are dealt with and approached needs careful consideration.

In light of the above, a discussion on how the derived comprehensive framework's elements of a conducive environment resonate with the South African legal framework for education will be undertaken below.

## 4.2 HOW A CONDUCTIVE ENVIRONMENT IMPACTS ON DEMOCRACY: PERSPECTIVES BASED ON THE DERIVED FRAMEWORK AND THE LEGAL FRAMEWORK

The framework on democracy that can guide SG practices and policies in SA that was derived in Chapter 3 identified five elements that may impact on a conducive environment for democracy. These are *condemnation and rejection of acts of corruption, prioritisation of education and socialisation for democracy, promotion of deliberation and dialogue, promotion and display of trust, as well as the creation of a learning organisation* (transforming SGBs into learning organisations) (cf. 3.2).

In order to establish whether the derived comprehensive framework's elements of a conducive environment resonate with the South African legal framework for education, a link will need to be established amongst the three main areas (democracy, SG practices and policies in SA) and the specific element. Establishing the link with each of the legal framework's sources, i.e. the *Constitution*, *NEPA*, *SASA*, and *EEA* will be done in this section.

After the link has been established, the focus will be on how the specific element in the legal framework is addressed.

I believe that the link between democracy and SG practices and policies in SA has been adequately addressed in Chapters 1 and 3. However, a brief emphasis, particularly from the perspective of the South African legal framework for education, is also provided. The *Constitution*, which embraces democracy (RSA, 1996a: Section 1), highlights the importance of education (RSA, 1996a: Section 29). Following this guarantee on education, further clarity is provided in the *NEPA*. The *NEPA* embraces democracy through its endeavour to democratise and transform the national education system (RSA, 1996c: Preamble). It also provides for the determination of the organisation, management and governance of the national education system, from which SG matters will be attended to (RSA, 1996c: Section 3(4)(b)). The *NEPA* paved the way for SG matters through the enactment of the *SASA*.

Like the *NEPA*, the intention of the *SASA* is to democratise and transform the historically segregated and unequal South African education system (RSA, 1996b: Preamble). It also essentially deals with the organisation, governance and funding of schools (RSA, 1996b: Preamble). Another piece of democracy-embracing legislation that links with SG is the *EEA*. The *EEA* states that SGBs of public schools have to be consulted when educators are appointed, promoted or transferred to any posts on the post establishment of a public school (RSA, 1998: Section 6(3)(a)). Due to the democratic character of SGBs, where all stakeholders are allowed to participate in the affairs of SGBs in schools, I argue that *EEA* related matters also embrace democracy. Also, the South African Council for Educators (SACE), through its code of professional ethics, directs that educators respect the basic human rights of learners as enshrined in the *Constitution*. Furthermore, the *EEA* is committed to human rights principles, particularly with regard to the appointment of posts. It states that due regard to equality, equity and the other democratic values and principles will be attended to and complied with (RSA, 1998: Section 7(1)). The *EEA* further directs that Section 195(1) of the *Constitution* should be consulted to be better informed about democratic values and principles, which will contribute to an environment conducive to the application of democracy in SG practices and policies in SA. Since human rights are the cornerstone of democracy (cf. 2.4.3), it implies that the *EEA* embraces democracy. That the *EEA* recognises and accommodates SGBs implies that it has links with democracy and SG practices and policies in SA. Because the *EEA* accommodates legislation that *inter alia* deals with SG practices and

policies in SA (NEPA and SASA), this suggests that democracy and SG practices and policies in SA are central to and are reflected in the study.

The link and relevance of democracy and SG practices and policies in SA as reflected in the derived framework for democracy, are also reflected in the South African legal framework for education. This implies resonance with the South African legal framework for education. Following the foregoing, the elements of a conducive environment will now be explored. However, due to the impact on democracy in society I will begin with *the condemnation and rejection of acts of corruption*.

#### 4.2.1 CONDEMNATION AND REJECTION OF ACTS OF CORRUPTION

##### 4.2.1.1 THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA: REFLECTIONS ON THE CONDEMNATION AND REJECTION OF ACTS OF CORRUPTION

The *Constitution* directs that citizens' rights and freedoms be enjoyed through its call for a caring and responsible public administration, which includes education-related matters. Its values and principles include promoting and maintaining a high standard of professional ethics, and the promotion of efficient, economic and effective use of resources (RSA, 1996a: Chapter 10, Section 195(1)(a & b)). There are also other values and principles that may be compromised, if acts of corruption are tolerated. Some of these values and principles include *inter alia* "human dignity, equality and freedom" (RSA, 1996a: Chapter 2, Section 7(1)); "inherent dignity and the right to have their dignity protected" (RSA, 1996a: Chapter 2, Section 10); and an understanding that "[e]veryone has the right to freedom and security of the person, which includes the right not to be treated or punished in a cruel, inhuman or degrading way" (RSA, 1996: Chapter 2, Section 12(1)(e)). The above will be negatively affected if acts of corruption are allowed to take place due to the risks this poses to the mentioned values and principles. For example, if the funds of the National School Nutrition Programme (NSNP) are embezzled, funds earmarked for school health is misappropriated, or are kept in an unsafe environment due to the inability to properly utilise funds. Also, SG stakeholders may believe that they are treated in an inhuman and degrading way if they are expected to for example relieve themselves outside, or if learners are to be taught in the open, as a result of funds being lost due to acts of corruption (cf. 3.2.1).

The *Constitution* is mindful of the fact that education services need resources to attain its objectives. It further acknowledges that resources are never enough and do not last forever

(RSA, 1996a: Chapter 2, Section 29(1)(a & b)). The implication is that behaviour that erodes or impedes the realisation of educational objectives, such as corruption, is discouraged. SGBs as constitutional organs of state (RSA, 1996a: Chapter 14, Section 239(b)) should be involved in deepening a culture of democracy (RSA, 1996a: Chapter 14, Section 234). This can be done through upholding appropriate values and attitudes with regard to how SGBs administer the use of resources to attain educational objectives. For example, it is important that when SGBs deal with procurement, they “must do so, in accordance with a system which is fair, equitable, transparent, competitive and cost effective” (RSA, 1996a: Chapter 13, Section 217(1)). Failure to adhere to the above may avail opportunities for acts of corruption in SG practices and policies in SA.

In the previous chapter I provided a detailed discussion on the impact of acts of corruption on democracy and SG practices in SA (cf. 3.2.1). Acts of corruption are directly linked to opportunities and resources being unfairly sourced (cf. 3.2.1). I posit that some of these rights and freedoms are resource dependent, such as education. Being resource dependent implies that some funds may be required for appropriation, which presents opportunities for the mismanagement of funds. This has three fundamental implications. First, SG stakeholders as citizens should be allowed to enjoy their democratic and constitutional rights and freedoms as enshrined in the *Constitution* (Chapter 2). It secondly pronounces the level of services to be rendered, failing which will make the environment conducive for acts of corruption. In other words, the principles and values have to be taken into account. In the third place it should make provisions for measures to combat acts of corruption. In this regard, the *Constitution* provides guidance to how services need to be provided and the precautionary measures needed to limit or combat acts of corruption in SG practices and policies in SA.

The necessary precautionary measures are provided by the *Constitution* to counter acts of corruption. Some of these are referred to as Chapter 9 institutions, which are empowered to deepen and support our constitutional democracy. These institutions deal with matters that may impede democracy by combating acts of corruption in schools and SG in SA. These include *inter alia* the Public Protector (PP) and the Auditor General (AG) (RSA, 1996a: Chapter 9, Sections 181 (1)(a) & (e)). Further clarity on the functions and roles of the PP and AG are provided in the *Constitution* (RSA, 1996a: Chapter 9, Sections 182-183 & 188-189). I will not elaborate on them here. In line with ensuring compliance and introducing mechanisms to put human rights into effect, the *Constitution* also recognises international agreements (RSA,

1996a: Chapter 14, Section 231 (1-5)). In this regard it adopted legislation that deals with anti-corruption strategies. These include *inter alia* the *UN Convention against Corruption* adopted by the General Assembly (GA) on 31 October 2003 for implementation in 2005; the *AU Convention against Corruption* adopted in 2003 for implementation in 2005; the *OECD Anti-bribery Convention*; and the *SADC Protocol Against Corruption* (Corruption Watch, 2013b:2-5). Domestically, the main measure is the *Prevention and Combating of Corrupt Activities Act 12 of 2004* (Corruption Watch, 2013b:8). Several measures are mentioned by Corruption Watch. These preventative measures clearly articulate the importance of combating acts of corruption in both the private and public spheres, and this is supported by the *Constitution*.

As acts of corruption violate the basic human rights of citizens, so too will democracy and SG practices and policies in SA be affected, as a consequence. It can therefore be concluded that the *Constitution* pronounces itself on *the condemnation and rejection of acts of corruption* in SG practices and policies in SA. A careful analysis of the literature consulted on *the condemnation and rejection of acts of corruption* as discussed in Chapter 3 (cf. 3.2.1) demonstrates that these are aligned with what is reflected in the *Constitution*.

The following section will provide a determination on what may be regarded as one of the products of the *Constitution* (i.e. *National Education Policy Act 27 of 1996*) regarding its reflection on *the condemnation and rejection of acts of corruption* in SG practices and policies in SA.

#### 4.2.1.2 NATIONAL EDUCATION POLICY ACT 27 OF 1996: REFLECTIONS ON THE CONDEMNATION AND REJECTION OF ACTS OF CORRUPTION

I have argued that the objective of providing guidelines to how resources should be used in education-related services, implies *inter alia* that acts of corruption should be prevented (cf. 4.2.1.1). Similarly, the *NEPA* recognises that resources are needed for this, and that these should be expropriated wisely. The *NEPA* directs that policies should be put in place that will work towards “achieving the cost-effective use of education resources and sustainable implementation of education services” (RSA, 1996c: Section 4(n)). This effectively implies that corruption should be discouraged, and that the necessary steps should be put in place to manage it when it occurs.

In light of the above, the *NEPA* does make pronouncements on democracy, SG practices and policies in SA, as well as the prevention of acts of corruption.

I have stated that the *NEPA* provides for the enactment of legislation that deals with the organisation, management and governance of the national education system. This legislation is the *South African Schools Act 84 of 1996*, and a discussion to determine whether it contributes to a conducive environment for democracy or not follows below.

#### 4.2.1.3 SOUTH AFRICAN SCHOOLS ACT 84 OF 1996: REFLECTIONS ON THE CONDEMNATION AND REJECTION OF ACTS OF CORRUPTION

The *SASA* *inter alia* deals with how funds need to be appropriated with the aim of attaining education outcomes (RSA, 1996b: Sections 20 & 21). I have argued that when resources and funds are involved, the possibility of corruption exists (cf. 4.2.1.1). In this regard the SG stakeholders need to execute various activities, responsibilities and functions. Most of these are mandatory as directed by *SASA* (RSA, 1996b: Sections 20 & 21). These functions require resources such as finance, assets, services and labour. Schools and school governors can acquire funds through fundraising activities, and they also receive funds from government both national and provincial departments. Concomitant to these resources are *inter alia* accountability and responsibility.

The responsibilities related to assets include the administration and control of the school's property, and buildings and grounds occupied by the school, including school hostels (RSA, 1996b: Section 20(1)(g)). Furthermore, "[t]he governing body may allow the reasonable use of the facilities of the school for community, social and school fund-raising purposes, subject to such reasonable and equitable conditions as the governing body may determine, which may include the charging of a fee or tariff which accrues to the school" (RSA, 1996b: Section 20(2)). This implies that the governing body has the opportunity to generate funds for the school, but I posit that this may bring about opportunities for corruption. The abuse of privileges and nepotism may also arise (cf. 4.2.1.1), while favouritism is also a reality. In addition, service-related functions and responsibilities include recommendations for employment of educators, as well as establishing posts for non-educators (RSA, 1996b: Section 20 (5)). A number of corruption-related issues have been highlighted by both the media and Corruption Watch regarding the employment of educators (cf. 3.2.1).



Schools are entitled and encouraged to raise funds for their schools in order to augment the contributions from parents and the allocation from government. In this regard, the SASA states that “[t]he governing body of a public school must establish a school fund and administer it in accordance with directions issued by the HOD” (RSA, 1996b: Section 37(1)). The HOD as an accounting officer, gives directives to how school funds should be used and accounted for (for example, *Northern Cape Department of Education Norms and Standards for School Funding Financial Directives: 31 August 2015*). Steps to curb corruption should therefore be built into these directives. In this regard, the SASA also provides guidance and its own directives regarding the use of funds and assets of schools (RSA, 1996b: Sections 36-44).

In an effort to address acts of corruption, the SASA categorically states that “[t]he school fund, all proceeds thereof and any other assets of the public school must be used *only* (my emphasis) for educational purposes, at or in connection with such school” (RSA, 1996b: Section 37(6)(a)). In addition, the principal has a responsibility of assisting the governing body in the management of finances, including taking “all reasonable steps to prevent any financial maladministration or mismanagement by any staff member or by the governing body of the school” (RSA, 1996b: Section 16A(2)(h & i)). If a principal becomes aware of financial maladministration or mismanagement of funds of the school, he has a duty to report it to both the SGB and HOD (RSA, 1996b: Section 16A(2)(k)).

In light of the above, it can therefore be accepted that the SASA does make pronouncements on democracy, SG practices and policies in SA, as well as condemning acts of corruption. It even directs that all activities related to resources should only be directed towards education and education-related activities.

Aside from the two pieces of legislation that deals with education and SG related matters, the *Employment of Educators Act 76 of 1998* also deals with education and SG practices. Its reflection on SG practices and the prevention of acts of corruption is addressed below.

#### 4.2.1.4 EMPLOYMENT OF EDUCATORS ACT 76 OF 1998: REFLECTIONS ON THE CONDEMNATION AND REJECTION OF ACTS OF CORRUPTION

Like the SASA, the *EEA* advocates for the responsible and accountable use of resources (cf. 4.2.1.3). In this regard, the *EEA* defines misconduct as “a breakdown in the employment relationship and an educator commits misconduct if he or she wilfully or negligently

mismanages the finances of the State, a school or an adult learning centre” (RSA, 1998: Section 18(1)(b)). Furthermore, if and when misconduct reaches serious levels such as theft, bribery, fraud or corruption in examinations or staff matters, such charged educators can be dismissed (RSA, 1998: Section 17(1)(a)). Another action classified as a dismissible offence includes any act of dishonesty (RSA, 1998: Section 18(1)(z)(ee)). All these acts of misconduct can be categorised as acts of corruption (cf. 3.2.1). The above provides measures to deal with educators charged with acts of corruption through the *EEA*. The *EEA*, which has since been repealed, further directs that a body to deal with *inter alia* the registration of educators in SA should be established (RSA, 1998: Chapter 6). This body is referred to as the South African Council for Educators (SACE). It has been enacted as legislation and the act is known as the *South African Council for Educators Act 31 of 2000*. SACE’s collection of funds from its members, donations or contributions, and the use of those funds, should be properly accounted for, through the submission of audited financial and annual statements (RSA, 2000: Section 19-20). This can be construed as mechanisms that can assist in detecting and dealing with acts of corruption.

Furthermore, SACE is also authorised to establish a code of professional ethics for educators, applicable to all educators who are registered or provisionally registered (RSA, 2000: Section 5 (c)(cc)). The aim is to *inter alia* deal with alleged educator misconduct, *including acts of corruption*. The Code of Professional Ethics (The Code) *inter alia* requires from educators to promote basic human rights as enshrined in the *Constitution* (The Code, 2017: Section 2.3), and to ensure that educators do not bring the teaching profession into disrepute (The Code, 2017: Section 2.5) or abuse their positions for financial, political or personal gain (The Code, 2017: Section 3).

From the above it can be concluded that the *EEA* does address issues of corruption, albeit from the perspective of educators. However, educators are but one part of the SG structure, so advocating for the *condemnation and rejection of acts of corruption* is directed towards all involved in SG practices and policies in SA. All stakeholders involved in SG practices and policies should be discouraged from acts of corruption (learners, parents, educators as well as government officials). Based on this argument, I contend that *the condemnation and rejection of acts of corruption* reflected in the derived comprehensive framework on democracy is aligned with that of the *Constitution*, *NEPA*, *SASA*, and the *EEA* (parts of the sources of the South African legal framework for education).

Below follows an analysis of the prioritisation of education and socialisation for democracy.

#### 4.2.2 THE PRIORITISATION OF EDUCATION AND SOCIALISATION FOR DEMOCRACY

##### 4.2.2.1 THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA: REFLECTIONS ON THE PRIORITISATION OF EDUCATION AND SOCIALISATION FOR DEMOCRACY

It has been acknowledged that education is critical in experiencing democracy (cf. 2.4.4.3). It implies that the provision of education should be broadened to include information regarding democracy. In an endeavour to contribute to democratisation, the Minister of Justice and Correctional Services, Mr. Michael Masutha did exactly that in the Western Cape Province, where learners were exposed to lessons on the BoR and the *Constitution* (TNA reporter, 2016:4). I contend that there is a need that such initiatives should be rolled out to all schools, communities and parents, particularly those involved in SG practices and policies in SA.

It is however my contention that the citizenry, and in the context of the study the SG stakeholders, are not necessarily living these democratic values and principles. In line with this, I argue that since SA is first and foremost a united and democratic State, “established on democratic values, [and] social justice” (RSA, 1996a: Preamble), this reinforces the expectation that we exhibit behaviour that is consistent with democratic values and principles (cf. 2.2). In other words, we should be seen to practise it in our everyday lives when we are involved in social structures, such as SG practices and policies in SA. This implies that the *Constitution* assumes that SG stakeholders will be exposed to programmes that will teach them democratic values. Some of these involve the state taking initiative to “respect, protect, promote and fulfil the rights in the Bill of Rights” (RSA, 1996a: Section 7). One of the initiatives could be through educating citizens on the BoR. Furthermore the right to education is guaranteed as a human right (RSA, 1996a: Section 29(1)). One can assume that acquiring education should enable citizens to be educated and socialised about democracy and its attendant values and principles. In addition, various declarations have advocated that democracy and human rights require education and socialisation (cf. 2.4.4.1 & 2.7).

Based on the above, the *Constitution* addresses the prioritisation of education and socialisation regarding the creation of a conducive environment for democracy. Also, what has been reflected in the derived framework on democracy does resonate with the contents of the *Constitution*.

As in the case of the *Constitution*, the *NEPA* will now be analysed.

#### 4.2.2.2 NATIONAL EDUCATION POLICY ACT 27 OF 1996: REFLECTIONS ON THE PRIORITISATION OF EDUCATION AND SOCIALISATION FOR DEMOCRACY

The *NEPA* nationally provides guidelines to both learners and adults with regard to matters of *education and socialisation for democracy* to be implemented at community (school) level. These first and foremost direct that all people should have equal access to basic education and institutions (RSA, 1996c: Section 4(a)(ii)). With regard to learners, an enabling environment conducive “to the full personal development of each learner” is envisioned (RSA, 1996c: Section 4(b)). It also seeks to redress past inequality in education provision, including issues such as the status of women and gender equality (RSA, 1996c: Section 4(c)). It implies an acknowledgement of the manner in which women are treated, and that means of educating and socialising society differently should be adopted and implemented. These are also human rights issues, which again links with democracy.

In an effort to advance the equality of opportunities, it is imperative that we consider inclusivity in SG practices and policies in SA. In this regard, *education and socialisation for democracy* should also be elevated to include equal opportunities for the disabled (RSA, 1996c: Section 4(d)). In other words, they have to be sensitised about their human rights. This can be achieved through *the prioritisation of education and socialisation for democracy*. Since the *NEPA* endeavours to redress the inequalities of the past, it can be concluded that it also strives to bring about an environment where democracy can be practised and experienced, particularly in SG practices and policies in SA. This is informed by *NEPA*’s reference to bringing about *inter alia* equality, equal opportunities and addressing the needs and aspirations of the vulnerable in society, such as women and the disabled. In other words, provision is made for vulnerable groups to be meaningful and active participants in SG matters in their communities.

It is acknowledged that school governors need education and training in order to acquire the necessary knowledge, skills and competencies to fulfil their responsibilities and functions effectively and efficiently. In this regard, the *NEPA* directs that opportunities for life-long learning should be created (RSA, 1996c: Section 4(e-h)). Furthermore, the *NEPA* advises that in order to enhance education and socialisation opportunities, proper behaviour and attitudes should be adopted. These include respecting teaching and learning institutions

(RSA, 1996c: Section 4(j)); promoting a culture of seeking knowledge through enquiry and research (RSA, 1996c: Section 4(k)); and “enhancing the quality of education and educational innovation through systematic research and development on education, monitoring and evaluating education provision and performance” (RSA, 1996c: Section 4(l)).

I argue that if the above are in place, school governors will be better equipped to participate in democratic SG practices. This may include education policy development, quality representation of their respective constituencies in broad governance aspects of the education system (RSA, 1996c: Section 4(m)), and using education resources in a cost-effective manner and promoting sustainable implementation of education services (RSA, 1996c: Section 4(n)). The general aim of the *NEPA*, therefore, is to contribute to the adoption of a democratic lifestyle, through propagating for the development and adoption of appropriate and relevant policies that would enable bringing about a democratic society. In this regard, *education and socialisation for democracy* can serve as a vehicle through which a conducive environment can be created, for democracy to be realised in SG practices and policies in SA.

The above demonstrates that the *NEPA* provides for *the prioritisation of education and socialisation for democracy* as an element that can contribute to a conducive environment for democracy. What is reflected in the derived framework for democracy is aligned with the contents of the *NEPA*.

I will now analyse the *SASA*, which is a product of the *NEPA*, to ascertain whether it also embraces democracy, SG practices and policies, as well as *the prioritisation of education and socialisation for democracy*.

#### 4.2.2.3 SOUTH AFRICAN SCHOOLS ACT 84 OF 1996: REFLECTIONS ON THE PRIORITISATION OF EDUCATION AND SOCIALISATION FOR DEMOCRACY

The *SASA* *inter alia* states that this Act intends to:

*provide an education of progressively high quality for all learners and in so doing lay a strong foundation for the development of all our people’s talents and capabilities, advance the democratic transformation of society, combat racism and sexism and all other forms of unfair discrimination and intolerance, contribute to the eradication of poverty and the economic wellbeing of society, protect and*

*advance our diverse cultures and languages, uphold the rights of all learners, parents and educators, and promote their acceptance of responsibility for the organisation, governance and funding of schools in partnership with the State* (RSA, 1996b: Preamble).

I argue that the above encapsulates the essence of a conducive environment for experiencing democracy. The implication is that *education and socialisation for democracy* are necessary in order to develop those talents and capabilities necessary to advance a democratic transformation.

The SASA seems to be clear in its call for the promotion of SG practices that are characterised by knowledgeable and competent governors. It does not assume that all stakeholders possess the requisite knowledge and skills. In this regard, it directs that the capacities of governing bodies be enhanced (RSA, 1996b: Section 19). To attain this aim, the necessary funds should be made available by the HOD to support such programmes (RSA, 1996b: Section 19(1)). It further directs that newly elected members should be provided with training so that they can perform their functions well (RSA, 1996b: Section 19(1)(a)), and continuing training should also be provided so that they can keep abreast with any changes and challenges while being able to perform additional functions (RSA, 1996b: Section 19(1)(b)).

Besides making funds available for the training of school governors, “[t]he HOD must also ensure that principals and other officers of the education department render all necessary assistance to governing bodies in the performance of their functions in terms of this Act” (RSA, 1996b: Section 2). To improve opportunities for training of school governors, “[t]he HOD may request a recognised governing body association or other appropriate training authority to train members of a governing body of a particular school or group of schools and to build the capacity” (RSA, 1996b: Section 19(4)(a)).

The above assistance from the HOD, as directed by the SASA, suggests and confirms the attention and importance of *education and socialisation for democracy* in SG practices and policies in SA. The importance is that *education and socialisation for democracy* can contribute immensely to the creation of a conducive environment for democracy. It is however critical that stakeholders adapt a democratic lifestyle (cf. 2.2). Furthermore, with the necessary skills of learning and socialisation, they may be able to learn more from those

who might have been co-opted onto SG committees due to their special expertise (RSA, 1996b: Sections 30 (1)(b)).

I contend that *the prioritisation of education and socialisation for democracy*, democracy and SG practices and policies in SA, as reflected in the derived comprehensive framework for democracy, are aligned with the contents of the SASA (as a source of the South African legal framework).

Below follows an analysis of the *EEA*.

#### 4.2.2.4 EMPLOYMENT OF EDUCATORS ACT 76 OF 1998: REFLECTIONS ON THE PRIORITISATION OF EDUCATION AND SOCIALISATION FOR DEMOCRACY

I acknowledge that the *EEA*'s focus regarding *education and socialisation for democracy* is aimed at educators. It directs that the professional development of educators should be one of the main objectives of the SACE (RSA, 2000: Section 2(b)). Furthermore, it also emphasises the promotion and development of the education and training profession (RSA, 2000: Section 5(b)). I have argued that the resolutions and declarations call for the promotion of education of democratic values (cf. 2.7). In this regard, I further argue that the SACE and educators are important role players in contributing to the delivery of the contents of the school curriculum. The implication of this is that they also contribute to the *education and socialisation for democracy* of democratic values so envisaged by the various local, regional and international organisations who advocate for human rights and democracy (cf. 2.7).

Based on my analysis, I contend that the contents on *education and socialisation for democracy* as reflected in the derived comprehensive framework on democracy are aligned with that of the *EEA* (as a source of the South African legal framework).

Below follows an analysis on the element of *the promotion of deliberation and dialogue*.

#### 4.2.3 PROMOTION OF DELIBERATION AND DIALOGUE

##### 4.2.3.1 THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA ACT OF 1996: REFLECTIONS ON THE PROMOTION OF DELIBERATION AND DIALOGUE

It is important to note that the *Constitution* is actually a direct product of *deliberation and dialogue*, and as a result, SG stakeholders can learn from this experience. It ultimately came

about as a result of negotiations which started on 20 December 1991 at the World Trade Centre in Kempton Park, and these talks were referred to as the Convention for a Democratic South Africa (CODESA) (Memory of the World Register, 2010:1). The aims of the negotiations were *inter alia* to “to create a climate conducive to peaceful constitutional change; and to set in motion the drawing up of a new Constitution” (Memory of the World Register, 2010:1). In its endeavour to promote *deliberation and dialogue*, the *Constitution* makes provision for the *promotion of deliberation and dialogue* through *inter alia* the encouragement of responsiveness and openness (RSA, 1996a: Chapter 1, Section 1(d)). I posit that in being responsive and open, one readily demonstrates willingness to engage in addressing matters that one might be confronted with, and be susceptible to being convinced otherwise.

Furthermore, *deliberation and dialogue* are enhanced through the provision of the right to freedom of conscience, religion, thought, belief and opinion (RSA, 1996a: Chapter 2, Section 15(1)), as well as freedom of expression (RSA, 1996a: Chapter 2, Section 16 (1)). This is important when people are required to participate in policy-making processes (RSA, 1996a: Section 195(1)(e)). In other words, the *Constitution* encourages citizens to be involved in deliberation and dialogue in matters that affect them.

These paragraphs referred to above would wish to bring to the attention of SG stakeholders that the voices of other people should also be heard and considered. These views may include *inter alia* culture, language, or religious beliefs. In other words, one should listen to the other party when involved in a discussion, and should accept it if convinced of a different opinion. Although the *Constitution* seeks to *promote deliberation and dialogue*, it also directs that this should take place within an environment where the respect and dignity of others are taken into account (RSA, 1996a: Chapter 2, Section 10). The implication is that *deliberation and dialogue* should be engaged within an environment of respect, and one should not be subjected to inhuman, degrading or cruel treatment in the process (RSA, 1996a: Chapter 2, Section 12(1)(e)). The *Constitution* further directs that SG should be practiced in a cooperative manner while the principles of co-operative governance are adhered to (RSA, 1996a: Chapter 3, Section 41). *Deliberation and dialogue* may enhance cooperation.

I contend that *deliberation and dialogue* will be strengthened if the following principles are kept in mind: the preservation of a peaceful atmosphere, the wellbeing of others, the sharing of information, genuine consultation on matters of mutual interest, adhering to agreed



procedures and agreements, and following the mechanisms provided for settling disagreements and disputes (RSA, 1996a: Chapter 3, Section 41(1)(a); (b); (h)(iii) & (iv)).

Democracy, SG practices and policies in SA as reflected in the derived comprehensive framework for democracy are aligned with that of the *Constitution*.

*Deliberation and dialogue* as enshrined in the *Constitution* and shown above are further elaborated on and given clarity in different pieces of legislation - in this case, education legislation. As stated earlier, the education legislation selected for this study includes the *NEPA*, *SASA*, and *EEA*, in that order. As was done with the *Constitution* above, the legislation will also reflect how it embraces and promotes *deliberation and dialogue* in enhancing a conducive environment for democracy to prevail in SG practices and policies in SA.

I will analyse the *NEPA* below.

#### 4.2.3.2 NATIONAL EDUCATION POLICY ACT 27 OF 1996: REFLECTIONS ON THE PROMOTION OF DELIBERATION AND DIALOGUE

The *NEPA* is directed towards seeking the protection and enjoyment of fundamental rights, and includes *inter alia* that every person should enjoy the freedom of conscience, religion, thought, belief, opinion, expression and association within education institutions (RSA, 1996c: Section 4(a)(vi)). The rights referred to require that *deliberation and dialogue* take place. I posit that this will commit SG stakeholders to “listen and talk” to one another. If this does not happen, the sharing of different thoughts, beliefs, opinions, and expression will not permeate, and as a consequence will most probably not be heard. Such a scenario will rather serve as an impediment to substantive *deliberation and dialogue*, and to the practice and experience of democracy, which in turn will negatively affect SG practices.

It is compulsory for the Minister of Education to consult with stakeholders regarding national education policy and legislation (RSA, 1996c: Sections 5 & 6). One such body is the National Education and Training Council (NETC) (RSA, 1996c: Section 11). SG structures (SGBs), whose duties and functions are contained in the *SASA*, are also bodies that promote *deliberation and dialogue*, particularly in SG practices and policies in SA. This implies that *deliberation and dialogue* can be enhanced through the promotion of consultation. Since consultation is legislated, it implies that non-adherence can lead to legal disputes

Furthermore, the *NEPA* endeavours towards “enabling the education system to contribute to the full personal development of each learner, and to the moral, social, cultural, political and economic development of the nation at large, including the advancement of democracy, human rights and the peaceful resolution of disputes” (RSA, 1996c: Section 4(b)). All these require *deliberation and dialogue* to be achieved. As a result, it can be concluded that *the promotion of deliberation and dialogue* is implied through the provision of an enabling environment as directed by the *NEPA*. That reference is also made to the peaceful resolution of disputes suggests and confirms that *deliberation and dialogue* is promoted. It would be highly unlikely that resolutions can be peacefully resolved without *deliberation and dialogue*. In this regard, the *NEPA* makes provision for deliberation and dialogue in the resolution of disputes (RSA, 1996c: Section 4(b)).

A number of other areas also require *deliberation and dialogue*, and in this respect the *NEPA* encourages independent and critical thought (RSA, 1996c: Section 4(i)); strives in “promoting enquiry, research and the advancement of knowledge” (RSA, 1996c: Section 4(k)); “ensuring broad participation in the development of education policy and the representation of stakeholders in the governance of all aspects of the education system” (RSA, 1996c: Section 4(m)); and lastly but also important, “co-operation between the national and provincial governments on matters relating to education, including the development of capacity in the departments of education, and the effective management of the national education system” (RSA, 1996c: Section 4(o)). I posit that the above suffice to promote *deliberation and dialogue* in SG practices and policies in SA.

The contents on *deliberation and dialogue* as reflected in the derived comprehensive framework for democracy is aligned with that of the *NEPA* as far as democracy, SG practices and policies are concerned.

I will now analyse the *SASA*.

#### 4.2.3.3 SOUTH AFRICAN SCHOOLS ACT 84 OF 1996: REFLECTIONS ON THE PROMOTION OF DELIBERATION AND DIALOGUE

The *SASA* requires representatives to make representations on various issues they may be confronted with, and promotes the creation of opportunities for negotiation. This suggests that opportunities for *deliberation and dialogue* is provided and encouraged. An example is evident in instances of the mergers of two or more public schools. The *SASA* directs that the

Member of the Executive Council “must publish a notice giving the reasons for the proposed merger in one or more newspapers circulating in the area where the schools in question are situated; give the governing bodies of the schools in question and any other interested persons an opportunity to make representations ... and consider such representations” (RSA, 1996b: Sections 12A (2)(b-d)). With regard to schools on private property, consultations and renegotiations should be undertaken with the property owner (RSA, 1996b: Sections 12A (3)(c)).

In emergencies the HOD is authorised to close and reopen schools, provided that the relevant information is brought to the attention of other affected stakeholders, such as educators and parents (RSA, 1996b: Sections 16(4-6)). Sometimes there is a need for a particular SGB to serve two or more schools. In such cases all affected parties need to be informed, and be given the opportunity to make representations. These inputs need to be taken into account (RSA, 1996b: Sections 17(2)(b-c)).

All of the above is encapsulated in matters relating to the withdrawal of the registration of independent schools. In this regard, the SASA states that: “No withdrawal of the registration of an independent school is valid unless- the owner of the independent school has been furnished by the HOD with a notice of intention to withdraw the registration, stating the reasons why such withdrawal is contemplated” (RSA, 1996b: Section 47(1)(a)). In order to comply with the element of *deliberation and dialogue*, the SASA states that the owner should be “provided an opportunity to make written representation to the HOD as to why the registration of the independent school should not be withdrawn; and [that] any such representations received have been duly considered” (RSA, 1996b: Section 47(1)(b-c)). This obligates all parties to subject themselves to a process where inputs are stated, deliberated upon and considered, and hopefully amicable solutions are reached. This will also promote *deliberation and dialogue*, which further has the potential of enhancing a conducive environment for democracy to be practised and experienced in SG practices and policies in SA.

A conducive environment is also enhanced when parties are given the opportunity to deliberate on the contents of a code of conduct, especially if they are bound by it. So before a SGB adopts a code of conduct for learners, parents, and educators, all of these parties should have been consulted (RSA, 1996b: Section 8). With regard to a code of conduct for the

members of a governing body, the MEC should first consult with the relevant provincial association of governing bodies (RSA, 1996b: Section 18A). These consultations provide opportunities for *deliberation and dialogue*.

The contents on *the promotion of deliberation and dialogue*, as reflected in the derived comprehensive framework for democracy, resonates with that of the SASA.

I will now analyse the *EEA*.

#### 4.2.3.4 EMPLOYMENT OF EDUCATORS ACT 76 OF 1998: REFLECTIONS ON THE PROMOTION OF DELIBERATION AND DIALOGUE

The *EEA* deals with *deliberation and dialogue* in matters relating to educator transfers, secondments, being declared unfit for duty, poor performance or disciplinary procedures instituted against an educator.

In matters relating to the transfer of educators to any other post within the jurisdiction of the State, the *EEA* directs that the Director-General or HOD must get the consent of the educator (RSA, 1998: Chapter 3, Section 8(1)(a)), and should also get a recommendation of the governing body concerned (RSA, 1998: Chapter 3, Section 8(2)). In the event that the salary of an educator is to be affected, his written consent should be sought (RSA, 1998: Chapter 3, Section 8(3)). This is an indication that some form of *deliberation and dialogue* should take place. In order to emphasise and formalise the consultation, it needs to be done in writing, as is the case in the secondment of educators, be it to another education department, another government, or any other institution or body (RSA, 1998: Chapter 3, Section 9(1)(a-d)).

Another instance where some form of consultation is necessary is in cases of declaring an educator to be unfit to carry out his duties efficiently or to the satisfaction of the employer. The *EEA* states that “[i]f it is alleged that an educator is unfit for the duties attached to the educator’s post or incapable of carrying out those duties efficiently, the employer must assess the capacity of the educator and may take action against the educator in accordance with the incapacity code and procedure for poor work performance” (RSA, 1998: Chapter 5, Section 16). It is through these actions that opportunities for engagement arise. This will enable the promotion of *deliberation and dialogue*.

The *promotion and display of trust* as an element is analysed below.

#### 4.2.4 PROMOTION AND THE DISPLAY OF TRUST

##### 4.2.4.1 THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA: REFLECTIONS ON THE PROMOTION AND DISPLAY OF TRUST

There are instances where trust is explicitly stated, and others where it is implied. With regard to the former, it expects SGBs to “co-operate with one another in mutual trust and good faith by-fostering good relations” (RSA, 1996a: Section 41(1)(h)). This also refers to the relationship between the SGB and the PED, or among themselves as constituent members of the SGB. With regard to it being implied, the *Constitution* directs that the provision of education, as a product of public administration, should not only be development-oriented (RSA, 1996a: Section 195(1)), but should also be provided “impartially, fairly, equitably and without bias” (RSA, 1996a: Section 195(1)(d)). I contend that this has the potential to contribute to ethical governance (RSA, 1996a: Section 195(1)(a)) as envisioned by the *Constitution*. This implies that should education services or SG practices and policies in SA not resonate with what is being directed by the *Constitution*, SG stakeholders will be unhappy, and this may compound problems in school communities. It may also lead to a breakdown in trust between other SG stakeholders. The social unrest and community service protests SA is currently experiencing could be attributed to some of these issues.

I argue that school governors, particularly those elected to executive committees, would have made promises and advanced action plans on how to implement these. The executive members would expect SG stakeholders to trust that they would deliver. Non-delivery on such promises would as a consequence compromise the element of *trust*. The democratic values so envisioned may be difficult to achieve, due to a lack of *trust*. These values and principles, when read and understood in context, therefore imply that the cultivation of *trust* is critical, particularly in SG practices.

Based on an analysis of the element of *trust* as reflected in the derived comprehensive framework for democracy, I posit that they are aligned with that of the *Constitution*.

I will now focus on legislation, which comprises the *NEPA*, *SASA*, and *EEA* respectively. In other words, I will analyse to what extent the elements of a conducive environment for democracy as reflected in the derived comprehensive framework for democracy resonate with that of the particular legislation.

#### 4.2.4.2 NATIONAL EDUCATION POLICY ACT 27 OF 1996: REFLECTIONS ON THE PROMOTION AND DISPLAY OF TRUST

Sayed (2016:6) intimated that our apartheid past still seems to haunt us today, as can be observed in the manner in which different racial groups in school settings distrust one another. On the contrary, the author and other researchers assert and recognise the importance of “positive relationships, trust, solidarity, inclusion, collectivism and common purpose”. These attributes can contribute to social cohesion (Sayed, 2016:6), which again implies that a democratic lifestyle can be enhanced. The inference is that distrust should be replaced with the cultivation and *display of trust*. The *display of trust* is reflected by the NEPA.

*Trust* can be implied through the elevation and recognition of respect as articulated in the NEPA, which states that the Act is directed towards “promoting a culture of respect for teaching and learning in education institutions” (RSA, 1996c: Section 4(j)). To illustrate this, I use the response of ordinary members of a political party towards their leadership to indicate that without respect, *trust* will be compromised. This has been demonstrated when members of a political party in Kimberley (a town in the Northern Cape province) displayed dissatisfaction regarding the manner in which the list process was done in preparation for the 3 August 2016 local government elections in SA (Kwon Hoo, 2016:3). They were dissatisfied and unhappy with the candidates, as they believed that their leaders tampered with the list. The disgruntled members stated that one of their senior leaders involved in the list process “does not deserve our respect ... we have no confidence in the list process” (Kwon Hoo, 2016:3). SG stakeholders are also expected to have respect, for example regarding SGB election processes. It follows that *free and fair election* processes would raise confidence and *trust* in the elected members. It should be noted that elections are human rights issues, and by implication impacts on democracy.

The above indicates the relationship between respect and *trust*, and in the context of this study, it can be concluded that the NEPA does make provision for *trust* to be displayed, particularly with regard to the provision and administration of education. This indication emanates from the call for respect as articulated in the NEPA, as stated in the paragraph above. By implication, the element of *trust* has demonstrated a link between democracy and SG practices.

The contents of the element of *trust* as reflected in the derived comprehensive framework are aligned with that of the *NEPA*.

An analysis of the *SASA* follows below

#### 4.2.4.3 SOUTH AFRICAN SCHOOLS ACT 84 OF 1996: REFLECTIONS ON THE PROMOTION AND DISPLAY OF TRUST

It seems the *SASA* is quite clear when it states that “[a] governing body stands in a position of trust towards the school” (RSA, 1996b: Section 16(2)). I argue that *trust* not only refers to SGBs, but to anyone broadly involved in education, including the State through its officials and organs. In further emphasising *trust*, I refer to the administration of the immovable property of schools (RSA, 1996b: Section 13(2)(b)). In this instance the *SASA* directs that whoever is involved in the administration of such facilities should do so in the interest of education. This implies that if there is no *trust* that the facilities will be used for education related activities only, this may impact on a number of other issues and basic rights and needs. One can accept that the *SASA* does make provision for the *display of trust* to be appreciated, particularly through SG practices and policies in SA.

The above demonstrates that the element of *trust* is essential in SG practices and policies in SA. An analysis of the contents of *trust* as reflected in the derived comprehensive framework for democracy is aligned with that of the *SASA*.

An analysis of the *EEA* follows below.

#### 4.2.4.4 EMPLOYMENT OF EDUCATORS ACT 76 OF 1998: REFLECTIONS ON THE PROMOTION AND DISPLAY OF TRUST

There are not many sections in the *EEA* that directly reflect on the element of *trust*, however, *trust* can be inferred or be implied. This inference can be observed in the recommendations for appointment, transfer or promotion of educators in South African public schools (RSA, 1998: Chapter 3, Section 6(1); Section 3(a)). The *EEA* advises that when such recommendations are done by governing bodies, due regard should be observed regarding principles of equity, redress and representivity (RSA, 1998: Chapter 3, Section 3(b)), which I believe have the potential to enhance the *display of trust*. I contend that should these principles not be considered as advised, the distrust due to our historical past will not subside (cf. 3.2.4). In addition to the mentioned principles, there are also other issues that the *EEA*

directs should be attended to that can enhance *trust*. These include equality, equity and other democratic values; whether the candidate has the ability and capacity to perform; and to address past imbalances (RSA, 1998: Chapter 3, Section 7(1)(a-b)).

SG stakeholders trust that SGBs will contribute positively to the quality of education and SG. In other words, they expect the SGB to serve them and be beneficial to them. I will mainly use the recommendation for appointment of educators and the use and procurement of resources to demonstrate the importance of trust, and how it can impact on SG practices and policies in SA. I contend that adherence of SGBs to procedural and substantive issues regarding recommendations can contribute to an environment that can enhance *trust*. These conditions include *inter alia* that “any procedures that have been collectively agreed upon are accordingly implemented”; that “any procedure collectively agreed upon or determined by the Minister for the appointment, promotion or transfer of educators” are adhered to; that any requirements and procedures that may assist to establish whether the “candidate is registered or qualifies for registration as an educator with the South African Council for Educators” are enforced and implemented; and most importantly, that “procedures that would ensure that the recommendation is not obtained through undue influence on the members of the governing body” are respected and obeyed (RSA, 1998: Chapter 3, Section 6(3)(b)(ii- v)).

The *EEA* places the responsibility for compliance with the above stated requirements on the governing bodies (RSA, 1998: Chapter 3, Section 3(d)). The *EEA* further directs that if the governing body does not comply with the requirements, then the HOD must decline such a recommendation (RSA, 1998: Chapter 3, Section 3(e)). The implication would be that the HOD has lost trust in the governing body. The candidates could also have been affected in the course of such actions, and therefore, they may lose faith in the system, adding to a loss of trust. The expectation is therefore that *trust* is a critical element in the execution of governance in the education system. I argue that *trust* is an element that seems to be inherent in education and SG practices and policies in SA.

My contention is based on the understanding that personnel are appointed without the employer really getting the opportunity to access all relevant information to decide not to trust a candidate. I contend that interviews cannot reveal all. It is only after the candidate has been appointed and is functioning in the system one can decide to really trust them, based



on their conduct, attitudes and behaviour. It does not only apply to educators, but to all who are involved in governance issues. So when *trust* is broken, disciplinary proceedings such as suspensions and expulsions can be instituted as provided for in the *EEA* (RSA, 1998: Chapter 5: Sections 17 & 18)). Furthermore, educator conduct can also to be regulated through a code of professional ethics instituted by the *SACE Act 31 of 2000*. Its intention is to enhance the element of *trust* that the educators need to display (RSA, 1998: Chapter 6, Section 28(1)(c)), hopefully leading stakeholders to have faith and believe in the conduct of educators.

Furthermore, educator tasks are generally of such a nature that the expectation of *trust* is inherent in the contractual obligations and performance of duties, functions and responsibilities. Their attitudes and behaviour towards their work can also demonstrate the element of *trust* towards other stakeholders. In addition to how they perform their functions, trust includes the extent to which they can be trusted to not harm others, sexually abuse learners, or psychologically and emotionally hurt any stakeholders, particularly in SG practices and policies in SA.

They need to focus only on what they have been contracted to do. Failure to respond to these expectations will result in a break of trust. *Trust* can also be affected when the education system or SG practices are perceived by stakeholders to be failing in for example the distribution and use of resources. I use the sentiments aired by community members in response to the alleged lack of service provisioning to illustrate this point. The provision of poor services has led to many citizens complaining of their reluctance to report grievances in the public sphere, due to lack of confidence and trust in the system and officials. The escalation of service delivery protests in communities across the country (Mapumulo, 2016:8) may be perceived as a lack of *trust*. With regard to education, complaints or protests on various issues were raised, for example language at Overvaal H/S (cf. 1.2.3), textbooks (Chisholm, 2013:8; Veriava, 2013:2), pit toilets (Selapisa, 2018:3; TNA Reporter, 2018:17), and hairstyles at Pretoria Girls' H/S (Mpofu-Walsh, 2017:119-120). It is imperative to note that compliance in delivering a high standard of services may increase the level of *trust*, and this could also be the case regarding education and SG practices and policies in SA. I further contend that if citizens' voices are heard, and if they are kept up to date regarding issues of service delivery, this may alleviate this type of lack of *trust*.

In light of the above, I contend that the contents on the elements of *trust* as reflected in the derived comprehensive framework for democracy are aligned with that of the *EEA*.

Below follows an analysis of the element of transforming SGBs into learning organisations.

#### 4.2.5 CREATION OF A LEARNING ORGANISATION

##### 4.2.5.1 THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA: REFLECTIONS ON THE CREATION OF A LEARNING ORGANISATION

It is stated in the *Constitution* that “[p]ublic administration must be developmental” (RSA, 1996a: Section 195(1)(c)). This suggests that services should be developed and rendered in such a manner that citizens can learn from these experiences. In other words, their involvement in for example governance should allow them to develop, so that they are able to manage future developments and changes with the aim of enabling the organisation to survive and stay relevant. This is further emphasised by stating that “[g]ood human-resource management and career-development practices, to maximize human potential, must be cultivated” (RSA, 1996a: Section 195(1)(h)). In this regard, the necessary skills should be acquired so that the *creation of a learning organisation* will be enhanced.

*The creation of a learning organisation* can also contribute to the acquisition of knowledge regarding the use of available resources; acquiring skills and competencies to better deal with issues including acts of corruption; and has the potential to enhance the quality of *deliberation and dialogue*. I contend that *the creation of a learning organisation* has to be operationalised to enable SG structures to address and manage change. This can be achieved through the continuous provision of knowledge and training. In this manner, SG structures could be turned into *learning organisations* (cf. 3.2.5). It can be concluded that *the creation of a learning organisation* is enshrined in the *Constitution*, albeit through implication, interpretation and reasoning. Furthermore, the contents on *transforming SGB structures into learning organisations* as reflected in the derived comprehensive framework for democracy are aligned with that of the *Constitution*.

I will address what is reflected in the *NEPA* below.

#### 4.2.5.2 NATIONAL EDUCATION POLICY ACT 27 OF 1996: REFLECTIONS ON THE CREATION OF A LEARNING ORGANISATION

One of the aims of the *NEPA* is to bring about an education system that will “contribute to the full personal development of each learner, and to the moral, social, cultural, political and economic development of the nation at large, including the advancement of democracy, human rights and the peaceful resolution of disputes” (RSA, 1996c: Section 4(b)). I contend that this requires such an education system to be managed as a *learning organisation*.

The need for this is premised on the idea that the economic climate is always changing, as can be noted in the current situation where from time to time issues of the down-grading of the economy and high unemployment rates dominate the discourse (Mpofu-Walsh, 2017:1-3). This has an impact on education and education provision, especially regarding resources. SGBs therefore need to reprioritise, and that is why the management of governing bodies as *learning organisations* are important.

The development referred to in the first paragraph of this section, requires competent and skilled personnel. As in the section on the *Constitution* above (cf. 4.2.5.1), the issues of skills, and methods and tools to change organisations for the better, are also relevant here.

The issues of democracy, SG practices and policies have been adequately demonstrated in this section and the elements addressed before this one. An analysis suggests that what is reflected on democracy, SG practices and *transforming SGBs into learning organisations* in the derived comprehensive framework for democracy are aligned with the *NEPA*.

Another piece of legislation that is relevant regarding *transforming SGB structures into learning organisations* is the *SASA*.

#### 4.2.5.3 SOUTH AFRICAN SCHOOLS ACT 84 OF 1996: REFLECTIONS ON THE CREATION OF A LEARNING ORGANISATION

The *SASA* has undergone various amendments since its inception in 1996. To date, it has been amended nine times (Juta’s Pocket Statutes, 2016:1). To enumerate, the amendments were effected through the *Education Laws Amendment Acts 100 of 1997; 48 of 1999; 53 of 2000; 57 of 2001; 50 of 2002; 1 of 2004; 24 of 2005; 31 of 2007; and the Basic Education Laws Amendment Act 15 of 2011* (Juta’s Pocket Statutes, 2016:1). These amendments do sometimes also include amendments on other education laws or areas, such as the *NEPA*, *EEA*

and others. These amendments are usually on a set of particular issues, such as the power of the HOD to appoint educators, establishing norms and standards for schools, the split of the former National DoE into the DBE and DHE, responsibilities of school principals, search and seizures, and drug testing at schools.

To illustrate the points on the inclusion of other areas, as well as the set of issues that can be amended, I use the *Education Laws Amendment Act 31 of 2007* as an example. There are references to amendments across various pieces of legislation that are related to education. Some of these amendments include the following: the SASA by an insertion of a definition of dangerous weapons through Section 1, and also Section 5A, which deals with norms and standards for basic infrastructure and capacity in public schools; and the amendment of the SASA by the insertion of Section 8A on random search and drug testing at schools, and also 16A which deals with the functions and responsibilities of principals.

Some of these amendments were implemented as a consequence of some contestation on an issue between the department and particular stakeholders. An example is the case on the norms and standards for public schools, where some groups in society lobbied for support to engage the DBE to address the same. This was implemented due to pressure, and is now part of the *Education Laws Amendment Act 31 of 2007*. More of these issues will be addressed later on in the study, when court cases are discussed.

To keep up with these changes, I posit that governing bodies need to accept these changes, and adopt and adapt, otherwise they may be involved in continuous contestations. The amendments in education legislation sometimes expect SGBs to either amend school policies or introduce new ones, such as on drugs and safety, amongst others. In order to keep up they need to be managed as *learning organisations*, and this requires certain capabilities. They need governing bodies that are willing to embrace change and to deal with new challenges, but they also need to be prepared to be involved in continuous training and learning (cf. 3.3.5).

The above exposition can be interpreted to mean that the SASA expects or makes provision for SGBs to be managed as *learning organisations*. Like the other pieces of legislation, the contents on *transforming SGB structures into learning organisations* are aligned with that of the SASA.

I will now analyse the *EEA* below.

#### 4.2.5.4 EMPLOYMENT OF EDUCATORS ACT 76 OF 1998: REFLECTIONS ON THE CREATION OF A LEARNING ORGANISATION

Qualified and competent educators are needed to contribute to the democratisation of education, and to harness the talents and capabilities of the South African citizenry (RSA, 1996b: Preamble). In other words, all SG stakeholders, including educators, will be able to contribute to learning and teaching, as well as proper socialisation on issues of democracy (National Development Plan: Vision 2030, 2011:262). Furthermore, the National Development Plan Vision 2030 (NDP Vision 2030) asserts that values can be acquired at school, and these can be experienced and observed in communities (National Development Plan: Vision 2030, 2011:262).

The above will also require educators who will act accordingly, and assist in promoting *developmental* and *democratic* SG practices [my emphasis] (National Development Plan: Vision 2030, 2011:285). On the contrary, if educators are not committed, it will be difficult to attain the aims and expectations of the *Constitution*, the *SASA*, the NDP Vision 2030, and other policy documents and imperatives. It is in this regard that the *EEA* aims to play a role, i.e. to discourage unbecoming behaviour by acknowledging that such behaviour and attitudes should not be allowed in schools and SG settings. The *SACE Act 31 of 2000* as well as the Code of Professional Ethics (2017) for educators, which are both products of the *EEA*, also support the call for the proper behaviour by and professional development of educators. As argued earlier, the development should also incorporate democratic values, SG competencies and skills that can assist in *transforming SGBs into learning organisations*.

The *EEA*'s contribution to an enabling environment for governing bodies to be managed as learning organisations, is the way in which it deals with the undermining of the democratisation of education. I argue that the *EEA*'s determination to address misconduct by educators may suggest an attempt to cultivate the opposite behaviour. The *EEA* directs that educators should be disciplined for *inter alia* committing acts of sexual assault in the school setting (RSA, 1998: Section 17(1)(b-c)); committing wrongful acts regarding State or school property (RSA, 1998: Section 18(1)); or any other misdeeds as listed under Section 18(1). The *EEA* also discourages behaviour that disrespects other pieces of legislation, such as the *SASA*,

in which the democratisation of education is enshrined (RSA, 1996b: Preamble). The understanding is that unbecoming behaviour and ill-discipline from educators is denounced.

In light of the above, I argue that the *EEA* promotes the idea that SG structures should be managed as *learning organisations*. In other words, they should aspire to learn new skills in order to respond to new challenges, as espoused in *inter alia* the NDP Vision 2030. The contents on *transforming SGBs into learning organisations* as reflected in the derived comprehensive framework for democracy are aligned with that of the *EEA*. Since the South African legal framework also includes case law, this will be addressed below.

### 4.3 HOW CASE LAW REFLECTS ON A CONDUCTIVE ENVIRONMENT FOR DEMOCRACY

Some sections of this study (4.3 & Chapters 5-7) refer to court judgements in an attempt to reflect on both the elements of a conducive environment as well as the essential principles of democracy. I declare that I am not a trained legal person, therefore dealing with court judgements in this study may not be easy. In this regard, Deacon (2016:vii) notes that:

*[c]ourt judgements on aspects of education help show the way and establish precedents for the country to follow. However, summarising complex legal issues remain quite challenging because one would not want to detract from any of the technical legal elements involved, although some judges provide good summaries in excellent judgements.*

I need to keep this in mind. In other words the relevance, impact and what can be learnt from them with regard to the focus of my study need to be kept in mind.

I have adopted Deacon's advice in the selection of judgements and the approach of analysis. This includes *inter alia* selecting cases that are relevant to my study. He advises that they should be presented "in a reader-friendly way", and that they be used in such a way that their implications find resonance with the study (Deacon, 2016:vii). In an effort to cover a wider range (Deacon, 2016:vii), I have decided to purposely select cases from a number of provinces that are relevant to this study, in order to be representative of the South Africa legal context.

Since not all cases in this section will be from all provinces, I did cover cases from other provinces in Chapter 1. Some will be addressed in this chapter and others in the rest of the

study. On the whole, most of the provinces would have been considered. This is important as it gives one a sense of how South Africans perceive and deal with the elements of a conducive environment and essential principles of democracy, regarding the critical evaluation of SG practices and policies in SA within the South African legal framework for education. In this section I will only discuss the elements of a conducive environment as reflected within case law, while the essential principles of a democracy will be dealt with in Chapter 5. In this regard, three specific judgements that address some of the elements of a conducive environment for democracy will be purposely selected. In these judgements, some comment on an element(s) may be made, or an inference can be drawn from them. Also, a link amongst democracy, SG practices and policies in SA, and the element will be established or argued. Although the three judgements will be the focus, other judgements may be used to augment my argument that I will be advancing and presenting in the study.

It is imperative to take note that it is not my intention to dwell on the veracity or otherwise of statements advanced in these cases, but just to use them to support my argument regarding the essence of my study. In this case the elements of a conducive environment will be the focus. I have purposely selected the *Economic Freedom Fighters (EFF) v Speaker of the National Assembly (NA) and Others; Democratic Alliance (DA) v Speaker of the National Assembly and Others* [2016] ZACC 11 (Hereafter Nkandla judgement); *The Freedom Stationery (PTY) LIMITED and MEC for Education and the Superintendent-General of the Department of Education*, Eastern Cape Provincial Government Case No: 280/2011 (Hereafter Freedom Stationery judgement); and the *National Teachers Union (NATU) and Department of Education and Culture, KwaZulu-Natal (KZN), Superintendent-General of Education and Culture, KZN, MEC for Education, KZN and South African Democratic Teachers Union (SADTU)* Case, No:D110/06 (Hereafter NATU and SADTU judgement).

The three selected court judgements address more than one element of a conducive environment for democracy, and this may complicate the referencing. In order to alleviate this, two issues will be addressed. A brief summary of the judgement and relevance to this study will be provided, and the referencing will be provided through the short name of judgement and a paragraph(s) from the judgement in square brackets “[ ]”, if the same case is referred to (the same system to be applied in Chapters 5-7). If a judgement is used in more than one instance, the summary will not be repeated, but this will be highlighted or referenced as such.

#### 4.3.1 *THE ECONOMIC FREEDOM FIGHTERS AND DEMOCRATIC ALLIANCE V SPEAKER OF THE NATIONAL ASSEMBLY CASE NO: [2016] ZACC 11 (NKANDLA JUDGEMENT)*

Almost all the cases purposely selected in this study have a direct bearing on education, but not this one. I thought it prudent to select a case that incorporates findings from a Chapter 9 institution, such as the Public Protector (PP). The findings of the court regarding the role of the PP is binding to education through the doctrine of precedents (*stare decisis* which literally means “to stand by previous decisions”) (Kleyn & Viljoen, 2010:58). Chapter 9 institutions are critical as they are established to promote and enhance our constitutional democracy (RSA, 1996a: Chapter 9, Section 181(1)). Their inputs and dealings in issues related to challenges of democracy is relevant to this study. This case attracted great interest both nationally and internationally, due to the alleged involvement of the President of SA. I argue that reflections on the elements of a conducive environment from such a high profile case may demonstrate to ordinary citizens how to contribute to a conducive environment for democracy to be practised and experienced. I also argue that such a case may impact greatly on case law and the South African legal framework for education in general, and the derived framework for democracy in particular, hence my decision to include it in my study.

This case is about a dispute between two South African political parties (the EFF and the DA) with the Speaker of the National Assembly regarding upgrades at the President of South Africa’s private homestead in Nkandla, KZN. The dispute was hinged on whether the proposed remedial actions based on the findings of the Public Protector (PP) were binding or not. The PP investigated the upgrades that were suspected not to be related to security. The Constitutional Court’s (ConCourt) ruling was that the PP’s findings are binding. However, what is important in this study is that the ConCourt also referred to the elements of a conducive environment. This is what I present as my contention below.

The court asserted that the *Constitution* requires that the Public Protector be assisted in creating an environment conducive to *inter alia* effectiveness [66]. This is informed by referring to constitutional provisions in an effort to support and strengthen SA’s constitutional democracy (RSA, 1996a: Chapter 9, Section 181(1)). This implies that a conducive environment for democracy requires the necessary support and strengthening from the various stakeholders and institutions. It has been demonstrated in this judgement that *acts of corruption* impact on democracy, as was also demonstrated earlier in this study



(cf. 3.2.1). Acts of *corruption* that do not necessarily occur in schools or SG practices, as in this case, still have an impact on SG practices and policies in SA (cf. 3.2.1). I argue that funds that are wasted through *acts of corruption* in one sphere of government could have been better appropriated elsewhere, such as in education. Furthermore, it was also demonstrated that the PP is a mechanism that can be used in SG practices when *acts of corruption* are detected (cf. 4.2.1.1). Based on the above, this judgement relates to democracy, SG practices and policies in SA (by implication), while it also addresses *acts of corruption* in government.

I could only identify three of the elements that could be directly reflected through references to paragraphs in the court judgements. They include *condemnation and rejection of acts of corruption, promotion of deliberation and dialogue; and the promotion and display of trust*. I could only use inference with regard to *the prioritisation of education and socialisation for democracy* and the *creation of a learning organisation*.

Below follows how this judgement reflects *the condemnation and rejection of acts of corruption*.

#### 4.3.1.1 CONDEMNATION OF ACTS OF CORRUPTION: NKANDLA JUDGEMENT

The judgement noted that the PP's findings suggested that the President's security upgrades at his private residence amounted to "undue benefit or unlawful enrichment to him and his family" [6 & 10]. The PP thought that the President should have known or should have been aware of this, and should have prevented this from happening [9]. Unfortunately, it did not happen, and the remedial action was that the President had to repay the money for the non-security upgrades he was not entitled to [10]. The judgement states that this amounts to "undue enrichment" [par 9], and calls for a stop from "unchecked abuse of State power and resources" [1]. I interpret this whole issue as an act of corruption that needs to be condemned and rejected (cf. 3.2.1). In this regard, the PP has a duty to investigate "unlawful enrichment and corruption" [51].

Parties to this case were reminded that "[t]he Public Protector is thus one of the most invaluable constitutional gifts to our nation in the fight against corruption, unlawful enrichment, prejudice and impropriety in State affairs and for the betterment of good governance" [52]. Furthermore, the judgement acknowledges that our constitutional democracy can only be enhanced when corruption is dealt with. This paragraph and the one

above demonstrate that corruption can have a detrimental impact on democracy, and should therefore be condemned and rejected.

The above is further demonstrated in an extensive discussion on the powers of the PP regarding corrupt behaviour as well as the requisite remedial action [57-62; 63-71; 72-75 & 76-83]. I do not think it is necessary to provide any further detailed discussion on this, as I think the paragraphs that I have provided above are sufficient to demonstrate the importance of the *condemnation and rejection of acts of corruption*. Also, the PP can be a valuable mechanism for SG stakeholders to turn to when they experience *acts of corruption*. A careful reading of the whole case seems to be hinged on *inter alia* the element of *acts of corruption* and how it can impact on our constitutional democracy, and, by implication, SG practices and policies in SA.

#### 4.3.1.2 PRIORITISATION OF EDUCATION AND SOCIALISATION FOR DEMOCRACY: NKANDLA JUDGEMENT

I could not directly extract any reflection on the *prioritisation of education and socialisation for democracy* from this court judgement. I could however infer that SG stakeholders should be open to be educated and socialised regarding the positive and negative aspects of *acts of corruption*. In this manner, a change so envisaged through the use of CT, may become realisable. The different combating mechanisms on corruption such as the PP may also be highlighted through the provision of education. Based on the above inference, one can accept that the *prioritisation of education and socialisation for democracy* is reflected through this judgement.

#### 4.3.1.3 PROMOTION OF DELIBERATION AND DIALOGUE: NKANDLA JUDGEMENT

The PP acknowledged that government officials are sometimes inclined to want to please their seniors who are in position of higher authority, as in the case of the President's non-security upgrades [8]. However, the PP asserted that the President should have stopped that from happening [9]. This I contend could have been through *deliberation and dialogue*. Based on the failure of the President to have brought the undue benefit to the attention to the officials concerned, one of the remedial actions provided by the PP was that the President should "[t]ake steps, with the assistance of the National treasury and SAPS, to determine the reasonable cost of the measures implemented by the DPW [Department of Public Works]"

[10]. This suggests that some form of consensus based on *deliberation and dialogue* should have been done, implying that *deliberation and dialogue* is promoted.

The judgement also acknowledged that the President was “entitled to enquire into the correctness of those aspects of the report he disagreed with. That inquiry could well lead to a conclusion different from that of the Public Protector” [78]. I argue that this implies that opportunities for further clarity through *deliberation and dialogue* were always open. The Parties were also reminded that even decisions and court orders are open to be further interrogated, and that sometimes these are found to be wrong [86]. This further acknowledges that opportunities for *deliberation and dialogue*, particularly when affected parties are not satisfied with court orders or rulings, can be appropriate mechanisms to help solve impasses. This opportunity for parties to challenge findings [88] would promote *deliberation and dialogue*.

The judgement recognised the justification of the PP to submit the report to the National Assembly. It stated that the NA was obligated to “scrutinise and oversee executive action and to hold the president accountable” [95]. This usually takes the form of debate in the NA, which would once again promote *deliberation and dialogue*.

Based on the above exposition, the judgement seems to acknowledge and appreciate the advantage(s) of the *promotion of deliberation and dialogue*.

#### 4.3.1.4 PROMOTION AND DISPLAY OF TRUST: NKANDLA JUDGEMENT

This case was brought about as neither the President nor the NA complied with the PP’s findings on the remedial action that was supposed to have been implemented [3]. If highly placed politicians and spheres of government are seen to violate the rulings of other organs of state, this would dampen the *trust* that ordinary citizens have in their politicians, spheres of government, and consequently the constitutional democracy.

The court asserted that the PP relied on *inter alia* the constitutional obligations in terms of section 96(1) and (2) (c) [7]. These include that the conduct of cabinet members and Deputy Ministers must be in accordance with a code of ethics prescribed by legislation, and that they may not “use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person” [7].

I posit that the above is essential because the citizenry (SG stakeholders) trusts that those who have been nominated to facilitate and promote our constitutional democratic state would do so with due respect to ethics. In other words, they would not use information or their position to unfairly benefit themselves or others, as have been argued in the section above (cf. 4.3.1). If politicians or state officials such as officials from the department of education are engaged in illegal actions such as corruption, I argue that the citizenry (SG stakeholders) will lose *trust* in them. This would then promote scenes of violent protests and marches that have now become a daily occurrence in SA (cf. 4.2.4.4).

Furthermore, the expectation is that people in high positions, such as the President, should address corruption if they become aware of it. If they do nothing about it [8], it may affect the *trust* in politicians and the democratic system. This expectation is further informed by the acknowledgement and realisation that in the President “the executive authority of the entire Republic [is] primarily entrusted” [20]. On the contrary, if they do something about acts of corruption, then *trust* may be enhanced and promoted.

There are other expectations or values that I regard as having a bearing on the promotion of *trust*. These include *inter alia* that the President needs to be conscious and sincere in the execution of his duties, and to serve with integrity [21]. Failure to act in this way may affect the *display and promotion of trust*. That reference to cabinet ministers is made in the second paragraph in this section, and that the Minister of Education is also a cabinet minister, implies that these principles also apply to the person serving in that capacity, as well as the MEC and officials at provincial level.

#### 4.3.1.5 CREATION OF A LEARNING ORGANISATION: NKANDLA JUDGEMENT

As in the case of the *prioritisation of education and socialisation for democracy, the creation of a learning organisation* was also not directly reflected in this court judgement (cf. 4.3.1.2). However, I infer that SG structures may learn from this judgement that things can go wrong as far as acts of corruption in society is concerned. This may also impact on education and SG practices and policies in SA. SG stakeholders can learn skills and competencies that may assist them to detect and deal with acts of corruption even before they happen. I argue that if SG structures and school governors have embraced the concept of *transforming SG structures into learning organisations*, they could learn from court judgements such as this one.

#### 4.3.2 *THE FREEDOM STATIONERY (PTY) LIMITED AND MEC FOR EDUCATION, EASTERN CAPE PROVINCIAL GOVERNMENT, CASE NO: 280/2011 (FREEDOM STATIONERY JUDGEMENT)*

This dispute pertains to a tender that was awarded by the first MEC (first respondent) and Superintendent-General (SG) of Education and the Eastern Cape Provincial Government (second respondent) to Freedom Stationery (PTY) Limited (the plaintiff) and other companies who competed for a tender (no. SCMU6-10-11-0005) in 2010 [1-2]. Part of the terms of the tender included “the manufacture, packaging and supply of scholastic stationery for grades R to 12 to local distribution centres in the Eastern Cape” [2]. Based on the tenders the bidders, including the plaintiff submitted, “the Eastern Cape Provincial Treasury informed the second defendant that the Interim Bid Advisory Committee supported the recommendation of the Department to award the contract to a group of six qualifying bidders, which included the plaintiff” [2]. This was addressed to the ECDoE in a letter dated 17 December 2010 [2].

To the dismay and surprise of the plaintiff and another bidder (Power Stationery (Pty) Ltd), a notice in the Daily Mail newspaper of 11 January 2011 appeared detailing that the tender process was cancelled [3]. This was the cause of the dispute. The two affected parties urgently instituted proceedings against the MEC and SG, as well as other parties, “to review the second defendant’s decision to cancel the tender and to award the contract, or part thereof, to two other suppliers” [3]. The order (dated 17 March 2011) as a consequence of their proceedings directed that the cancellation be set aside as well as the awarding of tenders to the affected parties [3]. Furthermore, the SG was ordered to start afresh with the tender from the point where the Interim Bid Advisory Committee had communicated their letter dated 17 December 2010 [3]. The implication is that the MEC and SG had lost the case. However, instead of abiding by the order of agreement, the SG continued with letters of communication contrary to the order of agreement.

This judgement directly links to democracy, SG practices and policies in SA, as well as *acts of corruption*. Furthermore, the deliberations that transpired after the order of agreement that seem to have been ignored will be employed to argue that this case reflects some of the elements of a conducive environment. Like the previous case (cf. 4.3.1), this judgement also directly reflects only three of the elements, and they are *condemnation and rejection of acts of corruption, promotion of deliberation and dialogue*, and the *promotion and display of trust*.

*Prioritisation of education and socialisation for democracy* and the *creation of learning organisations* will be inferred.

#### 4.3.2.1 CONDEMNATION AND REJECTION OF ACTS OF CORRUPTION: FREEDOM STATIONERY JUDGEMENT

I have indicated above (cf. 4.3.2) that the Superintendent-General (Advocate Manny) did not abide by the order of agreement when he (Superintendent-General) instead reminded the plaintiff about the accounting officer's responsibility to investigate allegations against an official or other role player of corruption [4]. However, he reflected on the issue of the rejection of corruption, or about taking steps to combat it. Just to note, the Eastern Cape High Court stated that the Superintendent-General had in its 1 April 2011 letter accused the plaintiff of having had access to a letter in an inappropriate manner [4]. The plaintiff, through their legal representatives, denied this allegation, and asserted that they had received the letter from a competitor [5]. They also contended that possession of the letter would not have compromised the supply chain processes in any way [5]. This suggests that the plaintiff was to be blamed for a corrupt action, which further raises the issue of corruption in the judgement. Further correspondence between the defendant and plaintiff on the issue of the possession of the letter ensued, but was denied each time by the plaintiff.

The above reflection was to demonstrate that issues related to democracy, SG practices and policies in SA, and the *condemnation and rejection of acts of corruption* are present in this judgement.

#### 4.3.2.2 PRIORITISATION OF EDUCATION AND SOCIALISATION FOR DEMOCRACY: FREEDOM STATIONERY JUDGEMENT

I advance the same argument that *education and socialisation for democracy* are not directly reflected, but can be inferred (cf. 4.3.1.2).

#### 4.3.2.3 PROMOTION OF DELIBERATION AND DIALOGUE: FREEDOM STATIONERY JUDGEMENT

The approach to the element of the *promotion of deliberation and dialogue* does not necessarily mean it should be expressly stated within a case or judgement. It may be indirectly stated, inferred or interpreted. I argue that by not respecting it, it may be interpreted that it is reflected. In this regard, the notice that appeared in the Daily Dispatch newspaper of 11

January 2011, cancelling the tender process, does exactly this [3]. The Superintendent-General did not see the logic of having engaged with the affected parties concerning his or their concerns regarding the tender process or any issue related to it.

On the contrary, it chose a route that had the potential to negatively affect a conducive environment for proper engagement of *deliberation and dialogue*. It seems the Superintendent-General did not consider *deliberation and dialogue* as elements that can contribute to a conducive environment for democracy to be practised and experienced. In corroborating this implication, it opted to engage the affected parties through letters with and through their legal representatives. This mode of communication was started with a letter dated 1 April 2011 accusing the plaintiff of having had access to a letter through improper means, which tarnished the supply chain management processes [4]. The plaintiff denied this charge.

Following the lack of *deliberation and dialogue*, the plaintiff opted to institute legal proceedings against the MEC and SG (defendants) [11]. This seems to have demonstrated that there was no further opportunity of resolving this impasse through *deliberation and dialogue*. Based on the above exposition, I posit that *deliberation and dialogue* was reflected - albeit by omission.

#### 4.3.2.4 PROMOTION AND DISPLAY OF TRUST: FREEDOM STATIONERY JUDGEMENT

Through a letter from a competitor dated 17 December 2010 the plaintiff became aware that it was the preferred supplier recommended by the department's treasury department [5]. I posit that the 11 January 2011 Daily Dispatch newspaper notice pertaining to the cancellation of the tender process was a catalyst to the plaintiff losing *trust* in both the department and the defendants. As a consequence, the plaintiff had to seek legal assistance to fight this perceived injustice.

In his letter dated 1 April 2011, in which he alleges that the plaintiff might have had access to some letter in an inappropriate manner [4-5], the Superintendent-General also displayed mistrust regarding the parties concerned.

Another issue where the *display of trust* was demonstrated in a profound manner, was during the cross-examination of witnesses, particularly regarding whether documents that were sent via facsimile to the defendants were received or not. In this regard I refer only to two

witnesses from the defendants' side, Ms Katikati and Mr. Zokwe. The court *inter alia* stated that Ms Katikati's "denial of receipt of the e-mails to which Annexure "F1" was attached cannot be afforded any weight" 47]. Furthermore, the court found that "[t]he testimony of Mr Zokwe was similarly unsatisfactory. He like Ms Katikati, would not concede anything" [48]. In emphasising their rejection of Mr. Zokwe's evidence, the court states that "the evidence of Mr Zokwe should be treated with circumspection" [51].

Based on the findings of the court on the versions of the witnesses, I contend that the evidence of the witnesses could not be trusted. That the court rejected the defendant's testimony, implies that the plaintiff had reason to mistrust the officials. The court ruled in favour of the plaintiff. The main issue from this paragraph and those above demonstrates that the element of the *display of trust* is reflected in this judgement. It seems the court was not impressed with the element of *trust* displayed and demonstrated in this judgement.

#### 4.3.2.5 CREATION OF A LEARNING ORGANISATION: FREEDOM STATIONERY JUDGEMENT

I advance the same argument that the *creation of a learning organisation* is not directly reflected, but can be inferred (cf. 4.3.1.5).

#### 4.3.3 THE NATIONAL TEACHERS UNION AND DEPARTMENT OF EDUCATION AND CULTURE, KZN AND SADTU CASE No: D110/06 (NATU AND SADTU JUDGEMENT)

Unlike the other two judgements that were heard at the Constitutional Court and Eastern Cape High Court respectively, this one was heard at the Labour Court in Durban in 2006. It is a matter between the National Teachers Union (NATU) (Applicant) and the Department of Education and Culture, KZN (First respondent); Superintendent-General (SG), Department of Education and Culture, KZN (Second respondent); MEC for Education, KZN (Third respondent), and South African Democratic Teachers Union (SADTU) (Fourth respondent) [1].

NATU (represented in this case by Mr. I. Pillay) and SADTU (represented in this case by Mr. L.C.A. Winchester SC) are constituent members of the Chamber of the Education Labour Relations Council ("the ELRC") in KwaZulu-Natal [2]. The dispute is essentially about an urgent application for an interdict against the respondents from filling office-based educator posts in the KZN province [2]. The filling of educator posts is also a SG issue, as SGBs are legally



authorised to make recommendations regarding the appointment of staff (cf. 4.2.4.4). As a result of the above, they are SG and policy issues. I have demonstrated the link between democracy and SG practices and policies in SA (cf. 4.2), and these are also discernible in this judgement. It is the deliberation process of this case that will be used to argue that three of the elements of a conducive environment with regard to democracy are being directly reflected. These are the *condemnation of acts of corruption, promotion of deliberation and dialogue*, and the *promotion and display of trust. Prioritisation of education and socialisation for democracy* and *the creation of learning organisations* are inferred.

#### 4.3.3.1 CONDEMNATION AND REJECTION OF ACTS OF CORRUPTION: NATU AND SADTU JUDGEMENT

NATU based its case on reports that the panels to interview and recommend new educators were all SADTU members, and that the posts would be filled by SADTU members only [5-6]. Based on this, “NATU submitted that its members would not be treated fairly because of the perception of bias which had been created” [7]. It should be noted that the case itself did not prove that the accused parties were found guilty of *acts of corruption*. However, the intention is to demonstrate that courts (Labour Court) do deal with alleged *acts of corruption*, and this impacts on democracy and SG practices and policies in SA.

It further implies the possibility that *acts of corruption* may take place. In this manner, the *condemnation and rejection of acts of corruption* as an element of a conducive environment for democracy is reflected. Whether this was proven in this case is not the issue, but just because it is raised, suggests a reflection thereof. NATU did however lose the case, implying that no evidence of the alleged *acts of corruption* could be found. This judgement demonstrates that the potential for *acts of corruption* do exist, particularly in SG practices and policies in SA. A lesson that can be learnt from this is to avoid and to *condemn and reject acts of corruption*.

Below follows an analysis on the element of *prioritisation of education and socialisation for democracy*.

#### 4.3.3.2 PRIORITISATION OF EDUCATION AND SOCIALISATION FOR DEMOCRACY: NATU AND SADTU JUDGEMENT

I advance the same argument that the *prioritisation of education and socialisation for democracy* are not directly reflected, but can be inferred (cf. 4.3.1.2).

#### 4.3.3.3 PROMOTION OF DELIBERATION AND DIALOGUE: NATU AND SADTU

##### JUDGEMENT

The allegations that were levelled by some individual members of NATU towards SADTU seem to have been based on hearsay. This is evident from what the Vice-President of NATU was told about deliberations at a meeting where the person who delivered the message to the Vice-President was not present [4]. Another meeting's deliberations that were not confirmed were delivered to NATU [5]. Based on this, it seems no effort was taken to engage in genuine and credible *deliberations and dialogue* between NATU on the one side and SADTU and department officials on the other, especially in the light of the serious nature of the allegations. These allegations should have been addressed through consultation as well as *deliberation and dialogue* sessions.

The court acknowledged that NATU did not voice any objections, even though they were part of the deliberations that took place in reaching consensus on the workings of the panel [22]. In this regard, the court asserted that "NATU missed the opportunity to build safeguards against political patronage during the negotiations for the collective agreements and subsequently during its implementation" [22]. This supports the idea that opportunities for *deliberation and dialogue* were available. The court further asserted that NATU should have created opportunities to engage with the Superintendent-General on various issues of concern [23; 29 & 42].

NATU was reminded that "[t]he entire labour relations regime is built on the belief that agreed outcomes are preferable to adjudication" [45]. I contend that this emphasises the principle upon which labour related issues in education need to be addressed, and that is through *deliberation and dialogue*.

#### 4.3.3.4 PROMOTION AND DISPLAY OF TRUST: NATU AND SADTU JUDGEMENT

The unsubstantiated reports by the NATU members regarding the domination of SADTU members in the panels was the basis for the dispute [4-5]. So the issue of *trust* is clear in this case. The NATU members did not trust that both the Superintendent-General and SADTU members were going to treat members of NATU fairly, highlighting the issue of *trust* [7]. In addition, the court doubted that NATU's "source is reliable for founding a reasonable suspicion about a decision taken by the Superintendent-General" [34]. This exposition

demonstrates that NATU did not have *trust* in either the officials or the process itself. However, not trusting may sometimes be an advantage for democracy.

Mechanisms have been built into the system of democracy, such as the labour court, to enhance democracy. In this way the critical assessment of the actions of others, especially those in positions of power, is an aspect of human rights. In this case, an assessment was done of whether corruption had taken place, and this can enhance democracy. The assessment could also have ensured that the best candidates for employment would have been appointed, which in my view, would be advantage to the education system and democracy.

Based on the exposition on trust above, it can be accepted that the *display of trust* was addressed in this judgement.

#### 4.3.3.5 CREATION OF A LEARNING ORGANISATION: NATU AND SADTU JUDGEMENT

I advance the same argument that *education and socialisation for democracy* are not directly reflected, but can be inferred (cf. 4.3.1.5) in this case.

### 4.4 SUMMARY

After having considered the discussion on the analysis on the elements of a conducive environment for democracy as reflected in the *Constitution*, legislation, and case law, I present a summary of the findings in the form of a table.

**Table 4-1: Summary of the reflection of the elements of a conducive environment for democracy in the South African legal framework for education.**

Elements of a conducive environment	Constitution (RSA)	NEPA	SASA	EEA	EFF & DA V SPEAKER	FREEDOM STATIONERY	NATU V KZN EDUCATION
1. Condemnation and rejection of acts of corruption	Addres sed	Addres sed	Addres sed	Addres sed	Addres sed	Addres sed	Addres sed
2. Prioritisation of education and socialisation for democracy	Addres sed	Addres sed	Addres sed	Addres sed	Addres sed	Addres sed	Addres sed

3. Promotion of deliberation and dialogue	Addressed	Addressed	Addressed	Addressed	Addressed	Addressed	Addressed
4. Promotion and display of trust	Addressed	Addressed	Addressed	Addressed	Addressed	Addressed	Addressed
5. Creation of learning organisations	Addressed	Addressed	Addressed	Addressed	Addressed	Addressed	Addressed

## 4.5 CONCLUSION

In line with the objective of the study and this chapter, i.e. to determine whether the *elements of a conducive environment* for democracy are aligned with the South African legal framework, I contend that they do.

I have considered the *Constitution*, the *NEPA*, *SASA*, *EEA* as well as case law as sources of law encompassing the South African legal framework in this chapter. In this regard, the *Constitution* and legislation (*NEPA*, *SASA* and *EEA*) reflect all five elements of a conducive environment. The conclusion is that the elements of a conducive environment for democracy as identified in the derived framework for democracy are aligned with that of the *Constitution*, the *NEPA*, *SASA*, *EEA* and case law.

In Chapter 5, a determination will be made as to how and whether the *essential principles of democracy* identified in the derived framework for democracy are reflected in the *Constitution*, specific education policy, and case law. This will be used to establish whether the comprehensive framework on democracy is aligned with that of the South African legal framework for education.

# CHAPTER 5: COMPARING THE ESSENTIAL PRINCIPLES OF DEMOCRACY WITH THE LEGAL FRAMEWORK

## 5.1 INTRODUCTION

In the previous chapter *elements of a conducive environment* of the derived framework were analysed as to whether and how they resonate with specific South African education legislation (cf. 1.4, Objective 2.1). In this chapter the aim is to analyse how the derived framework's *essential principles of democracy* resonate with the South African legal framework in the context of education (cf. 1.4, Objective 2.2). In this regard, I argue that democracy can be better conceptualised in relation to its constitutive principles. Towards this, I will evaluate whether the essential principles of democracy derived in Chapter 3 are aligned with that of the South African legal framework for education (cf. 4.1).

Resonance regarding the essential principles of democracy between the derived and South African legal frameworks will be considered in an integrated manner. Since I have argued that the derived essential principles of democracy are relevant in SG practices and policies in SA (cf. Chapter 3), I will analyse whether these are also present in the sources of the South African legal framework for education. If the sources, including the *Constitution*, specific education legislation and case law, address the essential principles of democracy, by implication resonance would have been evaluated. This is not an evaluation of the South African legal framework for education *per se*, but rather an investigation to determine if the essential principles are aligned with that of the different sources of the South African legal framework.

It should be noted that the *Constitution*, specific education legislation and case law will be addressed in this regard.

## 5.2 LEGAL FRAMEWORK

The essential principles of democracy that will be analysed include *participation, representation, respect for human rights, free and fair elections, respect for the rule of law, separation of powers, free and independent media, transparency and accountability* as well as *the promotion of authentic partnerships* (cf. 3.3).

In this section I endeavour to evaluate whether the principles of democracy that were identified, are addressed in the legal framework for education. If these are addressed in the legal framework for education, then by implication, resonance would have been found. I will start with the *Constitution*.

### 5.2.1 THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA: REFLECTIONS ON THE ESSENTIAL PRINCIPLES OF DEMOCRACY

#### 5.2.1.1 PARTICIPATION

The *Constitution* promotes *participation* through various platforms. These include *inter alia* political and public administration. First and foremost, the *Constitution* states that in order to create and develop an open and democratic state, this must be based on the will of the people. (RSA, 1996a: Preamble). This presupposes that citizens' *participation* in the affairs of the state should be provided for and promoted. It can further mean that if the citizens are not provided with opportunities for meaningful and genuine *participation*, the democratic state cannot be realised. I contend that the *participation* referred to in this case also relates to school governance.

*Participation* can occur through joining any organisation, and this is enshrined in the *Constitution* (RSA, 1996a: Chapter 2, Section 18). Not only are citizens free to associate with any organisation or structure in the community, but they are also given the right to participate in the activities of the organisation. This they can do by accepting nominations to serve and be actively involved in elected positions. They may also participate by influencing who may be elected into positions to carry out the functions and responsibilities of the organisation (RSA, 1996a: Chapter 2, Section 19(1)(b) & (3)(b)).

Although not directly referring to SG, the call for *participation* is also encouraged in the activities of both the National Assembly and the National Council of Provinces (NCOP) (RSA, 1996a: Chapter 4, Sections 59(1)(a) & 72(1)(a)). However, it should be noted that the National Assembly and the NCOP have committees that deal with education-related issues. In this regard, such initiatives that promote *participation* therefore also incorporate education and SG practices and policy-related matters. It is worth noting that parent *participation* in SG has been recognised as a concern due to their perceived reluctance to participate in SG activities (cf. 3.3.3). The call for *participation* in political settings as referred

to through both the proceedings of the National Assembly and the NCOP would therefore be welcomed and encouraged in SG practices and policies in SA.

The *Constitution* is also clear in its endeavour to promote public *participation* and the exercising of democratic values and principles, particularly regarding policy-making initiatives (RSA, 1996a: Chapter 10, Section 195(1)(e)). Since parents and other stakeholders are continuously encouraged and requested to participate in SG activities (cf. 3.3.3), they should be able to actively participate in policy-making and decision-making as referred to in Section 195 above. The right to *participation* is also extended to children through legislation which supplements those rights of children as enshrined in the *Constitution* (RSA, 2005: Section 8(1)). In this regard, “[e]very child that is of such an age, maturity and stage of development as to be able to participate in any matter concerning that child has the right to participate in an appropriate way and views expressed by the child must be given due consideration” (RSA, 2005: Section 10).

The above exposition seems to encourage *participation* of citizens in all spheres that affect their lives, and this therefore includes participation in SG practices and policies in SA.

#### 5.2.1.2 REPRESENTATION

The *Constitution* allows for the fact that it is not practically possible for all citizens to be involved in the managing of democratic tasks at the same time. These tasks include *inter alia* contributing to the establishment of a society based on democratic values, social justice and fundamental rights. In this regard, it acknowledges that this can be made possible through representatives who have been freely elected (RSA, 1996a: Preamble). The fact that the *Constitution* prescribes how these representatives should be elected suggests that it takes *representation* seriously. Representatives should be elected freely, for example.

The *Constitution* further directs that representatives should possess the appropriate and requisite abilities, objectivity and fairness, and they need to take part in redressing the imbalances of the past to contribute to achieving broad *representation* (RSA, 1996a: Chapter 10, Section 195(1)(i)). They also need to ensure that public administration should be governed by democratic values and principles enshrined in the *Constitution*, and should also ensure that the public administration should be broadly representative of the South African people (RSA, 1996a: Chapter 10, Section 195(1)(i)). This implies that SG practices and policies should reflect the demographics of learners and parents in the school.

The exposition above reflects the weight that the *Constitution* affords *representation* and representatives. One of the conditions as set out above is how they are elected, which suggests the interrelatedness between representatives and elections. Furthermore, one of the vehicles for adhering to the essential principle of *representation* is the promotion and commitment to *free and fair elections*.

### 5.2.1.3 FREE AND FAIR ELECTIONS

In emphasising the significance of elections, the *Constitution* directs that the right of every citizen to free, fair and regular elections for any governing body established in terms of the *Constitution* should be respected (RSA, 1996a: Chapter 2, Section 19(2)). The *Constitution* attaches importance to *free and fair elections* by reminding citizens about the democratic status of SA. The reminder is that democratic SA is founded on values that include “[u]niversal adult suffrage, a national common voter’s roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness” (RSA, 1996a: Chapter 1, Section 1(d)). I posit that this is also applicable in SG practices and policies in SA. In line with the above, SG elections use guidelines (DBE National Guidelines, 2012) that have to be adhered to (cf. 3.3.3), and most of these guidelines are aligned with what the *Constitution* proposes.

Since citizens have the right to association (RSA, 1996a: Chapter 2, Section 18), they also have the opportunity to elect leaders in those associations or organisations. Such organisations should also abide by the rules and conditions of the *Constitution* of SA. Conditions for *free and fair elections* entail that stakeholders practice their constitutional right to vote, and to do so in secret. They also have the right to participate in recruitment campaigns (RSA, 1996a: Chapter 2, Section 19(1)(a & b)); to vote for their preferred candidates in instances that require them to do so; and that they also have the right to stand for elections and to be voted into positions they have accepted nominations for (RSA, 1996a: Chapter 2, Section 19(3))a & b)).

I contend that the *Constitution* adequately reflects and recognises the importance of *free and fair elections* as an essential principle for democracy, and this also incorporates SG practices and policies in SA.



#### 5.2.1.4 RESPECT FOR HUMAN RIGHTS

The *Constitution* acknowledges our divided and undemocratic past, and the consequent lack of social justice and human rights. In response it declares that human rights, democratic values and social justice should be the basis on which any new society should be based and built (RSA, 1996a: Preamble). It further directs that *human rights* and freedoms be pursued, so that human dignity should be restored, and that strides to achieve equality should be advanced (RSA, 1996a: Chapter 1, Section 1). Besides human dignity, and freedoms, the *Constitution* enshrines all the human rights in the Bill of Rights (BoR), Chapter 2. This is indicative of the democratic nature and character of the *Constitution*.

Furthermore, basic *human rights* are regarded as the cornerstone of democracy (RSA, 1996a: Chapter 2, Section 7(1)) (cf. 3.3.4). Without the Bill of Rights there can be no democracy. “It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom” (RSA, 1996a: Chapter 2, Section 7(1)). The state needs to “respect, protect, promote and fulfil the rights in the Bill of Rights” (RSA, 1996a: Chapter 2, Section 7(2)). It however also discourages the abuse of *human rights*, and so it provides for limitations in section 36 and elsewhere in the *Constitution* (RSA, 1996a: Chapter 2, Section 7(3)). All citizens and organs of states are subjected to it.

The *Constitution* states that “[t]he BoR applies to all law, and binds the legislature, the executive, the judiciary and all organs of state” (RSA, 1996a: Chapter 2, Section 8(1)). This includes schools and SGBs, as these bodies were brought about through legislation (*NEPA & SASA*). The BoR therefore expects that SG practices and policies in SA should exhibit and promote behaviour that is consistent with the democratic values and *human rights* it enshrines. Some of these include *inter alia* that the enjoyment of all rights and freedoms will be protected and advanced, and that stakeholders will be protected against unfair discrimination (RSA, 1996a: Chapter 2, Section 9(2)).

In an effort to further strengthen the resolve to ensure that *human rights* are protected, the BoR has made provision for the establishment of bodies or institutions specifically aimed at strengthening democracy in SA (RSA, 1996a: Chapter 9, Section 181(1)(b)). One of these is the Human Rights Commission (HRC). This institution deals with a number of *human rights* issues that are also related to SG practices and policies in provinces across SA (cf. 3.3.4). To entrench and strengthen democracy in society in general and SG practices and policies in SA in

particular, the HRC has some constitutional imperatives and obligations. These include *inter alia* to “promote respect for human rights and a culture of human rights; promote the protection, development and attainment of human rights; and monitor and assess the observance of human rights in the Republic” (RSA, 1996a: Chapter 9, Section 184(1)a-c)). Furthermore, the HRC has also been endowed with powers to “to investigate and to report on the observance of human rights; to take steps to secure appropriate redress where human rights have been violated; to carry out research; and to educate” (RSA, 1996a: Chapter 9, Section 184(2)(a-d)).

In assisting the HRC, the *Constitution* directs that state organs, such as those for education, should report annually on measures they have employed in achieving the targets set regarding *human rights* issues (RSA, 1996a: Chapter 9, Section 184(3)). Whether this is happening may be another issue. Tensions regarding *human rights* violations in schools do seem to catch the attention of the media, and they are on the agenda of the HRC (cf. 3.3.4). From this exposition, one can acknowledge that the essential principle of basic *human rights* in relation to SG practices and policies in SA in particular, and democracy in general, is addressed in the *Constitution*.

#### 5.2.1.5 RESPECT FOR THE RULE OF LAW

The *Constitution* is the supreme law of the Republic, stating that every citizen should enjoy equal protection before the law (RSA, 1996a: Preamble; RSA, 1996a: Chapter 1, Section 1(1)). This raises both expectations and implications, as the *Constitution* rules “conduct inconsistent with it as invalid, and (that) the obligations imposed by it must be fulfilled (RSA, 1996a: Chapter 1, Section 2). This means that no other rule, position, structure or person should be regarded as superior to the *Constitution*. It also implies that behaviour which contravenes the *Constitution* should not be tolerated. Furthermore, every citizen should abide by what it advocates. Stakeholders in SG, as citizens of the country, are also expected to comply.

One of the expectations is that stakeholders need to be cognisant about the rights of children (RSA, 1996a: Chapter 2, Section 28), and the right to education (RSA, 1996a: Chapter 2, Section 29). In other words, SG practices and policies in SA should be consistent with the *rule of law* including *inter alia* rights of children, citizens in general, and other juristic and legal entities. This may manifest through treating others equally before the law, and the “right to equal protection and benefit of the law” (RSA, 1996a: Chapter 2, Section 9(1)). It also implies

that particularly the vulnerable are not discriminated against (RSA, 1996a: Chapter 2, Section 9(2)).

This study has reported on a number of cases where governing bodies and other interested parties within the sphere of education and SG have taken the department of education (both national and provincial) to court (cf. 3.3.5). The *Constitution* directs that citizens should adhere to court rulings and what the law prescribes. *Respect for the rule* as an essential principle of democracy is obviously reflected in the *Constitution*.

#### 5.2.1.6 SEPARATION OF POWERS

It has previously been stated that stakeholders and structures should be respected (cf. 3.3.6 & 5.2.1.5), and that *the rule of law* should be respected when dealing with matters of mutual interest - particularly in SG practices and policies in SA. I posit that *respect for the rule of law* also relates to acknowledging that different stakeholders may have different responsibilities, functions and powers, and as a consequence the *separation of powers* should be respected and adhered to.

The *separation of powers* has relevance to three branches of government, namely Legislative (RSA, 1996a: Section 43), Executive (RSA, 1996a: Section 85), and Judiciary (RSA, 1996a: Section 165). The *Constitution* states that other spheres and institutions should “respect the constitutional status, institutions, powers and functions of government in the other spheres”, and “not assume any power or function except those conferred on them in terms of the *Constitution*” (RSA, 1996a: Chapter 2, Section 41(1)(e & f)). I contend that this is also applicable to education and school governance in particular, where there is an expectation that the *separation of powers* and functions should be respected.

Although not all functions of government are directly provided for in the *Constitution*, legislation such as the *NEPA*, *SASA* or *EEA* do assist in clarifying the different roles and powers in this regard. Furthermore, legislation that is in contravention of the *Constitution* is not allowed (RSA, 1996a: Chapter 1 Section 1(c)). This effectively implies that the *separation of powers* should also not be violated or undermined, but adhered to and respected.

#### 5.2.1.7 TRANSPARENCY AND ACCOUNTABILITY

The *Constitution* states that democratic South Africa is founded on *inter alia* the value of accountability (RSA, 1996a: Chapter 1, Section 1(d)). It further states that organs of state

must “provide effective, transparent, accountable and coherent government for the Republic as a whole” (RSA, 1996a: Chapter 3, Section 41(1)(c)). It also states that “[p]ublic administration must be accountable” and should always be a priority (RSA, 1996a: Chapter 10, Section 195(1)(f)). Providing the public and stakeholders “with timely, accessible and accurate information” will foster transparency (RSA, 1996a: Chapter 10, Section 195 (1)(g)). In other words, schools and its attendant governance should, as state institutions, also address and comply with and the essential principle of *transparency and accountability* as reflected herein.

A lack of *transparency and accountability* may affect democracy in a negative manner. Those in management should be knowledgeable on important issues. If this is not the case the other stakeholders would not be able to engage meaningfully in decisions affecting them. This would in turn negatively affect democracy, because genuine participation may also be impacted upon. As a consequence, SG will also be negatively impacted. To enhance *transparency and accountability*, and by implication openness and democracy, the *Constitution* provides advice regarding co-governance. This advice respects and adheres to the principle of *transparency and accountability*, and needs to be nurtured and displayed. Some of the advice refers to utilising provisions such as the right to information, just administrative action, and access to courts (RSA, 1996a: Sections 32-34). Exercising these rights will create the opportunity for information to be made transparent, and to hold those in positions of authority accountable for their decisions and actions.

The above section suggests that if SG has to be provided in a manner that respects and exhibits the essential principles of democracy (such as *transparency and accountability*), the contents of this section needs to be taken into account.

#### 5.2.1.8 FREE AND INDEPENDENT MEDIA

In SA “[e]veryone has the right to freedom of expression, which includes freedom of the press and other media; freedom to receive or impart information or ideas; freedom of artistic creativity; and academic freedom and freedom of scientific research” (RSA, 1996a: Chapter 2, Section 16(1)(a-c)). I have discussed the role and importance of a *free and independent media* in SG (cf. 3.3.8). However, stakeholders in SG should be particularly socialised about allowing a *free and independent media* to operate in their environment. I contend that this can also highlight their profiles and inform communities about their successes and other important

information. Some schools use their school magazines to impart information, but the emphasis in this study is that school governance should allow *free and independent media* space to operate, if they request it. Although the *Constitution* guarantees *free and independent media*, it also discourages irresponsible and malicious intentions regarding the use of this right.

The expression of ideas that is intended to incite war, “imminent violence, advocacy of hatred that is based on race, ethnicity, gender, or religion, and that constitutes incitement to cause harm” (RSA, 1996a: Chapter 2, Section 16(2)(a-c)), is not permitted or promoted in any way. This implies that incitement due to the expression of ideas or the media threatens the safety of citizens, then stakeholders have a right to respond. This response can be to prohibit the media to operate in such situations. The National Assembly and NCOP have a constitutional obligation to allow the public to be involved in their processes, but they may deny the media this opportunity if it is reasonable and justifiable to do so (RSA, 1996a: Chapter 4, Sections 59(1 & 2; 72)(1 & 2)).

As one of the essential principles of democracy, a *free and independent media* plays a critical role in society and school governance. If this is suppressed, it would be difficult to even become aware how the other principles are impacted upon. The consequence of an open democratic society would be curtailed, and democracy would not be realised. It therefore seems no accident that the *Constitution* ensures that this principle is provided for. It however also limits the operation of the media in the same provisions and sections, notwithstanding the general limitation in section 36 of the BoR.

#### 5.2.1.9 PROMOTION OF AUTHENTIC PARTNERSHIPS

The *Constitution* acknowledges that democratic SA was brought about by the citizens of this country. People also “[b]elieve that South Africa belongs to all who live in it, united in our diversity” (RSA, 1996a: Preamble). This suggests that future challenges and the way forward should be approached in this same spirit. Similarly, citizens (including school governors) should be conscious of and accept duties and responsibilities of citizenship in an equitable manner (RSA, 1996a: Chapter 1, Section 3(2)(b)). I posit that this is where the principle of *authentic partnerships* come to the fore.

In encouraging *authentic partnerships*, the *Constitution* directs that stakeholders involved in cooperative governance must “co-operate with one another in mutual trust and good faith”

(RSA, 1996a: Chapter 3, Section 41(1)(h)). This may be done in various ways, including “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, 1996a: Chapter 3, Section 41(1)(h)(i-vi)).

From the brief exposition above, it can be noted that the *Constitution* emphasises that all citizens work together to bring about a democratic SA. This would facilitate and enhance democracy in SG practices and policies in SA.

I have presented an argument that the nine essential principles of the derived framework are reflected in the *Constitution*. This suggests that they are aligned with the *Constitution*. Another source of the South African legal framework for education is the *NEPA*, which I analyse below.

## 5.2.2 NATIONAL EDUCATION POLICY ACT 27 OF 1996: REFLECTIONS ON THE ESSENTIAL PRINCIPLES OF DEMOCRACY

### 5.2.2.1 PARTICIPATION

The main objective of the *NEPA* is *inter alia* the determination of policy by political heads, both at national (Minister) and provincial MEC or HOD level. The *NEPA* is explicit, unambiguous and emphatic that the determination of policy should be based on the condition that consultation of citizens or stakeholders, who will be affected by such policy, should be consulted (RSA, 1996c: Section 2(b)). This implies that *participation* and consultation is a prerequisite for policy development and implementation. The *NEPA* further directs that bodies are established to represent stakeholders (RSA, 1996c: Section 2(b)), so that they can participate on behalf of their constituencies. This further necessitates the establishment of structures to enable and promote *participation* (RSA, 1996c: Section 2(b)), if not yet in existence.

There are various sections and instances where the *NEPA* provides guidance regarding the promotion of *participation* and consultation of stakeholders. The *NEPA* directs that people in educational institutions should be allowed to use their own language to participate in the cultural lives of their choice (RSA, 1996c: Section 4(a)(iii)). It also directs that efforts to ensure that “broad public participation in the development of education policy and the

representation of stakeholders in the governance of all aspects of the education system” should be made (RSA, 1996c: Section 4(a)(iii)). Besides the determination of national policy, where consultation is a prerequisite (RSA, 1996c: Section 4(5)), matters related to the passing of legislation (RSA, 1996c: Section 4(6)) also warrants consultation and *participation*. It is critical to note in that this does not limit or restrict school governors in their *participation* in the affairs of education broadly, and SG in particular.

It seems that the *NEPA* acknowledges that the Minister will not be able to deal with all matters regarding the education of the nation by himself. In this regard, it suggests that bodies such as the National Education and Training Council (NETC) or others should be established to advise him accordingly (RSA, 1996c: Section 11). In matters related to SG practices and policies in SA, the *SASA*, which is a product of the *NEPA*, gives more clarity regarding SGBs.

The above not only explicates the importance of *participation* in education matters, but also highlights the critical role that *representation* and representatives play in both education and democracy.

#### 5.2.2.2 REPRESENTATION

In order to promote and enhance *representation*, the *NEPA* makes provision for the appointment of subcommittees, and to even appoint other members if a need arises, to ensure that stakeholders are represented and that they participate (RSA, 1996c: Section 10(3)). In cases of subcommittees, it should be ensured that professional teaching organisations are represented (RSA, 1996c: Section 10(3)).

The *NEPA*’s call for the establishment of representative bodies (cf. 5.2.2.1), suggests that it takes *representation* seriously. This is also evident in its emphasis that stakeholders in SG need to participate in all issues related to education (cf. 5.2.2.1). It should be noted that most of the issues reflected in the section above (cf. 5.2.2.1) should be carried out by representatives.

#### 5.2.2.3 FREE AND FAIR ELECTIONS

The *NEPA* does not explicitly reflect on elections. However, I argue that one can infer that it is being addressed in the choice of words such as “appoint other members” (cf. 5.2.2.2). These are concepts that are used in elections. It can be assumed that representatives were elected in the correct manner, as the *NEPA* directs that national education policy should be dealt with

in accordance with the *Constitution* (RSA, 1996c: Section 3(1)). One can therefore conclude that elections are implied in the *NEPA*.

Since representatives represent members or structures, these should have been nominated, elected and endorsed by their constituencies, otherwise they would not have their support. In the event that they were forced on the structures, and therefore not supported, implies that elections could have been a challenge.

#### 5.2.2.4 RESPECT FOR HUMAN RIGHTS

The *NEPA* contends that it is imperative that all South African people uphold their fundamental rights (RSA, 1996c: Preamble). This suggest that we should promote reciprocity, meaning that you should respect other people's rights as you would want them to respect yours. Taking this expectation a step further, implies that this should also be exhibited by SG practices and policies in SA. The *NEPA* asserts that in order to bring about a situation where the basic *human rights* of citizens are respected, national legislation should be adopted (RSA, 1996c: Preamble).

In an attempt to give guidance with regard to national policy determination, the *NEPA* offers concrete advice and guidance. It advises that national policy should ensure "that no person shall administer corporal punishment, or subject a student to psychological or physical abuse at any education institution" (RSA, 1996c: Section 3(4)(n)), but should provide for "the implementation of measures to address past discriminatory practices" (RSA, 1996c: Section 3(4)(r)). It further offers guidance regarding the aims and objectives that the intended national policy regarding basic *human rights* should be geared to. It asserts for example that national policy should be geared to "the advancement and protection of the fundamental rights of every person guaranteed in terms of Chapter 2 of the Constitution, and in terms of international conventions ratified by Parliament" (RSA, 1996c: Section 4(a)).

Furthermore, the *NEPA* asserts that national policy should ensure that unfair discrimination is not promoted; where practicable all should have equal access to education opportunities; that the language of instruction as a choice should be considered; that "the freedoms of conscience, religion, thought, belief, opinion, expression and association within education institutions" should not be ignored; it should allow for the establishment of "education institutions based on common language, culture or religion, as long as there is no discrimination on the ground of race"; and that citizens be allowed to "use the language and



participate in the cultural life of his or her choice within education institutions” (RSA, 1996c: Section 4(a)(i)(ii)(v)(vi)(vii)(viii)). Most importantly the *NEPA* should create a conducive environment that promotes the advancement of democracy, *human rights*, and the peaceful resolution of disputes (RSA, 1996c: Section 4(b)).

#### 5.2.2.5 RESPECT FOR THE RULE OF LAW

When determining national policy, the *NEPA* directs that due regard to the provisions of the *Constitution* and this Act should be adhered to (RSA, 1996c: Section 3(1)). This implies that the *rule of law* should be respected, as this is an important principle as directed by the *Constitution* (cf. 5.2.1.5). The *NEPA* further deals with the monitoring and evaluation of education (RSA, 1996c: Section 8), which suggests that some sort of oversight role is played by structures and individuals. People in such positions may be tempted to overstep their authority, or even to abuse their authority.

In an effort to manage and limit the potential abuse of authority and power when the monitoring and evaluation of education is conducted, the *NEPA* directs that due regard to the *rule of law* should be complied with, particularly regarding issues relating to the national qualifications framework (RSA, 1996c: Section 8(2)(1)). Should the Minister become aware that *the rule of law* or provisions of the *Constitution* are not adhered to, he should inform the political head of education and request an intervention plan within a stipulated period (RSA, 1996c: Section 8(6)).

From the above, it can be noted that the *NEPA* is committed to and reflects *respect for the rule of law*.

#### 5.2.2.6 SEPARATION OF POWERS

I did not find any direct reference on the *separation of powers* in the *NEPA*. It can be implied that the *separation of powers* needs to be acknowledged and respected if one looks at the policies, legislation and regulations being promulgated by the national Minister, and those promulgated at provincial level through either an MEC or HOD (cf. 5.2.2.1). It has already been argued in this study that the *separation of powers* with regard to the three spheres is constitutionally provided for (cf. 5.2.1.6). This difference in the functions of the different levels implies that the *separation of powers* is acknowledged and respected.

#### 5.2.2.7 TRANSPARENCY AND ACCOUNTABILITY

The *NEPA* requires that consultations with stakeholders should take place prior to the determination of policy, and promotes the “publication and implementation of national education policy” (RSA, 1996c: Section 2(b-c)). The drafting of policies requires consultation, which implies that different stakeholders will have knowledge of and access to the contents of those policies. This will enhance transparency. The *NEPA* also requires that the provision of education should be monitored and evaluated (RSA, 1996c: Section 2(d)). Those responsible for the provision of education will be held accountable for the provision of infrastructure such as toilets and classrooms, for example. In this regard, the national Minister of Education has been taken to court for the provision of textbooks in Limpopo (Veriava, 2013:2), implying that the Minister is also accountable for textbooks. In addition, the *NEPA* clarifies details with regard to the publication of national education policy, and the monitoring and evaluation of education, detailing the responsibilities of specific role players (RSA, 1996c: Sections 7 & 8). In line with publishing policies and reports on education matters, it can also be implied that the public can hold officials accountable (RSA, 1996c: Sections 2(c) & 7). Based on the above I argue that *transparency and accountability* is addressed in the *NEPA*.

#### 5.2.2.8 FREE AND INDEPENDENT MEDIA

The directive by the *NEPA* for encouraging a *free and independent media* is visible through a number of provisions. These include that national education policies needs to be published (RSA, 1996c: Section 2(c)), and that after legislation has been passed, it should also be published (RSA, 1996c: Section 6). In cases where national education policy deals with instruments that accompany them, such legislation or notices to that effect have to be published in the Gazette within a stipulated period (RSA, 1996c: Section 7(a & b)).

In cases of monitoring and evaluation of national education policies, this is the responsibility of national department of education (RSA, 1996c: Section 8(4)). In addition, the *NEPA* contends that the reports on the results of such investigations should be published after giving concerned stakeholders an opportunity to respond (RSA, 1996c: Section 8(5)). This sharing of information also extends to committees that are linked to Heads of Education Departments (RSA, 1996c: Section 10(2)( b)), which I interpret as the promotion of *free and independent media*. Through the publication of policies and reports, a *free and independent media* is able to criticise where it thinks criticism is justified. Examples exposed in the media

include the issue of pit toilets and the Limpopo textbooks saga (cf. 4.2.4.4). The foregoing can also be ascribed to the provisions of the *NEPA*.

#### 5.2.2.9 PROMOTION OF AUTHENTIC PARTNERSHIPS

The *NEPA* categorically enables the Minister to determine national policy to specifically promote authentic partnerships between provincial education departments, local governments, and non-governmental organisations (RSA, 1996c: Section 3(4)(p)(i-iv)), and by implication amongst SG constituencies. This is further emphasised by calling for close “co-operation between the national and provincial governments on matters relating to education, including the development of capacity in the departments of education, and the effective management of the national education system” (RSA, 1996c: Section 4(o)). The directive of building authentic partnerships also refers to the monitoring and evaluation of education, and in this regard, the analysis of data in co-operation with provincial education departments (RSA, 1996c: Section 8(3)).

A further indicator of promoting authentic partnerships is through calling for the co-ordination of actions “on matters of mutual interests to the national and provincial governments”, as well as promoting the sharing of “information and views on all aspects of education in the Republic” (RSA, 1996c: Section 9(4)(b & c)). As in the case of *free and independent media*, the building of *authentic partnerships* also refers to the Heads of Education Departments. Heads of Education Departments are required by the *NEPA* to “co-ordinate administrative action on matters of mutual interests to the education departments” (RSA, 1996c: Section 10(2)(c)).

In light of the above, the essential principles of democracy are reflected in the *NEPA*. The *SASA* is analysed below.

### 5.2.3 SOUTH AFRICAN SCHOOLS ACT 84 OF 1996: REFLECTIONS ON THE ESSENTIAL PRINCIPLES OF DEMOCRACY

The *SASA* seems to address the essential principles of democracy fairly well.

#### 5.2.3.1 PARTICIPATION

*Participation* features quite prominently in the *SASA*, as is evident from the following requirements: The *participation* of stakeholders is regarded as a prerequisite in matters that

relate to mergers of schools (RSA: 1996b: Sections 12A (2)(b) & (6)(a)); ensuring the involvement of learners through their representatives in school governance matters (RSA: 1996b: Section 11(1)); ensure that governing bodies hold meetings and reminding that parents, learners, educators and other staff at the school have to be present at those meetings, as well as making minutes of meetings available for inspection by the HOD and making reports available to all stakeholders (RSA: 1996b: Section 18(2) (a-e)).

The requirement for meetings with all stakeholders where the activities of the governing body are discussed and decisions are made, is emphasised. From the minutes and reports it would be possible to determine stakeholder *participation* and how decisions were made.

Other instances where consultations and meetings are highlighted, are when topics such as the approval or adoption of a budget (RSA: 1996b: Section 38(2)); issues relating to school fees (RSA: 1996b: Section 39(3)); and various other situations in the *SASA* are dealt with. The essential principle on *participation*, as put forth in the paragraphs above, to a greater extent assumes that *representation* and elections were done properly.

#### 5.2.3.2 REPRESENTATION

The *SASA* seems to promote broad participation by prescribing that, as far as possible, those involved in SG should be represented on governance structures at schools. In this regard, the *SASA* states that learners should be represented by learners who have been elected onto the representative council of learners, and only schools with Grade 8 and higher may have a representative council of learners (RSA: 1996b: Sections 11(1); 23(2)(d) & (2)(4)). Parents whose children are learners at the school, elected members, the principal in his or her official capacity, co-opted members, educators at the school, and members of the staff at the school who are not educators (RSA: 1996b: Section 23(1) & (2-7)) can serve on the SGB.

In emphasising the legitimacy of representatives on the governing body, the *SASA* goes to the extent of directing that only learners who have been elected onto the representative council of learners can represent learners on the SGB (RSA: 1996b: Section 23(2)(d)). It also states that the parent component of the governing body must always be one more than the combined total of other representatives who are eligible to vote (RSA: 1996b: Section 23(9-10)). Furthermore, the *SASA* directs that representatives be consulted in for example the adoption of a code of conduct for learners (RSA, 1996b: Section 8(1)). Other sections where legitimate representatives are required are for example when governing body meetings are

held (RSA, 1996b: Section 8(1)); when a specific governing body represents the school's governing body at a voluntary association (RSA, 1996b: Section 20(3)); and elsewhere in the Act. The SASA emphasises the expectation that *representation* should be legitimate, and that those representing the stakeholders had been properly elected, according to the predetermined criteria.

### 5.2.3.3 FREE AND FAIR ELECTIONS

The SASA gives clear guidelines regarding the elections and the terms that representatives should serve on the governing body. These guidelines include *inter alia* “the term of office of members and office-bearers of a governing body”; “the designation of an officer to conduct the process for the nomination and election of members of the governing body”; procedures for the removing and filling of vacancies; the utilisation of a formula to determine the number of or members who are to serve on the governing body; as well as other matters related to *free and fair elections* (RSA, 1996b: Section 28(a-d & f-g)).

The SASA further reflects on the essential principle of democracy by giving valuable information regarding school governing body membership in public ordinary schools. This membership comprises elected members; the principal, in his or her official capacity; and co-opted members (RSA, 1996b: Section 23(1)(a)). It also includes parents, educators, non-educators and learners, all of whom have to be elected by their own respective constituencies. Elections are not only prioritised with regard to members of the governing structure, but also at the level of office-bearers. In this regard it states that “[a] governing body must, from amongst its members, elect office-bearers, who must include at least a chairperson, a treasurer and a secretary” (RSA, 1996b: Section 29(1)). It does, however, also provide guidance as to who qualifies to be a chairperson (RSA, 1996b: Section 29(2)). Furthermore, it also provides information on the election process to be followed in the case of a vacancy.

The SASA provides guidance regarding how and when elections should take place to fill vacancies on the SGB, or when co-option should be effected (RSA, 1996b: Section 23(11 & 12)). This extends to schools catering for learners with special education needs (RSA, 1996b: Section 24(2)). In this manner, inclusivity and diversity is attended to. Besides potential vacancies and resignations, governing bodies may become dysfunctional for some reason. In this case, the SASA directs that the HOD should ensure that elections are conducted using the

same terms as stated in the Act (RSA, 1996b: Section 25(3)), so that the voices of all members of the governing body are always heard. This will ensure that all constituencies are always represented. It is important to note that the SASA directs that “reasonable representation for each category” (RSA, 1996b: Section 28(f)), must be ensured, and that the different circumstances and sizes of public schools must be taken into account, although the fairness of elections should never be compromised.

Based on the above, I posit that it is important that these guidelines are upheld. If not, then representatives who do not have the support of their constituencies will participate and take decisions on behalf of stakeholders, which is not fair. This may impact on decision-making and the participation of stakeholders in the affairs of the governing body although it would be quite undemocratic. Furthermore, elections that do not follow these guidelines may jeopardise the interests of those they are supposed to represent. One can therefore accept that the SASA adequately regards *free and fair elections* as an essential principle of democracy.

#### 5.2.3.4 RESPECT FOR HUMAN RIGHTS

*Human rights* as an essential principle of democracy seem to be highly prioritised in the SASA. This is evident in the various sections encapsulated in the Act. The first of these is the right to education, where parents are given the responsibility to ensure that their children attend school (RSA, 1996b: Section 3(1)). This addresses the right to education, which is a basic *human right* (RSA, 1996a: Chapter 2, Section 29(1)(a)). This basic *human right* is protected even during instances of suspension and expulsion, when learners still have the right to be heard and represented (RSA, 1996b: Section 9(1 & 1A)). Alternative education opportunities are provided for in cases of learners found guilty while still subject to compulsory schooling (RSA, 1996b: Section 9(5)).

Other *human rights* provisions include *inter alia* the freedom of conscience and the observance of religion (RSA, 1996b: Section 7); the prohibition of corporal punishment (RSA, 1996b: Section 10), which is linked to the “right to be free from all forms of violence from either public or private sources” (RSA, 1996a: Section 12(1)(c)), and “the right to be protected from maltreatment, neglect, abuse or degradation” (RSA, 1996a: Section 28(1)(d)); that their dignity be protected through the maintenance and provision of educational resources and infrastructure (RSA, 1996b: Section 21(1)(a & c)); that racism and sexism be combated (RSA,

1996b: Preamble); and the protection and advancement of all diverse cultures and languages, as well as the combating of all forms of unfair discrimination and intolerance (RSA, 1996b: Preamble). In addition, the SASA prohibits the practice of racial discrimination in the implementation of the language policy determined by the SGB (RSA, 1996b: Section 6(3)).

Although the issue of language is a contentious issue in our schools, this is contrary to what the SASA actually proclaims. The SASA authorises governing bodies to determine language policy (RSA, 1996b: Section 6(2)), but governing bodies should refrain from promoting racial discrimination when implementing these policies (RSA, 1996b: Section 6(3)). As a means to alleviate the potential for discrimination through the language policy, the Act directs that governing bodies of public schools need to “ensure that there is no unfair discrimination in respect of any official languages that are offered as subject options” (RSA, 1996b: Section 6B)).

From this exposition, one understands the importance of language in public schools and society, and this is reflected in the attention it receives through the SASA. The discouragement of discriminatory practices is also relevant and extended to initiation practices in schools (RSA, 1996b: Section 10A), particularly those that can be perceived as violating basic *human rights* of stakeholders in school governance in South Africa.

In an effort to appreciate and promote *human rights* in SG practices and policies in SA, the SASA prohibits any action that may harm or endanger stakeholders’ physical or mental health or safety, or subjecting “individuals to humiliating or violent acts which undermine the constitutional guarantees to dignity in the Bill of Rights” (RSA, 1996b: Section 10A(3)(a & c)). The undermining of “the fundamental rights and values that underpin the Constitution”, or the impediment of “the development of a true democratic culture that entitles an individual to be treated as worthy of respect and concern” is also not permitted (RSA, 1996b: Section 10A(3)(d & e)).

As governing bodies and schools may own property on behalf of the State (RSA, 1996b: Section 13 (2)), the SASA directs that these should be protected (RSA, 1996b: Section 10A(3)(f)). Not only may governing bodies own property, but they also have a right to freedom of association (RSA, 1996a: Section 18). In this regard, the SASA, permits governing bodies to “voluntarily join provincial or national bodies representing governing bodies” (RSA, 1996b: Section 20(3)).

#### 5.2.3.5 RESPECT FOR THE RULE OF LAW

The SASA expects and asserts that governing bodies, through their representative stakeholders, execute their functions and responsibilities with due regard to the *Constitution* and the laws of the State. This implies that they should not only have *respect for the rule of law*, but should actually practice it. This expectation is indicated in a number of sections within the SASA. Provision for the *respect for the rule of law* is for example in the directive that “the governing body of a public school must function in terms of a constitution” as well as “applicable provincial law” (RSA, 1996b: Section 18(1). This phrase is prevalent in a number of sections. (RSA, 1996b: Sections 3(1)); 6(1); 8(1); 9(1); 12A(1); 13(8); 14(3); 18(1); 20(4 & 5); (11); (215(1)). It also suggests that the laws that govern education and SG practices and policies in SA need to be adhered to. Sometimes the SASA specifically directs what sections or parts it demands stakeholders to adhere to, and if not obeyed, it suggests possible sanctions or punishment. Sometimes it simply discourages disobedience to the *rule of law*.

The SASA directly focuses on the *rule of law* with regard to compulsory school attendance. The SASA directs that it is compulsory for parents to ensure that learners (between the ages of seven and fifteen) attend school (RSA, 1996b: Section 3(1)). The State, through the provincial HOD, must ensure that all learners attend school. If this is not the case, the HOD must institute an inquiry and take corrective action (RSA, 1996b: Section 3(5)(a & b)). If such corrective action fails, the HOD should obligate the parents, in writing, to comply. Should the parents not comply with the intervention of the HOD, the parent may be “found guilty of an offence, and is liable on conviction to a fine or to imprisonment for a period not exceeding six months” (RSA, 1996b: Section 3(6)(a)). Also, any other person who might prevent a learner to attend school after the intervention of a provincial HOD, is guilty of an offence and liable on conviction as in the case of a parent (RSA, 1996b: Section 3(5)(b)).

The State, through schools and its officials, are also expected to comply with the *rule of law*. In this regard, public schools are expected to admit learners and provide quality education without any discrimination (RSA, 1996b: Section 5(1)). Schools are not permitted to administer tests in order to determine legibility for admission (RSA, 1996b: Section 5(2)), as this would be against the law. The point here is that the SASA does call for the *respect for the rule of law*.



SG practices and policies in SA have been subjected to a number of court cases regarding various issues. Such court decisions, orders and judgements should be respected by all stakeholders. In this regard, the SASA demands stakeholders to *respect the rule of law* regarding issues regarding the language policy (RSA, 1996b: Sections 6(1)); code of conduct for learners in public schools (RSA, 1996b: Sections 8(1)); random search and seizure and drug testing at schools (RSA, 1996b: Sections 8A(1)); suspensions and expulsions from public school (RSA, 1996b: Sections 9(1)); the enforcement of the payment of school fees (RSA, 1996b: Sections 41(1)); functions of all governing bodies (RSA, 1996b: Sections 20 (4 & 5)); and the respect for distinguishing between governance and management function at schools (RSA, 1996b: Sections 16(3), amongst others. Furthermore, the SASA indicates that its various responsibilities, functions and roles must be carried out within the confines of the law. However, this requires being conscious of the different powers that are vested in its various structures and spheres.

#### 5.2.3.6 SEPARATION OF POWERS

In emphasising the different legal roles and responsibilities of each stakeholder, the SASA seems to particularly address issues where one or more stakeholders may infringe on the authority and responsibilities of another. In this regard, the SASA clearly delineates the powers, authority, roles and responsibilities of the different stakeholders, and this includes the parents (RSA: 1996b: Section 3(1 & 6)), principals (RSA: 1996b: Section 5(2, 3 & 6)), public schools (RSA: 1996b: Section 5(1 & 3)), SGBs (RSA: 1996b: Sections 5(2 & 5)) Heads of Department (HODs) (RSA: 1996b: Sections 3(5); 4; 5(6-8)), the MEC (RSA, 1996b: Sections 3(3 & 4)), and the Minister (RSA: 1996b: Sections 3(2); 5(4)).

The *separation of powers* is further emphasised through the functions of SGBs, where each of the stakeholders as mentioned above, as well as the learners, have been assigned definite roles in the governance of schools (RSA, 1996b: Sections 20 & 21). They also each have responsibilities regarding funding and its use (RSA, 1996b: Sections 34 & 36). It must further be noted that all stakeholders should operate within the confines of the *Constitution* and the *rule of law*, and should therefore not interfere with other stakeholders' roles and functions.

The *separation of powers* implies that no component should interfere in the sphere of responsibilities of another, but should answer to those who elected them. The *separation of powers* suggests that representatives should know to whom they report and are accountable

to. The SGB should know, for example, where to report any grievances they might have. This study earlier referred to mergers, and in such cases the governing body should know that they can contact the HOD, who has the responsibility to consider their case. In the case of admissions of learners, parents should know that they first have to approach the HOD before the matter is escalated to the MEC.

The above exposition reflects how the *SASA* addresses the *separation of powers*.

#### 5.2.3.7 TRANSPARENCY AND ACCOUNTABILITY

SG have to “keep records of funds received and spent by the public school and of its assets, liabilities and financial transactions”, and report on the finances annually (RSA: 1996b: Section 42(a & b)). Governors also have to convene meetings when dealing with school funds and fees (RSA: 1996b: Section 38(2)), suggesting that issues are dealt with in a transparent and accountable manner. Furthermore, the directive that the education department has to be furnished with minutes of meetings and audited financial statements (RSA: 1996b: Section 43(5)), emphasises and reinforces the importance of *transparency and accountability*.

The *SASA* directs that *transparency and accountability* can also be demonstrated through taking responsibility for the academic performance of learners, as well as the management of resources in public schools. In this regard, the principal is expected to prepare annual reports to determine whether educational outcomes have been achieved, and how resources were utilised (RSA: 1996b: Section 16A (1) (b)(i & ii)). Not only are schools expected to report, but MECs as well. MECs have to report to the Minister on compliance with norms and standards, and also to indicate how these can be achieved, if they have not been complied with (RSA: 1996b: Section 58C (3)). The lines of accountability seem to be clearly defined, as the principal, governing body, MEC and the Minister all have their specific responsibilities on which they have to report. These reports are open to the public, and therefore one can accept that the *SASA* does reflect on *transparency and accountability*, especially in the matters stated above.

Furthermore, the *SASA* categorically states that “[a] school must make information available for inspection by any person” (RSA: 1996b: Section 59(1)), particularly if individuals need to use such information. However, the department at both provincial and national levels is accountable to the electorate, so information also needs to be reported to them.

Another essential principle of democracy is the impact of *free and independent media*. The manner in which the principle of *free and independent media* was addressed, supports the idea that transparency is critical. I contend that if it were not for a *free and independent media*, the reports on corruption as published in the SA media might not have happened. The disputes regarding governance issues would not have received the wide attention they had, to the point of being escalated to the courts.

Based on the above exposition, I posit that the SASA supports and *promotes transparency and accountability*. This study further contends that not only should governing bodies be transparent and accountable, but they should also experience and contribute towards a *free and independent media*.

#### 5.2.3.8 FREE AND INDEPENDENT MEDIA

Schools with low learner enrolments, mostly in rural areas, are often merged in order to make better use of resources and to improve the quality of education. This process should be preceded by a process of consultation, and most importantly, it should be published in the local newspapers, informing the community (RSA: 1996b: Section 12A (2)(b & c)). This information should include *inter alia* the reasons for the merger, as well as other information which might be needed by stakeholders if they feel aggrieved (RSA: 1996b: Section 12A (2)(c)). This implies that the SASA promotes the idea that a *free and independent media*, accessible to all members of communities, should be available and used.

The general vehicle for communication, which the public also has access to, is the national and provincial Government Gazettes. In the case of mergers, for example, notice should be given in the Provincial Gazette (RSA: 1996: Section 12A (1)). This implies that other media houses and publications can access them and make the information available to communities. In this case, reference was also made to the usage of local newspapers.

It is not a given that newspapers should be used to communicate information, but it can assist to inform communities of new policies etc. of which they need to take note. In other words, the news media can be used to inform and educate communities. This was demonstrated in Gauteng when the Department of Education decided to implement online applications for admissions. This decision was published in a Provincial Circular 05/2016 dated 13 April 2016. The public's reaction through media platforms was overwhelming as it was published via print media, on radio, television, as well as social media platforms. This is why I assert that access

to information published in Government Gazettes or Circulars or Notices allows the broader media to distribute information to communities.

The SASA makes numerous references to when Government Gazettes can be used. These include instances where the national Minister (i.e. national Government Gazette) or the provincial MEC (i.e. Provincial Gazette) or both have jurisdiction. The reason I emphasise this, is that through the Government Gazettes, the *free and independent media* may access information and disseminate it to affected communities. I highlight from SASA which areas of information are specifically included, as examples. Where both national and provincial bodies have jurisdiction is when dealing with matters that include *inter alia* transitional provisions relating to governing bodies (RSA: 1996b: Section 54 (1); functions of all governing bodies (RSA: 1996b: Section 20(1)(m)); and regarding the duty of schools to provide information (RSA: 1996b: Section 59(1 & 2)), which can be utilised by anyone, including political entities. The Minister has jurisdiction when dealing with matters such as notifications regarding the age of learners regarding compulsory attendance (RSA: 1996b: Section 3(2)); admission of learners (RSA: 1996b: Section 5(4)(c)); functions of all governing bodies (RSA: 1996b: Section 20(11); the determination of norms and standards (RSA: 1996b: Section 20(11); school fees at public schools (RSA: 1996b: Section 39 (7); transitional provisions relating to schools other than private schools (RSA: 1996b: Section 52 (3)); and transitional provisions relating to immovable property of certain schools (RSA: 1996b: Section 55(1 & 2)).

The MEC has jurisdiction in matters that include *inter alia* a governing body serving two or more schools (RSA: 1996b: Section 17(2)(a)); the provisions for the constitution of governing bodies (RSA: 1996b: Section 18(1)); code of conduct of a governing body (RSA: 1996b: Section 18A(1)); allocated functions of governing bodies (RSA: 1996b: Section 21(6); membership of governing bodies of a school with learners with special education needs (RSA: 1996b: Section 24(2 & 3)); election of members of governing bodies (RSA: 1996b: Section 28); closure of public schools (RSA: 1996b: Section 33 (1)); annual budgets of public schools (RSA: 1996b: Section 38 (1)); registration of independent schools (RSA: 1996b: Section 46 (2)); declaration of independent schools as public schools (RSA: 1996b: Section 49 (2)); duties of MEC relating to independent schools (RSA: 1996b: Section 50 (1)); expropriation of land or real rights for the purposes of education (RSA: 1996b: Section 58 (1 & 2)); alienation of assets of public schools (RSA: 1996b: Section 58A (3)(c)); representative council of learners (RSA, 1996b:

Section 11(2 & 3)); mergers of public schools (RSA, 1996b: Section 12A (1)); and suspensions and expulsions from public schools (RSA, 1996b: Section 9(3)).

The above demonstrates that the *SASA* promotes *free and independent media*. I contend that amongst others, it is also the responsibility of the media to inform and sensitise various stakeholders of the importance of governing in partnership.

#### 5.2.3.9 PROMOTION OF AUTHENTIC PARTNERSHIPS

A democratic and transformed state where all social injustices, inequalities and deprivation, violations of human rights, unfair discrimination as well as all forms of inequality, particularly in the sphere of education and school governance, will not be achieved unless all stakeholders cooperate and work “in partnership with the State” (RSA, 1996b: Preamble). This implies that without a partnership with the State, the realisation of democracy in SG practices and policies in SA will be difficult to achieve, or even impossible.

Another instance where *authentic partnership* is promoted by the *SASA* is in the adoption of a code of conduct for learners. It states that “a governing body of a public school must adopt a code of conduct for the learners after consultation with the learners, parents and educators of the school” (RSA, 1996b: Section 8(1)). This may also be construed to be encouraging governing in partnership. The same understanding and argument can be applied to the directive of at least one constitutional governing body meeting per quarter (RSA, 1996b: Section 18(2)(a)). All stakeholders are expected to be present at these meetings and to participate meaningfully. Through such participation, partnerships can be enhanced, and the interests of the different constituencies may be addressed.

The expectation that the best interests of the school and the provision of quality education for all learners will be promoted (RSA, 1996b: Section 20(1)(a)) is the responsibility and function of all SG stakeholders. This expectation is dependent on the collective support to the principal and staff (RSA, 1996b: Section 20(1)(e)). Furthermore, the *SASA* calls for the encouragement of “parents, learners, educators and other staff at the school to render voluntary services to the school” (RSA, 1996b: Section 20(1)(h)). I contend that this directive, seeking to promote authentic partnerships, also refers to all functions of the governing body, as enshrined in the *SASA*.

Based on the exposition above, it can be concluded that the SASA endeavours to reflect on authentic partnerships as an essential principle of democracy.

Complimentary to the SASA is the *Employment of Educators Act 76 of 1998 (EEA)*, which will be discussed below. The aim is to determine how the *EEA* reflects the essential principles of democracy in SG practices and policies in SA, and how it contributes to this study as a whole.

#### 5.2.4 EMPLOYMENT OF EDUCATORS ACT 76 OF 1998: REFLECTIONS ON THE ESSENTIAL PRINCIPLES OF DEMOCRACY

##### 5.2.4.1 PARTICIPATION

The *EEA* obliges the governing body to be consulted and involved when educators are to be transferred. The *participation* of the governing body is also vital in making recommendations in that regard (RSA, 1998: Section 8(2)). The *EEA* further emphasises that when appointments, promotions or transfers are dealt with, this should be done based on the recommendation of the governing body (RSA, 1998: Section 6(3)(a)). Since the assumption is that the governing body comprises various stakeholders, this implies that the *participation* of stakeholders is required, and that the *EEA* promotes *participation*. Furthermore, when dealing with such issues, the governing body is expected to consider and adhere to democratic values and principles as enshrined in section 195 (1) of the *Constitution*. This includes meaningful *participation* in SG issues (RSA, 1998: Section 6(3)(b)(i)).

Another matter that implies the promotion of *participation* is that when issues of appointments, promotion and transfers have been concluded through collective agreements, these should be adhered to (RSA, 1998: Section 6(3)(b)(ii & iii)). This also implies that meaningful and genuine *participation* would have been promoted through these fora.

##### 5.2.4.2 REPRESENTATION

The requirement of the involvement of the governing body in participation also suggests that *representation* should be addressed, to give legitimacy to processes in SG practices and policies in SA. This deduction is informed by the recognition of collective agreements as referred to in the section above (cf. 5.2.4.1). As in the case of *participation* above, the *EEA* also directs that the governing body is expected to adhere to democratic values and principles enshrined in section 195 (1) of the *Constitution*, and this includes the principle of *representation* (RSA, 1998: Section 6(3)(b)(i)). The *EEA* emphasises that when governing

bodies deal with appointments and the filling of posts, they should ensure that “the need to redress the imbalances of the past in order to achieve broad representation” is addressed (RSA, 1998: Section 7(1)(b)).

In light of the brief exposition above, I contend that *representation* is reflected within the *EEA*.

#### 5.2.4.3 FREE AND FAIR ELECTIONS

I notice that the *EEA* does not expressly reflect on *free and fair elections*, but I assume that the promotion of *free and fair elections* is in some way implied. Examples would include that there is a directive that governing bodies should be involved and represented in governance matters, which implies that these have been preceded by *free and fair elections*. If this assumption is flawed, then the implication is that the collective agreements referred to in the section on *representation* (cf. 5.2.4.1), were not attained in a democratic manner. The legal and credible representatives of the stakeholders would not have been the ones who facilitated those agreements on their behalf, and as a consequence the issue of proper representation might have been compromised.

Based on the above exposition, I therefore assert that *free and fair elections* are implied in the *EEA*.

#### 5.2.4.4 RESPECT OF BASIC HUMAN RIGHTS

The *EEA* directs that *human rights* should be respected. It discourages conduct that “unfairly discriminates against other persons on the basis of race, gender, disability, sex, pregnancy, marital status, ethnic and social origin, colour, sexual orientation, age, religion, conscience, belief, culture, language, birth, family responsibility, HIV status, political opinion or other grounds prohibited by the Constitution” (RSA, 1998: Section 18(1)(k)).

*Human rights* are addressed through discouraging educators from being involved in conduct that may be interpreted as acts of misconduct (RSA, 1998: Section 18(1)). Some of these include adversely affecting the right of learners to education (which is a basic human right); “in the course of duty endangers the lives of himself or herself or others by disregarding set safety rules or regulations”; “assaults or attempts to or threatens to assault, another employee or another person”; “displays disrespect towards others in the workplace or demonstrates abusive or insolent behaviour”; “intimidates or victimises fellow employees, learners or students”; “prevents other employees from exercising their rights to freely

associate with trade unions in terms of any labour legislation”; and “victimises an employee for, amongst others, his or her association with a trade union”(RSA, 1998: Section 18(1)(a, e, r, t-v, & ff)).

#### 5.2.4.5 RESPECT FOR THE RULE OF LAW

The *rule of law* seems to be clearly defined in the *EEA*. This is evident in its discouragement of introducing laws and regulations that are not aligned to other legislation. In this regard it states, for example, that the making of regulations “which are not inconsistent with any law” (RSA, 1998: Section 35) should not be allowed. Although particular instances are referred to regarding the making of regulations (RSA, 1998: Section 35(a-e)), violations of applicable laws of the state are also discouraged. In this regard, the *EEA* states that “[a]n educator shall be guilty of misconduct if the educator contravenes or fails to comply with a provision of this Act or any law relating to education” (RSA, 1998: Section 17(1)(a)).

There are other references regarding the call for the upholding and respect *for the rule of law* in the *EEA* that focus on other issues and stakeholders. The *EEA*, through its focus on incidents of misconduct, highlights the issue of the call for the *respect for the rule of law*. This is particularly evident in its definition of misconduct as a “breakdown in the employment relationship and [that] an educator commits misconduct if he or she ... fails to comply with or contravenes this Act or any other statute, regulation or legal obligation relating to education and the employment relationship” (RSA, 1998: Section 18(1)(a)). The *EEA* seems to be unambiguous and emphatic in its call for *respect for the rule of law* as it discourages any form of behaviour that intends to undermine the *rule of law*, statute, regulation or legal obligation. Orders or directives derived from such legal instruments therefore need to be complied with.

If the *rule of law* is not respected, it may cause disorder and other negative behaviour that may lead to democracy being affected. The *EEA* attempts to discourage this, and highlights a number of acts of misconduct which, if left unchecked, could contribute to disrespect for the *rule of law*. These include *inter alia* “when an educator wilfully or negligently mismanages the finances of the State, a school or an adult learning centre”; “without permission possesses or wrongfully uses the property of the State, a school, an adult learning centre, another employee or a visitor”; “wilfully, intentionally or negligently damages or causes loss to the property of the State, a school or an adult learning centre”; “in the course of duty endangers



the life of himself or herself or others by disregarding set safety rules or regulations”; “unjustifiably prejudices the administration, discipline or efficiency of the Department of Education, an office of the state or a school or adult learning centre”; “misuses his or her position in the Department of Basic Education or a school or adult learning centre to promote or to prejudice the interests of any person”; “accepts any compensation in cash or otherwise from a member of the public or another employee for performing his or her duties without written approval from the employer”; “fails to carry out a lawful order or routine instruction without just or reasonable cause” or “commits an act of dishonesty” (RSA, 1998: Section 18(1)(b-i & ee)). These acts of misconduct through SG practices may negatively impact on the essential principles of democracy. If the laws and regulations related to these are not respected, this may undermine democracy in SG practices and policies in SA.

Non-compliance with the *rule of law* may in some cases inadvertently lead to the violation of the basic *human rights* of other, usually more vulnerable stakeholders, and this is not good for democracy, particularly regarding SG practices and policies in SA.

#### 5.2.4.6 SEPARATION OF POWERS

The *separation of powers* as an essential principle of democracy, is evident through a number of sections in the Act regarding the powers of the Minister, Director-General, the Member of the Executive Council (MEC) at provincial level, as well as the Provincial Head of Department are concerned. Educators in the service of the Education Department are employed by the Director-General, employment of educators at provincial Department level is the responsibility of the HOD, and salaries and other conditions of service are determined by the Minister (RSA, 1998: Section 3(1)(a & b) & (2)). Furthermore, the Act states that for the creation of posts, “the Minister shall be the employer of educators in the service of the said Department”; and at provincial level, “the Member of the Executive Council shall be the employer” (RSA, 1998: Section 3(3)(a & b)). Since public schools are actually the sites where teaching and learning take place, they serve as “the employer of persons in the service of the said school” (RSA, 1998: Section 3(5)).

I contend that the delineation outlined above can also include the principal, to whom educators and other employees report. It is important to remember that the staff does not report to the other senior officials mentioned on a daily basis, but to the principal of the school. They also apply for leave through the principal. The *EEA* reflects the *separation of*

*powers*, but what happens in practice could be another issue. Non-adherence to the application of the *separation of powers* implies an undermining of the rule of law, and this is generally discouraged in the *EEA*.

#### 5.2.4.7 TRANSPARENCY AND ACCOUNTABILITY

The *EEA* requires from the SACE to submit annual financial reports to the Minister to show how they have performed their functions (RSA, 1998: Sections 32(1)). The SACE is also required to account to the Minister on its income and expenditure for any financial year (RSA, 1998: Sections 31(2)(b)). Although not extensively reflected, this can be construed to be promoting *transparency and accountability*. In other words how funds are appropriated would be exposed, and hopefully responsibility will be demonstrated, promoting *transparency and accountability*.

#### 5.2.4.8 FREE AND INDEPENDENT MEDIA

Apart from reflecting on the annual financial reports of SACE, information regarding due dates regarding the registration of educators seems to be the only instance where the media is referred to. In this regard, the *EEA* states that the employment of educators is dependent on the registration of educators with the SACE, of which the information shall be published by the Minister in the Gazette (RSA, 1998: Section 29(4)). This can also be done provisionally, while related issues are finalised.

#### 5.2.4.9 PROMOTION OF AUTHENTIC PARTNERSHIPS

The *EEA* places a strong emphasis on the appointment, promotion and transfer of educators with regard to the powers of employers. It directs that these actions should take place on the condition that the recommendation of the governing body should have been considered (RSA, 1998: Section 6(3)(a)). Furthermore, in cases where collective agreements might have been entered into, these should be respected and adhered to (RSA, 1998: Section 6(3)(b)(ii & iii)). This implies that the *EEA* supports and promotes the principle of the promotion of *authentic partnerships*. This is based on the assumption that all stakeholders would have participated in such a processes. There is an expectation that they would have acted in *authentic partnership*.

### 5.3 HOW CASE LAW REFLECTS THE ESSENTIAL PRINCIPLES OF DEMOCRACY IN EDUCATION POLICY

I acknowledge my status of not being a trained legal expert, and relied on Deacon's advice on the selection and interpretation of case law (cf. 4.3). In this regard, two specific judgements were purposely selected. One focuses on an admission dispute, and the other on language. As I will be doing a CPA of an admission policy and a language policy, I believe selecting an admission and a language policy-related judgement will expand our understanding around the interpretation and application of these policies. However, different court judgements will be analysed in Chapters 6 and 7.

As mentioned earlier (cf. 4.3), It is not my intention in this study to comment on the veracity of statements and facts presented in these cases, but only to use them to justify my argument that the derived framework on democracy is able to solicit relevant information regarding the contents of education policies, the contexts within which they operate, as well as their consequences (Chapters 6 & 7).

In order to consider the usefulness of the derived framework on democracy, I have purposely selected *Member of the Executive Council, Eastern Cape Province and Others v Queenstown Girls' High School (1041/07)[2007] ZAECHC 100 (21 November 2007)* (Queenstown Girls' H/S case) (admission-related judgement); and *The Hoërskool Ermelo case (Case No. CCT 40/09 [2009] ZACC 32)* (language-related judgement).

I will also use the short name and square brackets for the paragraph “[ ]” (cf. 4.3). The admission-related judgement is discussed below.

#### 5.3.1 THE QUEENSTOWN GIRLS' HIGH SCHOOL CASE/JUDGEMENT: MEMBER OF THE EXECUTIVE COUNCIL, EASTERN CAPE PROVINCE AND OTHERS V QUEENSTOWN GIRLS' HIGH SCHOOL (1041/07)[2007] ZAECHC 100 (21 NOVEMBER 2007)

The Queenstown High School case is largely about the application of a clause in its admission policy that was allegedly used to deny learners, perceived to have behavioural problems, admission to the school [1]. This clause permits the SGB to protect stakeholders at the school from physical and mental harm through expecting those applying for admission to the school

to provide a “certificate of conduct completed by the school where the learner is enrolled at the time when application for admission is made” [1].

Initially 11 learners were affected in this case [14]. The MEC for Education in the Eastern Cape (first applicant), the HOD (second applicant) and the parent (third applicant) of one of the learners collectively challenged three issues regarding the admission dispute with the school in June 2007. In this case in the Eastern Cape Division of the High Court of South Africa the applicants sought a declaratory order that this clause in the school’s admission policy was inconsistent with the national *Admission Policy* issued by the Minister of Education under the *National Education Policy Act*, “for the review and setting aside of the school’s refusal to admit the third applicant’s daughter (i.e. learner) to the school for 2007”, as well as “for an order directing the school to admit the child to the school as a learner” [2].

Although the application was initiated in June 2007, the issue originated in 2006. The parent (third applicant) sought the help of the ECDoE when she realised that the school where her daughter was enrolled had refused to provide them with a certificate of conduct [3]. As a consequence the learner was refused admission without the certificate, as it was part of the requirements for application for admission to Queenstown Girls’ High School.

The parent actually had a problem with the current school for refusing to provide them with the certificate to satisfy Queenstown Girls’ High School’s requirement. In response to this complaint, the ECDoE intervened by ordering Queenstown Girls’ High School to admit the child, but the school refused [3]. The child was then “enrolled at a school in the nearby town of Cathcart for 2007” [3]. Queenstown Girls’ High School interpreted the intervention from the ECDoE as “unlawful administrative action” [4]. In other words, the ECDoE was seen to be interfering with affairs of the school.

Based on their interpretation of interference, the school then approached the Bisho High Court in February 2007 for an urgent order to set aside the instruction of the ECDoE. This application was however dismissed. They sought leave to appeal, which the full bench of the Bisho HC granted [4]. As the appeal was to be heard later that year, it is important to note that the ECDoE’s application was instituted during the period before the appeal was to be heard.

The HC judgement noted this principle (*lis alibi pendens*), in that the same issue and the same parties were involved in a pending matter, but equally urgent and paramount was that they also had to preside on this issue brought before them by the three applicants against the school [6]. However, it seems that the best interests of the learner were more critical, and so the court decided to rather consider the facts already put before them in both the first application as well as the current one brought by the three applicants [46]. This line of thought is based on the possibility that the appeal would be heard in the following year [46], which would be to the further detriment of the learner. One can assume that the court wished to address the matter as a matter of urgency.

These applications referred to above exhibit the essential principles of democracy, and this study will reflect on these in the sections below. The first essential principle is *participation*.

#### 5.3.1.1 PARTICIPATION

It is noted in the judgement that the admission policy of the school was duly determined, formulated and subsequently “forwarded to the Education Department in April 2004, without receiving any objection or comment from the department” [8]. This implies that the policy was adopted by all stakeholders in the school, and as a consequence, also implies that all stakeholders genuinely participated in the whole process. That there was no objection from the department also suggests that they had no problems with the admission policy of the school.

The department’s challenge of some clauses in the school’s admission policy after so many years raises other questions. Some of these relate to what the department does with policies submitted by schools and governing bodies, but that is not the focus of this study. It would however seem that from the department’s side, their oversight role may ultimately appear suspect and may be perceived not to be genuine in this regard.

There existed a long-standing and confidential agreement between the principals of Balmoral Junior Primary School and Queenstown Girls’ High School about certificates of conduct that learners needed from Balmoral if they wanted to enrol at Queenstown Girls’ High School [13]. This certificate has to do with the behaviour of a learner, which can be useful in deciding to accept a learner or not. This confidential agreement implies that in both schools, the parents and educators representing their constituencies may not have been afforded the opportunity to participate in the decision to implement the clause in an open and transparent manner.

The judge cautioned the principals and contended that the learner and the parent should have been made aware of the certificate, as well as what it was to be used for [68]. They should also have been given an opportunity to make representations regarding this matter, particularly when the child was refused admission. This seems to amplify the role of *participation* in this matter.

Also linked to the issue of the certificate is that a parent whose child had been refused admission based on conduct, could have been invited for an interview by the school [70]. The judgement acknowledges that this could have been an opportunity for the parent to participate. Based on legal advice the parent declined an interview. Besides having noted instances where *participation* in decisions in governance matters was noted, the judgement also brought the parties' attention to what education policies direct and advice. This includes reminding stakeholders that it is important for them to participate in co-ordinating "in order to ensure the accommodation of eligible learners in public schools" [28].

In light of the above, the court ordered "that the decision to refuse the learner admission to the school was unfair to the extent that she and her parents were not made aware that her past conduct or behaviour at Balmoral Primary School, might result in her non-admission" [75]. Genuine *participation* was compromised and as a result important information was not shared.

The judgement expressly exhibited the impact of genuine *participation* in decision-making in school governance matters. It also showed the importance and impact of genuine *participation* as an essential principle of democracy.

#### 5.3.1.2 REPRESENTATION

The judgement asserted who the legitimate party is entrusted with seeking admission for any learner, and directed who the only representative to engage in such actions is. The same applies when admission is refused. In this regard, the judgement stated that "the parent of the learner, no one else" [72] is authorised to act as a representative of learners in similar cases.

The judge reprimanded the education department officials to remember that they are not the legitimate representatives to *inter alia* assume responsibilities that are not legally theirs, as for example demanding the admission of learners or appealing the refusal of a learner's

application for admission. Furthermore, the judgement reiterated that only the parent can institute an appeal, and that such an appeal can only be directed to the MEC [72].

#### 5.3.1.3 FREE AND FAIR ELECTIONS

The judgement did not address or relate to *free and fair elections*, and I could also not make any inferences to that effect.

#### 5.3.1.4 RESPECT FOR HUMAN RIGHTS

The assistance the parent sought from the education department was due to her believing that the basic *human right* to education of her child was being violated [17]. Whether the methodology of the department's officials was lawful or not, is another issue. Hence, the issue of un/lawfulness is addressed in other relevant essential principles or sub-sections. The child was ultimately enrolled at another school in Cathcart, so her *human right* to education was catered for [22]. Furthermore, the court outlined the procedures to be followed to operationalise the basic *human right* to education. These include procedures for application to schools as well as dealing with the appeals that may emanate from such admission procedures [24-34].

Queenstown Girls' High School argued that the inclusion of the clause on the provision of a certificate of conduct was to protect other learners and educators in the school from physical and psychological harm [48]. This implies that the school felt it was their task to ensure that the basic *human right* to safety was provided for. Furthermore, the judgement directed that unfair discrimination in the administration as well as in other respects in the admission of learners should not be allowed [50]. The court gave clarity on unfair discrimination as far as it relates to equality [53]. The argument on equality from the perspective of the parent could be interpreted to suggest that her daughter was discriminated against, and was not given equal treatment. However, the judgement explained that this case did not actually deal with unequal treatment from that perspective, but that the idea was to protect stakeholders in the school from potential physical and psychological harm [53-56]. The court agreed with the school and emphasised that indeed "[i]ndividually, the learners, teachers and other employees at the school have the fundamental right to be protected from any form of violence" [58].

Based on the exposition above, it can be concluded that the *respect for human rights* as an essential principle of democracy was adequately addressed in this judgement.

#### 5.3.1.5 RESPECT FOR THE RULE OF LAW

The *rule of law inter alia* deals with what the law directs, and this may manifest itself through orders and instructions with respect to adherence to the law. These orders or instructions may be either lawful or unlawful. The judgement largely reflected on these. Based on the refusal of Queenstown Girls' High School to admit the learner, the parent sought the intervention of ECDoE officials. From early December 2006, the officials began giving instructions to the principal to admit the learner, but the principal refused to implement these orders [17]. It seems that the principal and governing body considered these instructions to be unlawful [18]. This implies that the officials of the department did not comply with the *rule of law*.

This resulted in the school seeking assistance from the Bisho HC to order the officials to stop intervening. The court dismissed the school's application on 21 February 2007. In line with the *rule of law*, the school sought leave to appeal and this was granted [18]. Cognisant of the ruling by the court on the matter, the officials persisted with the instruction to have the learner admitted to the school. In response the school requested documents that would assist them in determining whether the *rule of law* was applied in regard to the delegation of authority [19]. Further interactions between the department and the school did not change the mind of the school [20]. The school continued to resist as they were of the view that the appeal process now raised by the department was not genuine, as the department did not follow proper procedures [21]. It implies that the department did not have regard for the *rule of law* as directed by education policies and legislation. It is with this background that the court gave direction regarding the admission of learners in public schools. The court gave clear and extensive guidelines in this regard [23-34].

The court refuted the department's contention that the principal's invitation to discuss learner behaviour with parents was suspect [70]. Furthermore, the judge called on parties to make decisions that are reasonable and lawful. In other words, they should respect the *rule of law* as it pertains to their environments. The court gave direction on how the *rule of law* should be upheld, particularly regarding disputes regarding admissions [71 & 72].

#### 5.3.1.6 SEPARATION OF POWERS

The issue of the *separation of powers*, particularly regarding roles and responsibilities, was raised in this case. This was evident in the ECDoE officials being cautioned about interfering



in the admission of the learner. In this regard, the school launched an urgent application for an order to prohibit the conduct of the officials [18]. In addressing this matter, the court reminded the parties of their different roles and responsibilities [24 & 34]. These include *inter alia* that the governance of schools is vested in the governing body, and that the principal is responsible for the professional management of the school under the authority of the HOD [26]. Furthermore, the admission function is the responsibility of the department of education, and “may delegate that responsibility to officials of the department” [27]. The school’s admission policy should also be taken into consideration.

Having noted that it seemed one party wanted to assume another’s responsibility without having been delegated to do so, the court once more reiterated that each party should be aware of what they are authorised to do regarding applications for admissions and disputes arising from these [72]. One can also interpret that secrecy regarding the certificate of conduct by the principals is not their prerogative, but that the governing body should have presided on this matter. There should also have been a difference between the actions of the principals and the governing body, and the education department through delegation from the HOD. Failure to adhere to this has led to the court presiding over this case.

From the above exposition it can be acknowledged that the disregard of the *separation of powers* can have serious consequences. The court dealt with the essential principles of democracy, one of which in this case was the *separation of powers*.

#### 5.3.1.7 TRANSPARENCY AND ACCOUNTABILITY

The case reflects a lack of *transparency and accountability* through the behaviour of the two principals. There was “a long-standing (and sometimes confidential) agreement between the principals of Balmoral Junior School and the school” that a learner from Balmoral would need to submit a certificate of conduct when applying to Queenstown Girls’ High School [13]. As a consequence, the principal of Queenstown Girls’ High School would know that the specific learner might have had behavioural problems if no certificate of conduct was submitted.

The issue of the confidential agreement was actually noted by the judge and a declaratory order in respect of this was made [75]. Part of it states that it “was procedurally unfair to the extent that she and her parents were not made aware that her past conduct or behaviour at Balmoral Primary School, might result in her non-admission to the school” [75]. Had the learner and parents been made aware of this, they might not have been in this situation. This

implies that not all stakeholders would have had access to this information. The principals were therefore not transparent and accountable to all stakeholders. The impact of keeping information away from the learner and parents, and also from other stakeholders, may have impacted upon other principles of democracy [32]. These include *inter alia* genuine participation, the right to information as a basic *human right* (RSA, 1996a: Chapter 2, Section 32) and the promotion of genuine partnerships.

Another issue that was not addressed in a transparent manner was inviting parents and their children whose conduct was perceived to be suspect for an interview. The court alluded that the interviews could have been used to allow the parents to make representations [70], but the interviews could also have been used as some form of test, which is unlawful [24 & 29]. If this was brought to the attention of the parents and learners it might have prevented a measure of discontentment. In light of this I posit that the interviews might have been construed to be in the place of a test, which could have been regarded as unfair discrimination, as argued by the local attorney [14].

The two principals of the schools in question as well as the applicants showed a lack of respect for *transparency and accountability*. The applicants did not disclose that the learner was already enrolled at an alternative school at the time of their application [22]. This may have had an influence on the case. The high school also did not display *transparency and accountability* when it failed to state reasons for refusing the learner. This was expressly stated by the court [33]. In light of the above, it seems that *transparency and accountability* was adequately dealt with by the courts.

#### 5.3.1.8 FREE AND INDEPENDENT MEDIA

The judgement does not address free and independent media, and neither could I infer any relevant information in this regard.

#### 5.3.1.9 PROMOTION OF AUTHENTIC PARTNERSHIPS

This case was essentially about incorporating information about a learner's past conduct into the school's admission policy, and using that information in the assessment of the application [64]. However, the judgement categorically stated that "the assessment of past conduct of prospective learners must also be made in the context of the school's obligation, in co-operation with the department" [64]. This means that all stakeholders should have participated in incorporating such clauses in the school's admission policy, as well as in the

application or implementation of such a clause [57]. By so doing, authentic partnerships would have been promoted.

To a certain extent, the appeal process also requires parties to participate in partnership. In this regard, the judgement advised “all parties (parent, principal and governing body) to make a proper input so that the Member of the Executive Council is also in a position to give a lawful and reasonable decision” [72]. This implies that all stakeholders should also work in partnerships towards the resolutions of disputes.

From the exposition above, the judgement envisaged that the governing body should work in partnership with the education department to ensure that eligible applicants for admission are properly accommodated in public schools [59]. Another important point is that clauses in the admission policies of schools should not be abused for other purposes other than facilitating a conducive and safe learning and teaching environment for all stakeholders [58 & 59].

The judgement above dealt with an admission dispute, and seven of the essential principles of democracy were addressed while two were not. Below follows a judgement that deals with the emotive issue of language.

### *5.3.2 THE HOËRSKOOL ERMELO CASE/JUDGEMENT (CASE NO. CCT 40/09 [2009] ZACC 32)*

The Ermelo case (*HOD, Mpumalanga Department of Education and Another v Hoërskool Ermelo, and Others, Case CCT 40/09 [2009] ZACC 32*) deals with a dispute regarding the language of teaching and learning in a public school. The parties in dispute were the HOD of Mpumalanga Department of Education (First Applicant), Minister of Education (Second Applicant) and Hoërskool Ermelo (First Respondent), SGB of Hoërskool Ermelo (Second Respondent), and FEDSAS as Amicus Curiae.

The focus of this case is hinged on two pertinent matters. The first is whether the HOD has the power to withdraw the right of the SGB to determine the language policy of a school, and the second is whether he can appoint another structure to determine the language policy of a school [1]. Hoërskool Ermelo has historically been an excellent school for over 90 years at the commencement of the dispute [6]. It was characterised by excellent academic results,

good infrastructure and a broad curriculum. It was however not prepared to change its exclusively Afrikaans language policy adopted in 2005 [6 & 10]. This refusal happened despite the Mpumalanga Department of Education (MDE) having repeatedly requested them to consider changing their language policy to a parallel medium of instruction to accommodate learners who preferred English as the medium of instruction [20].

This request was further strengthened by the reality that other schools in the Ermelo district did not have sufficient space to accommodate learners whose choice of language of instruction was English [11]. Despite their good infrastructure, available classroom space, adequate staff and dwindling learner number since 2000, the school and its governing body refused [7-9]. They contended that they had smaller learner-educator ratios, a wider choice of subjects and that each educator was allocated a class [10]. This seems to suggest that they did not embrace the ideals of a democratic South Africa, and were therefore unwilling to transform as called for by the *Constitution* and education legislation such as the SASA.

Pressured by the growing numbers of English learners seeking enrolment and the persistent unwillingness of the Hoërskool Ermelo to accommodate them, the Mpumalanga Department of Education decided to engage with the Hoërskool Ermelo and other schools in the district in an effort to assist in this regard. Still the school refused [12-13]. In 2006 Hoërskool Ermelo offered two classrooms to accommodate 28 Grade 8 learners who preferred to be taught in English. Those classrooms were however apparently uninhabitable [12]. A nearby school then offered an unused laundry, which the MEC allowed to be used, but later declared unsuitable for the learners [13]. In response to the unused laundry, the MDE reported this matter to the Human Rights Commission (HRC) to the effect that that school that housed the learners in the laundry space treated the learners in an inhumane manner [13]. The school denied this allegation [13]. However, the problem of accommodating the English learners seemed to escalate year on year.

After further interaction with the Hoërskool Ermelo, the MDE requested the school to admit 113 learners on 9 January 2007, but the school once again refused [16]. By that time the department had had enough of the situation and began to take action. The acting regional director instructed the principal to admit the learners or face disciplinary action [16]. In response to this instruction, the chairperson of the SGB wrote to both the principal and acting regional director that the school was only prepared to admit those learners who were willing

to accept tuition in Afrikaans [17]. Following this proposal, the MDE decided to use the prescripts of the SASA.

On 25 January 2007 the HOD had two letters delivered to the school, detailing that the function of the governing body to determine the language policy had been withdrawn, and that an interim committee had been appointed to carry out that function [21-22]. Some of the English learners were then admitted to the school by departmental officials [26]. Based on this action, the court battle began.

The school and governing body launched an urgent application with the High Court to set aside the instruction by the HOD [25]. The HC decided in favour of the HOD and the Minister [29]. Although the application for leave to appeal was initially refused, it was subsequently granted [29]. Not satisfied with the decision, the school and governing body appealed to the Supreme Court of Appeal (SCA), and the HC decision was reversed [33], implying that the school and governing body won that round. This was subsequently appealed by the HOD and Minister to the Constitutional Court (ConCourt). The decisions and deliberations of this judgement will form the basis of my argument in illustrating that most of the derived essential principles of democracy are reflected in this judgement.

Although the order and ruling of the case point out that the ruling was in favour of the respondents, I contend that a careful reading and analysis seems to suggest a win-win situation. This implies that both the MDE and the school and governing body's actions were with the best interests of the learners at heart. This is however not the focus of this study, but rather the essential principles of democracy.

From the arguments, debates and orders derived from this judgement, the essential principles of democracy will be investigated to determine whether and to what extent they were addressed in the judgement. I have identified seven of the nine principle. Some are reflected across the judgement, and others only in one or two instances. Some will therefore be referred to more than others. Those that are more pronounced are *respect for human rights*, *respect for the rule of law* and *separation of powers*, followed by the promotion of *authentic partnerships*, *participation*, and to a lesser extent *representation* as well as *transparency and accountability*.

I will not necessarily discuss them in the order as reflected in the above paragraph, but as they have been discussed in the previous sections of this study.

#### 5.3.2.1 PARTICIPATION

As stated above (5.3.2), the HOD had appointed an interim committee to determine the language policy of the Hoërskool Ermelo. The judgement noted that the decision to convert the language policy of the school to a parallel medium school was done without the *participation* of “the school governing body, the teaching staff, learners already admitted to the school or the parents” [27]. Furthermore, the judgement also reminded the parties in dispute that the preamble of the SASA “aims at making parents and educators accept the responsibility for the organisation, governance and funding of schools in partnership with the state” [55 & 57]. The implication is that stakeholders involved in school governance should be given the opportunity to actively participate in the decisions of the governing body.

The court contended that it has a constitutional responsibility to promote an approach that seeks to involve all parties in a dispute to become part of the solution [97]. In light of this it directed that the governing body should reconsider the language policy of the school [98]. This implies that all stakeholders in the school should participate in the process of the determination of a new language policy for the school.

The above exposition reflects the importance of *participation* in SG in this manner, and it is recognised and reflected as an essential principle of democracy.

#### 5.3.2.2 REPRESENTATION

In line with the responsibility to determine the language policy of a public school, the judgement reminded stakeholders about *representation* [56] - “[t]he national government is represented by the Minister for Education whose primary role is to set uniform standards for public schools. The provincial government acts through the MEC for Education who bears the obligation to establish and provide public schools” [56]. It also acknowledged that “[p]arents of the learners and members of the community in which the school is located are represented in the school governing body which exercises defined autonomy over some of the domestic affairs of the school” [56].

The above paragraph not only highlights the importance of *representation*, but also guides the boundaries of their responsibility. As a result *representation* as an essential principle of democracy is reflected.

#### 5.3.2.3 FREE AND FAIR ELECTIONS

The Hoërskool Ermelo case does not address *free and fair elections* and neither could I infer anything in this regard.

#### 5.3.2.4 RESPECT FOR HUMAN RIGHTS

*Human rights* are normally based on different sections of the BoR. These include *inter alia* access to basic education (RSA, 1996a: Section 29(2)); language (RSA, 1996a: Sections 30-31); human dignity (RSA, 1996a: Section 10); not to be treated in a degrading or inhuman manner (RSA, 1996a: Section 12(1)(e)); best interests of the child (RSA, 1996a: Section 28(2)); equality (RSA, 1996a: Section 9); and combating racial discrimination (RSA, 1996a: 9(3)). Most of these essential principles of democracy find expression and reflection in the Hoërskool Ermelo judgement. The judgement noted that “an unequal access to education entrenches historical inequity as it perpetuates socio-economic disadvantage” [2]. By so doing, one can therefore claim that basic *human rights* can be negatively affected. One such right that can be impacted upon by implication is the “[t]he right to receive education in the official language of one’s choice in a public educational institution where it is reasonably practical”. This has been consistently referred to in the judgement [40, 42, 44, 51-54 & 76], and these are also *human rights* matters (RSA, 1996a: Chapter 2, Sections 29(2)).

Although the school and governing body adopted its language policy on 25 January 2005, its decision to only use Afrikaans as medium of instruction [6] may be interpreted as an unwillingness to embrace non-racialism, respect for and the use of other languages (multilingualism) (RSA, 1996a: Chapter 1, Sections 1(b) & 6(b)(i)), transformation, and consequently democracy. I argue that these are also linked to *human rights*. This belief is informed by the repeated attempts by the MDE to convince the school and governing body to allow the use of another language [12 & 14-17], which the school repeatedly and steadfastly refused. This would have provided access to education to those who needed it at that moment. On the contrary, the school had argued “that its admission policy is non-racial because it does not discriminate on the grounds of race”, apparently because they had 34 black learners who were receiving education in Afrikaans [9].

Parties were further reminded that the aim of the education system is *inter alia* to “advance democratic transformation of society and combat racism, sexism, unfair discrimination and the eradication of poverty” [55]. Therefore, when implementing a language policy in a public schools, the judgement postulates that “no form of racial discrimination may be practised” [60]. The court noted that the learners who were excluded from being admitted were exclusively black [38], and this may be construed to be connected to race. As a result discrimination on the basis of race could have been an issue. The situation regarding classroom occupation around Ermelo at the time of the dispute was 38 learners per classroom, while at Hoërskool Ermelo it was 33 learners per classroom on average [11]. This raises the issue of (in)equality, which is also a *human rights* matter. The fact that Hoërskool Ermelo offered two classrooms, which were not acceptable for use by Grade 8 learners, implies that they had no problem with learners being treated in an inhuman manner, thereby violating their human dignity and security (RSA, 1996a: Chapter 2, Sections 10 and 12(1)(e)) respectively. This was compounded when learners were accommodated in a laundry space in a nearby school, to the disappointment of the MDE [13]. The MDE later complained to HRC, vouching that this was a *human rights* matter. As mentioned before, the school denied that charge [13].

The judgement emphasised the inequalities in our society [45]. This manifested itself through the disparities in resources [45]. The implication is that some schools and communities are treated differently from others [46], implying there is no equality of treatment which goes against the prescripts of the BoR (RSA, 1996a: Chapter 2, Section 9). In this regard, the judgement reminded all parties about the contents of Sections (9(1-2)) of the *Constitution* which refers to guarantee and “entitle everyone to formal and substantive equality” [47]. Furthermore it also advised that “Section 9(3) precludes and inhibits unfair discrimination on the grounds of, amongst others, race and language or social origin” [47]. Another *human rights* matter raised by the court relates to the best interests of the child [74, 80 & 99], which is espoused in the BoR (RSA, 1996a: Chapter 2, Sections 28(2)). This implies that when the withdrawal of governing body functions in public schools are affected, such as language policies, the best interests of the child should always be considered. To put effect to the best interests of the child, the court ruled that the learners who were admitted to Hoërskool Ermelo should continue to be enrolled there until they finish their schooling [95].

The above exposition is a demonstration that *human rights* are addressed in the judgement.



#### 5.3.2.5 RESPECT FOR THE RULE OF LAW

The court “characterised the dispute as solely about the *rule of law*, and not language policy” [33]. In this regard, the order it made referred to *inter alia* actions that were unlawful, such as the withdrawal of the functions of determining a language policy; the appointment of an interim committee to perform the function of determining a language policy for the school; and the decision of the interim committee “to amend the language policy from Afrikaans medium to parallel medium” [33]. The apparent misinterpretation of the law which may have contributed to some unlawfulness was clarified [66-70]. The same clarification with regard to the appointment of the interim committee was also provided [85-92].

Based on the above, it can be acknowledged that the *rule of law* is addressed.

#### 5.3.2.6 SEPARATION OF POWERS

As stated earlier (cf. 5.3.2), the various representatives at national, provincial and school levels are responsible for specific roles, powers, and functions. For example, the Minister of Education at national level is responsible for setting norms and standards for public schools, the MEC for Education at provincial level is responsible for the establishment of public schools, while the governing body is responsible for the governance of public schools and the determination of language policies [55-56 & 76-78]. This implies that the *separation of powers* as an essential principle of democracy is being reflected in the judgement. However, what transpired in this case seemed to have been a contentious issue.

#### 5.3.2.7 TRANSPARENCY AND ACCOUNTABILITY

The governing body of the school was not afforded an opportunity to make representations on the decision to withdraw their functions, nor was it appraised to the appointment of the interim committee [92]. The letters to that effect were just presented and simultaneously enacted [21]. This happened without prior engagement or having been forewarned [27], and may be construed as not adhering to the essential principle of *transparency and accountability*.

#### 5.3.2.8 FREE AND INDEPENDENT MEDIA

The Hoërskool Ermelo judgement does not address *free and independent media* and neither could I infer anything. However, it did get a lot of media attention, and academics and case law commented on it (Liebenberg, 2016:2; Smit & Oosthuizen, 2011:62; Serfontein, 2010:98).

### 5.3.2.9 PROMOTION OF AUTHENTIC PARTNERSHIPS

The situation as described in the paragraph above (cf. 5.3.2) seems to suggest that not all stakeholders were involved in the decision-making and execution of the instructions. It may be interpreted that this was done without due regard for the principle of working in authentic partnership. In an effort to address this apparent omission, the judgement reminded stakeholders that the SASA aims *inter alia* “at making parents and educators accept the responsibility for the organisation, governance and funding of schools in partnership with the state” [55-58]. It seems as though the parties did not try to work together to find a solution that focused on the best interests of the learners, but the case was rather about a power struggle between the SGB and the department, instead of focusing on the requirements of genuine co-operation and “avoiding legal proceedings against one another” (RSA, 1996a: Section 41(1)(h)(vi)). One can therefore state that the essential principle of democracy through fostering and promoting *authentic partnerships* is reflected in the judgement.

The Hoërskool Ermelo also experienced its own challenges regarding the language of choice for teaching and learning, although some principles of democracy are addressed.

## 5.4 DISCUSSION AND SUMMARY

After having considered the discussion on the analysis of the essential principles of democracy as reflected in the *Constitution*, other education legislation and case law, I have found that some sources of the South African legal framework for education adequately relates to all the essential principles of democracy. Some of these were mentioned directly, while others were inferred or deduced. Some case law does not reflect all. However, it was enough to come to a conclusion. The *Constitution* and the SASA address all nine essential principles, the NEPA directly relates to five and those that were implied are *free and fair elections*, *rule of law*, *separation of powers*, and *transparency and accountability*. The EEA directly relates to seven, and those implied are *free and fair elections* and *free and independent media*. Case law does not relate to *free and fair elections* and *free and independent media*. I present a summary of the findings in a table below.

**Table 5-1: Summary of the reflection of the essential principles of democracy in the South African legal framework for education.**

Essential principles of democracy	Constitution (RSA)	NEPA	SASA	EEA	Hoërskool Ermelo	Queenstown Girls' H/S
1. Participation	Addressed	Addressed	Addressed	Addressed	Addressed	Addressed
2. Representation	Addressed	Addressed	Addressed	Addressed	Addressed	Addressed
3. Free and fair elections	Addressed	Addressed	Addressed	Addressed	Not Addressed	Not Addressed
4. Respect for human rights	Addressed	Addressed	Addressed	Addressed	Addressed	Addressed
5. Respect for the rule of law	Addressed	Addressed	Addressed	Addressed	Addressed	Addressed
6. Separation of powers	Addressed	Addressed	Addressed	Addressed	Addressed	Addressed
7. Transparency and accountability	Addressed	Addressed	Addressed	Addressed	Addressed	Addressed
8. Free and independent media	Addressed	Addressed	Addressed	Addressed	Not Addressed	Not Addressed
9. Promotion of authentic partnerships	Addressed	Addressed	Addressed	Addressed	Addressed	Addressed

## 5.5 CONCLUSION

In this chapter I have analysed the *Constitution*, the *NEPA*, *SASA*, the *EEA*, and case law as sources of legislation encompassing the South African legal framework for education. In this regard, they demonstrate a variety of observations. I have found that some sources of the South African legal framework for education adequately relates to all the essential principles of democracy, some do not relate directly (implying some inference), and some do not reflect this at all. However, it was enough to come to a conclusion. Based on the above, I conclude that the essential principles of democracy as addressed in the derived framework are aligned with that of the South African legal framework for education.

The framework on democracy was effectively derived in Chapters 2 and 3. In Chapters 4 and 5 the alignment with the South African legal framework for education was undertaken. This has been concluded, and it was found that it satisfies the legal conditions to be regarded as a

derived framework on democracy that can be used in South African schools and SG settings. I do however contend that it would be prudent and correct if its usefulness is tested before it is ultimately adopted and permitted to be used. In this regard, the following two chapters will be used to test the usefulness of the derived framework on democracy to critically evaluate SG practices and policies in South Africa.

# CHAPTER 6: ANALYSIS OF THE ADMISSION POLICY FOR ORDINARY PUBLIC SCHOOLS (1998)

## 6.1 INTRODUCTION

In Chapter 5, the derived framework's essential principles of democracy were analysed to determine how they resonate with the South African legal framework in the context of education (cf. 1.4, Objective 2.2). As in the case of the elements of a conducive environment for democracy, the derived framework's essential principles of democracy were also found to be in line with the South African legal framework for education. The result of the above implies that the derived framework on democracy is now ready to be "tested" so that its usefulness can be determined. This will be done through applying the derived framework to critically analyse two national education policies. Chapters 6 and 7 will each focus on a specific education policy and one related court case. In this chapter, the focus will be on the *Admission Policy for Ordinary Public Schools (1998)* (hereafter *Admission Policy*) (cf. 1.4, Objective 3.1).

Critical Policy Analyses (CPA), in conjunction with document analyses (case law), will be employed in Chapters 6 and 7 (cf. 1.5.3.3). Besides case law being part of the South African legal framework (cf. 4.1), the role of case law is to provide information on the impact of the implementation of the policy. The impact of policy implementation is an essential part of CPA of the *Admission Policy*, and I use the case as a documented occurrence of consequence (Taylor, Rizvi, Lingard & Henry, 1997: 50-52; Offe in Ball, 1993:13). Drawing from both Taylor (1997) and Ball (1993) I will use my derived framework to analyse the *text* in the policy as well as in the example of case law presented in this chapter. In this regard, it is important to not only focus on what is included in the text, but also what the text is silent on (Taylor *et al.*, 1997:50). I will start with some background on the policy, or what Taylor *et al.* (1997) refer to as the *context* of the policy.

## 6.2 BACKGROUND TO THE ADMISSION POLICY (1998)

Although not acknowledged in the policy document, the historical past of a fragmented system of admissions of learners into public schools served as the impetus for the development of the *Admission Policy*. As such it can be argued that the policy itself was

developed to overcome an existing environment that was not conducive to democracy, and to ensure that human rights are upheld.

The *Admission Policy* states that the policy is to be used by all provincial education departments (PEDs) (Department of Education, 1998: Section 2). The policy discourages acts of discrimination in the admissions of learners (Section 9). To prevent opportunities for discrimination and the potential use of different sets of admission criteria, all PEDs and ordinary public schools are expected to uniformly implement this national policy (Section 2). Public ordinary schools are directed to strictly adhere to and comply with the prescripts of this policy (Section 3).

### 6.3 THE CRITICAL ANALYSIS OF TEXT IN THE ADMISSION POLICY (1998)

Text in policy provides the directive to those who need to implement it, and the *Admission Policy for Ordinary Public Schools (1998) (Admission Policy)* will be analysed against the backdrop of the *elements of a conducive environment for democracy and essential principles of democracy*. On the one hand the framework will guide my analysis of the policy, while on the other I remain critical regarding the completeness and usefulness of the framework.

#### 6.3.1 CONDUCTIVE ENVIRONMENT FOR DEMOCRACY

I found the *Admission Policy* to be silent regarding the creation of a conducive environment for democracy. No direct reference to elements such as *the rejection and condemnation of acts of corruption, prioritisation of education and socialisation for democracy, and transforming SGB structures into learning organisations* was found in the text. Although no clear directive could be found, the consultations and participation discussed in 6.3.2.1 could link with the *promotion of deliberation and dialogue*. One could also infer a link between the *separation of powers* (6.3.2.6) and the *promotion of authentic partnerships* (6.3.2.9) with *promotion and display of trust*.

#### 6.3.2 ESSENTIAL PRINCIPLES OF DEMOCRACY

With regard to the essential principles of democracy, as identified in Chapter 3 (cf. 3.2), I have identified a number of references which could be linked to the essential principles of democracy. These principles are either directly stated or implied within the *Admission Policy*.

### 6.3.2.1 PARTICIPATION

The national *Admission Policy* serves as a guide for all PEDs and SGBs in the development of admission policies for all provincial departments and public ordinary schools (Department of Education, 1998: Section 4). The *NEPA* (1996c: Section 4(m)) requires from the national Minister of Education to ensure broad public participation and the representation of stakeholders in the development of national education policies. It could therefore be assumed that the national *Admission Policy* is not only a product of a participatory process, but that it would also promote participatory policy development processes. In this regard, it is expected that SGBs, which are responsible for the development of school policies, will act in line with the stipulations of *NEPA* (1996). In Section 7 the *Admission Policy* states that “the admission policy of a public school is determined by the governing body of the school.” SGBs are constituted by representatives from various stakeholders, for example parents, educators, learners, and community members. This implies that all SG stakeholders are expected and obliged to participate in the development of the school’s admission policy.

The *Admission Policy* also requires participation through consultations with stakeholders regarding the admission of learners in general (Section 5) and with learners with special education needs (LSEN) in particular. It directs that the HOD must consult “with parents, educators and other support personnel concerned” when dealing with the admission of LSEN (Section 24). Furthermore, these consultations should be taken into account when assessments are done in cases where learners are referred to another public school (Section 24). This elevates consultation to active participation. It is through these assessments that discussions from different stakeholders can be entertained. In cases where LSEN are to be placed at an alternative public school, assessment and consultation should also have been conducted, prior to the HOD approving such placement (Section 25). This indicates and promotes the importance of participation.

Other instances where one could assume that the *Admission Policy* calls for participation is with regard to establishing school zoning boundaries (Department of Education, 1998: Section 33). The *Admission Policy* states that the “Head of Department, after consultation with representatives of governing bodies, may determine feeder zones for ordinary public schools”. In this regard it promotes broad *participation*, and also recognises the various representatives involved in the process of determining the feeder zones of schools. The latter emphasises that those who are to participate, should be legitimate representatives.

#### 6.3.2.2 REPRESENTATION

I contend that the essential principle of *participation*, discussed above, is acknowledged when it is performed by the legitimate representatives of stakeholders. In this regard, the *Admission Policy* directs that when school zoning to control learner numbers in schools is determined, the representatives of school governing bodies should be consulted by the HOD (Department of Education, 1998: Section 33). This implies that stakeholders including parents, learners, educators, and the PED through its officials, should be involved in decisions that relate to admissions.

Failure to engage with the representatives is an infringement on the principle of democracy, as promoted in the *Constitution* and promoted in the *NEPA* (1996). This may result in misunderstandings that may ultimately demand interventions from other areas, which may include courts of law. It can be implied that the *Admission Policy* provides for, and promotes, the essential principle of *representation* that is legitimate, genuine and proper, and in good standing. Simply put, the representatives should have been constitutionally elected in order to perform the functions and responsibilities expected by the *Admission Policy*.

#### 6.3.2.3 FREE AND FAIR ELECTIONS

While the *Admission Policy* does not directly address *free and fair elections*, true *representation*, as discussed above, can only take place if those representatives had been elected in a free and fair manner. It can therefore be inferred that although the policy is silent on the issue, it is implied. The *NEPA* (1996c: Section 3(1)) states that national education policy shall be developed in accordance with the provisions of the *Constitution*. The *Constitution* (RSA, 1996a: Section 19(2)) makes provision for free and fair elections by stipulating that “every citizen has the right to free, fair and regular elections”. If the *Admission Policy* (Section 7) must be consistent with the *Constitution*, as pronounced in section 7, then one could assume that the *Admission Policy* endorses and embraces free and fair elections. References to participation and representation, as is found in the *Admission Policy*, could therefore also be read in conjunction with an understanding that this policy promotes *free and fair elections*, especially of the people involved in determining the admission policy of a school.

#### 6.3.2.4 RESPECT FOR HUMAN RIGHTS

I assert that the *Admission Policy* seeks to operationalise the right to education of all learners in the Republic of South Africa (Department of Education, 1998: Sections 5 & 6). This assertion



can be inferred from the regulations that it addresses, which implies that it is a human right. The right to education is a human right as espoused by the Constitution of the Republic of South Africa (*The Constitution*) (RSA, 1996a: Chapter 2, Section 29). Education is a human right, and the *Admission Policy* tries to establish guidelines that will affect this right for all South African citizens. It also provides for the education of learners who are not South African citizens. This implies that the *Admission Policy* acknowledges the scope and extent of Human Rights. This is clear from the fact that the *Admission Policy* acknowledges that non-South African citizens should also enjoy the same human rights as South African citizens (Department of Education, 1998: Sections 19-21). This is important to note, particularly in light of xenophobic attacks that sporadically seem to be perpetrated against foreigners. These attacks affect the education of immigrant learners, which violates and disrespects their basic human rights.

The right to information, which is protected in Section 32 of the *Constitution* as a human right, is also protected by the *Admission Policy*. In this regard the *Admission Policy* places a responsibility on governing bodies and other education officials to inform all parents of learners of “their rights and obligations in respect of the governance and affairs of the school, including the process of deciding the school budget, any decision of a parent meeting relating to school fees, and the Code of Conduct for Learners” (Section 39).

The *Admission Policy* also categorically states that in no way should unfair discrimination against any applicant for admission be permitted (Section 9). This is fundamental in my view, as it has an impact on other human rights, particularly when applicants for admission are unfairly discriminated against. The financial and economic situation of parents should not be used to disadvantage any learner, whether in sport, cultural or educational activities, or in accessing any records that the learner may need in order to utilise educational services (Section 10). The *Admission Policy* ensures that the right to education should not be violated even if the parent is unable to pay school fees; does not agree with the school’s mission statement and code of conduct; or has not agreed to abide to some contractual agreement whereby the parent has waived the rights to sue or claim damages against the education department or school where his/her child has been affected (Section 10(a-c)).

#### 6.3.2.5 RESPECT FOR THE RULE OF LAW

The *Rule of Law* is *inter alia* about displaying obedience by all members of society, be it private individuals or state organs, to decisions taken by courts of law or competent bodies (cf. 3.3.5). In this regard, the *Admission Policy* states that:

*[t]he governing body of a school must inform all parents of learners admitted at a school of their rights and obligations in terms of the SASA and applicable provincial law. Parents must specifically be informed about their rights and obligations in respect of the governance and affairs of the school, including the process of deciding the school budget, any decision of a parent meeting relating to school fees, and the Code of Conduct for Learners (Department of Education, 1998: Section 39).*

The above implies that stakeholders need to be knowledgeable regarding their legal responsibilities in terms of the provision of education to learners. This obliges the SGB to make such information available to parents. Failure to disseminate information may lead to parents not exercising their rights regarding for example their participation in decisions about payment of fees, which has a direct impact on admissions and school attendance. Parents are also required to abide by decisions taken by the majority at properly constituted parents meetings. This includes decisions on the school budget and school fees (Section 39). Since the above has to be read along with the *South African Schools Act 84 of 1996*, provision can be made for the SGB (Section 39) to consider applications for exemption of the payment of school fees (RSA, 1996b: Sections 38-41).

Apart from the legal responsibilities that have to be adhered to as stated in the paragraphs above, it is prescribed that this national *Admission Policy* be applied “uniformly in all provincial departments of education and ordinary public schools (Section 2). In addition, when implementing this *Admission Policy*, no form of unfair discrimination in the administration of admission of learners is permitted (Section 9). It implies that non-adherence to this can be construed to be in conflict with the *rule of law*. If a learner or parent is dissatisfied that the learner has been refused admission at a public school, he/she can appeal that decision to the Member of the Executive Council (MEC) (Section 43). If this rule is not adhered to, it has the potential to lead to serious disputes. A case in point is case law that will be addressed later (cf. 6.4.1), where instead of exhausting legal provisions, a parent accompanies departmental officials and unlawfully registered a learner at a school.

The issue addressed in the above paragraph also links to the *separation of powers*, as it is important to understand who is responsible for admission at a particular level.

#### 6.3.2.6 SEPARATION OF POWERS

As an important democratic principle, the *separation of powers* seems to be clearly demarcated across the *Admission Policy*. This is demonstrated in for example when dealing with the placement of LSENs. In this regard, the *Admission Policy* asserts that “a team based at the school” needs to deal with the assessment and consultation with parents, but that the approval rests with the HOD (Department of Education, 1998: Section 25).

The *Admission Policy* also assign specific functions and responsibilities to the different stakeholders. With regard to the admission of learners to a public school, it is the responsibility of the HOD to ensure that mechanisms are put in place to ensure that spaces are available at schools and that learners get admitted (Sections 5 & 6). In the event that a learner is not admitted, an appeal may be lodged with the MEC by the learner, or parent of a learner (Section 43). This process attempts to give clarity when faced with disputes and appeals emanating from admission issues. It is only fair that those who have dealt with admissions should not be the ones to also deal with appeals. In this regard, it should be noted that the admission function may be delegated to departmental officials (Section 6), and these departmental officials should not deal with appeals. This is an attempt to avoid bias.

Another issue that clearly signifies the separation of power but seems to be contentious at times is the determination of the school’s *Admission Policy*, which is the responsibility of the SGB (Section 7). The policy should be in line with other legislation such as the *Constitution* and the *SASA* (Section 7), and the policy should reflect knowledge about these laws. From this one could infer that SGBs are *learning organisations*. The policy clearly stipulates that it is the HOD’s responsibility to ensure that the admission of learners is well coordinated, while the SGB should assist in ensuring that learners who qualify are suitably accommodated (Section 8). The implication is that there should be clarity regarding the different roles which the various SG stakeholders should play, which further implies that the *separation of powers* need to be respected. All of these actions should, however, be in line with the *Constitution*. The HOD also seems to have no powers in placing a learner in a school.

#### 6.3.2.7 TRANSPARENCY AND ACCOUNTABILITY

The concept of transparency and accountability is visible in the statement that the SGB must submit a copy of the school's admission policy to the provincial HOD (Department of Education, 1998: Section 7). This would allow the provincial HOD and the PED to be knowledgeable about the contents of the school's admission policy, especially since schools' admission policies are supposed to promote basic human rights.

The *Admission Policy* holds the HOD accountable for providing schools for learners in provinces, and it holds SGBs accountable for the accommodation of learners in schools (Section 8). In the event that a parent or a learner wishes to appeal an incidence of non-admission at a school, such an appeal can be lodged with the MEC (Section 43). Such an appeal, however, should be due to a reason that the affected party does not agree with. This implies that school refusing a learner admission would have been open and transparent with its reasons and processes. The above implies that *transparency and accountability* is addressed.

SGBs are also expected to be transparent in explaining to the parents whose children are admitted at the school about their "rights and obligations in terms of the South African Schools Act". As mentioned above (6.3.2.6), the *Admission Policy* further emphasises that parents should be informed. The policy also indicates that parents should accept responsibility regarding their obligations, including applying for admission well in time (Sections 5 & 14); presenting the required documentation, including the birth certificate and vaccination certificate (Section 15 & 16); and being available when required for consultation (Section 23 & 26). Parents are also responsible to ensure that their children attend school (Section 40).

On the part of the school, they have to ensure that "[o]fficials of the provincial education department must have access to the register of admission" (Section 39). Having access to the admissions register will enable the PED to be aware of *inter alia* learner numbers, which can be a contentious issue. Schools are supposed to make the admission policy and the code of conduct for learners (Section 14) available to parents so that they are able to make informed decisions as far as admissions for their children are concerned.

#### 6.3.2.8 FREE AND INDEPENDENT MEDIA

The *Admission Policy* does not refer to *free and independent media*, and neither could I draw any inferences to this effect.

#### 6.3.2.9 PROMOTION OF AUTHENTIC PARTNERSHIPS

While the separation of powers (6.3.2.6) indicate different responsibilities, the *Admission Policy* requires the different powers to work in partnership. As the HOD is responsible for ensuring that learners in the province have access to a school, and the SGB should ensure that learners are admitted according to the policy (see 6.3.2.6 above), one could assume that they will work in partnership to realise the vision of the *Admission Policy*. If all stakeholders do what they are supposed to do, then such a partnership will be beneficial to the learners. In this partnership the PEDs are to give guidelines through Provincial Acts for *inter alia* the administration of admissions in schools, while SGBs are to develop and adopt school-specific admission policies. This amplifies the interdependence of different SG stakeholders in contributing to effective governance. Adherence to other principles discussed above, such as *participation*, *respect for human rights*, the *rule of law* and *separation of powers*, would all be regarded as enhancing the promotion of an authentic partnership, provided that each SG stakeholder cooperates with the others.

In light of the above exposition, it seems as if the success of the implementation of the *Admission Policy* is based on the *promotion of authentic partnerships* between and among the various SG stakeholders.

#### 6.3.2.10 SUMMARY

Based on the exposition above, the findings show that seven of the essential principles of democracy are addressed in the *Admission Policy*, and two are not. Those that are addressed include *participation*, *representation*, *respect for human rights*, *respect for the rule of law*, *separation of powers*, *transparency and accountability*, and *promotion of authentic partnerships*. Although *free and fair elections* are not directly mentioned, a link with free and fair SGB elections can be inferred, while *free and independent media* seems not to be reflected at all. Furthermore, although not explicitly stated, links with *the promotion of deliberation and dialogue*, as well as *the transformation of SGBs into learning organisations* were found.

The acknowledgement and assertion that policy always enters a contested space (Ball, 1993:12-13) implies that policies may be interpreted differently by different role players. Subsequently, it may be implemented differently and therefore have different consequences. I believe that it is through the implementation of the *Admission Policy* that more light on its success or shortcomings (lack of clarity, silences or gaps, etc.) can be observed, and this is evident in the example of case law that I will discuss.

## 6.4 CRITICAL ANALYSIS OF THE RIVONIA PRIMARY SCHOOL JUDGEMENT: MEC FOR EDUCATION, GAUTENG PROVINCE, AND OTHERS V GOVERNING BODY, RIVONIA PRIMARY SCHOOL AND OTHERS 2013 (6) SA 582 CC (RIVONIA P/S COURT JUDGEMENT)

In order to evaluate the usefulness of the derived framework on democracy I have purposely selected *The Rivonia Primary School judgement: MEC for Education, Gauteng Province, and Others v Governing Body, Rivonia Primary School and Others 2013 (6) SA 582 CC*, because it relates to an admission dispute, and it provides an opportunity to put the framework on democracy to use in the context of SG practice.

I provide a brief background to the court judgement which reflects how particular SG stakeholders experienced the implementation of the *Admission Policy*.

### 6.4.1 BACKGROUND

The Rivonia Primary School court judgement emanates from a dispute regarding the admission of a Grade 1 learner, whom the school declined to admit (MEC for Education, Gauteng Province, and Others v Governing Body, Rivonia Primary School and Others 2013 (6) SA 582 CC:Par 2) [2]. The school alleged that it had reached its capacity. The parent (mother), with the support of some officials from the Gauteng Department of Education (GDE), persisted in her demand for the admission of her child to the school. As a consequence of her persistence, and the support from the officials, “the HOD instructed the principal to admit the child” [2]. It is worth noting that even before the SGB could meet to consider the instruction, the officials from the education department and the mother arrived at the school

and “summarily deposited the child in a classroom” [2]. As a consequence, an impasse developed that led to the school and SGB seeking relief from the courts.

Due to the accusations and counter-accusations as well as actions and reactions that characterised this dispute, I contend that these impacted on the essential principles of democracy, which is the focus of this study. I also analysed whether the elements of a conducive environment were addressed. Although this case was first heard in the South Gauteng High Court in Johannesburg, it is the judgement of the Supreme Court of Appeal of South Africa (Appeal Court) that is relevant to this study, as discussed below.

The dispute “occurred at a school located in an affluent, historically white suburb, where a little more than half the learners were white” [1]. It is also acknowledged that the school’s past was based on racial segregation, but that that situation had changed since the dawn of democracy in 1994 [4]. This implies that the school is well resourced, and as a consequence has better qualified educators and also provides higher quality education [6]. The demand for admission to this type of school is high (Beangstrom, 2018:3; Jansen, 1998:13). This increases the potential for disputes if learners are not admitted, even when the school provides valid reasons for their inability to admit more learners due to *inter alia* reasons of capacity or space. The judgement noted that this historically privileged position of the school, as a result of race and the past system of government that promoted segregation and unequal treatment regarding education and resources, is one of the reasons on which the department of education based their intervention and the subsequent demand of the admission of a learner [53].

In court the perception from the respondents (education department) that schools such as Rivonia Primary would necessarily refuse learners from other race groupings so that they could continue to enjoy the privileges granted previously under the old system of government became clear [53]. However, the court expressed a different view regarding the refusal of the learner [53]. Although the court ruled that the school did not deny admission based on racism or discrimination, it stated that the school and SGB were not permitted to refuse a learner because of their social standing or economic situation. Schools had to act in a manner that was sensitive to such issues, however [40]. The court did not accede to the demand of the parent and the education department that the school admit the learner [49].

The court asserted that “[t]here was not one bit of evidence to suggest that the school has ever refused admission to a child - including this child, who happens to be black, on the grounds of race or has unfairly discriminated against any child on this basis” [52]. The exposition above gives some historic background in which the school’s admission policy is based, as well as the current context within which the policy is situated and operates.

With this as background, I will use my framework to analyse the text from the transcript of the court case.

### 6.4.2 TEXT

As in the case of the *Admission Policy* (cf. 6.3), the elements of a conducive environment for democracy and the essential principles for democracy as addressed in the Rivonia Primary School court judgement will be analysed (cf. 6.4.3).

#### 6.4.2.1 CONDUCTIVE ENVIRONMENT FOR DEMOCRACY

The Rivonia Primary School court judgement suggests that the departmental officials were not prepared to *deliberate* on the matter, but opted to place the learner in a classroom without the permission of the principal or SGB, or following due process [16-17]. It is also evident that they did not have *trust* in the principal and SGB to admit the learner. On the contrary, it can also imply that the department could not be trusted regarding it exceeding its powers and misusing its power [49]. Based on the foregoing, it can be deduced that the elements of *deliberation and dialogue* as well as the *promotion and display of trust* were missing from their actions, and this negatively impacted on an environment conducive for democracy. In addition, no immediate reference could be drawn on *the rejection and condemnation of acts of corruption, prioritisation of education and socialisation for democracy, and transforming SGB structures into learning organisations*.

#### 6.4.2.2 ESSENTIAL PRINCIPLES OF DEMOCRACY

Considering the essential principles of democracy, the following can be highlighted.

##### a) *Participation*

Based on the court judgement, it does not seem that all parties were genuinely involved in participating in the resolution of the dispute regarding the admission of the learner in this case. The court asserted that both the SGB member present at the school at the time, as well



as the principal, informed the departmental officials that the SGB was busy trying to resolve the matter [16]. The departmental officials ignored this, and unilaterally decided to place the child in a classroom without having been admitted by the school [17]. This can be interpreted that the SGB member and principal were not participants in any decision to execute this admission of the child. It seems that had an opportunity for *participation* been created, this court judgement might not have been necessary. As a result, *participation* as an essential principle of democracy was seemingly ignored.

*b) Representation*

A number of problems with regard to *representation* came to the fore in this case. It became evident in the case that the officials from the education department, having been instructed by the HOD to admit the learner, was not in line with the policy [16-17] (this also refers to (e) below). The national *Admission Policy* provides that in the event of a refusal of a learner by the school, an appeal should be lodged by the parent of the learner with the MEC (Department of Education, 1998: Section 43). It does not seem that the departmental officials were instructed by the MEC, but rather by the HOD. This raises a question regarding the legitimacy of the representatives who intervened in this issue. From the school's side, the principal was the SGB's lawful representative in this matter.

It should be taken into account that this matter was first heard in the South Gauteng High Court, where leave to appeal was sought by the school and SGB, and granted by the High Court. The Court of Appeal had to preside on it, after which the judgement that vindicated the school and SGB was granted [56]. It *inter alia* stated that "[it] is declared that the instruction given to the principal of the Rivonia Primary School to admit the learner contrary to the school's admission policy, and the placing of the learner in the school, were unlawful" [56]. This further indicates that the school and SGB were correct from the beginning, but were treated with disrespect and their voices were ignored. My point is that those who represented, or thought they were representing, the best interests of the child, did not really do so. They rather seemed to have been ill-prepared, unfortunately with the consequence that human rights seem to have been violated.

*c) Free and fair elections*

The judgement neither addresses free and fair elections, nor could I infer anything to that effect.

*d) Respect for human rights*

The judgement confirms that school admission policies should not discriminate, and also that learners may not be refused admission on the basis that the parent is unable to pay school fees [40]. These statements refer to issues of human rights as expressed in the *Constitution*, the right to equality, and the right to education (RSA, 1996a: Chapter 2, Sections 9(2) & 29(2)). Another human right that was addressed was that in response to the reason for the non-admission of the learner, but here the principal duly complied [10]. This is in line with the BoR (RSA, 1996a: Chapter 2, Section 32(1)(b)).

*e) Respect for the rule of law*

Problems with regard to *respect for the rule of law* are reflected in this judgement. It was confirmed that the function of the admission of learners in schools lies with the SGB [31 & 37-39], so the forceful placement of the learner implies that powers and functions that were not afforded to the implicated parties were unjust and not in line with the policy [50]. This implies that the rule of law was consequently not respected by the departmental officials. The judgement however acknowledged that the school and the SGB complied with all the legal requirements, including the submission of the school's admission policy [47].

Furthermore, it was wrong to “unjustly punish” someone without having given the other party a chance to respond, in other words, the common law principle of *audi alteram partem* was ignored. The withdrawal of the admission function was implemented without giving the principal and the SGB an opportunity to respond [18]. The judgement further states that if an SGB's function were to be withdrawn, it should have been due to some unreasonable or wrongful act on the part of the SGB [35-36 & 40], which was not proven to have been the case.

In light of what has transpired in this case, I therefore posit that the *rule of law* was violated.

*f) Separation of powers*

Further reading of the judgement indicates that the separation of powers was also impacted upon. This essential principle of democracy seems to have been profoundly violated by the education department, in that the HOD interfered in governance matters of the school. In an effort to discourage such practices, the judgement states that the MEC has an “obligation to ensure that infrastructure is provided for compulsory attendance of all children in the province between the ages of seven and 15 years of age” [43]. In other words, the MEC should

ensure that the infrastructural requirements for quality education is provided, and if there is a need, deficits in this regard can be reported to the Minister of Education at national government level. The role of the HOD should have been with regard to investigating the circumstances relating to the non-admission of the learner [13], or investigating the non-attendance of a learner [44]. Therefore, those obligations “have no relation to the governance of the school” [43]. Apart from references of the responsibilities of the MEC and HOD, other stakeholders were also reminded about their roles with respect to the *separation of powers*.

In emphasising the principles of democracy and clarifying the different roles of the various stakeholders in SG, the judgement states that “[t]he lawmaker chose to give the power over admission policy to governing bodies so as to promote democratic school governance. And it limited the provincial education department’s role to the minimum required for legal accountability” [45]. Therefore, the forceful admission of the learner by officials of the department, and the negation of the admission function of the SGB and the school, demonstrate that the principle of the *separation of powers* was violated. I contend that this seems to have been demonstrated throughout the judgement, as can be noted in various references in the judgement [33-37; 39; 43-45 & 54]. It appears as if the officials, MEC and HOD overstepped their boundaries of competence and power.

I further contend that the *separation of powers* also had a consequential effect on other essential principles of democracy, as will be argued below. *Transparency and accountability* is one of these.

#### *g) Transparency and accountability*

From the court judgement it seems as if the departmental officials were not transparent in dealing with the whole issue, as they did not communicate the reasons for withdrawing the admission function from the principal and the SGB to them [18]. I contend that this lack of information, which may be as a consequence of not being transparent, may lead to uncertainty and confusion, as it has in this case. The departmental officials furthermore acted as if they were not accountable to the school and the SGB. Apart from the departmental officials, the court also highlighted the accountability of the parent and the HOD.

The court confirmed that the child’s parent is obliged to ensure that her child is enrolled in a school, and attends it [44]. It is only in the event that the attendance of the learner is in any way interrupted, or if the learner is absent from school, that the HOD has to step in [44]. The

judgement further states that “[n]o mention is made of any duty on a school regarding the compulsory attendance of children” [44]. It cannot be concluded that it was the responsibility of the school to ensure that a learner gets admitted, particularly after indicating that the school had reached its capacity [44].

*h) Free and independent media*

The judgement does not address *free and independent media*, and I could also not infer anything to this effect.

*i) Promotion of authentic partnerships*

The judgement made it evident that it is the aim and spirit of the *South African Schools Act 84 of 1996* that school governance be practiced and exercised in partnership [27]. I posit that this concomitantly elicits various expectations that have to be satisfied. Some of these expectations include *inter alia* respect towards other stakeholders, respecting the opinions of others especially during disagreements, cooperation, and working towards common goals and aims in the interest of education of the learners of SA. Contrary to this, the manner in which the department, through the actions of the MEC, HOD, and the other officials, handled this issue seems to suggest that no authentic partnership was evident. This implies that the SASA’s aim of democratic school governance, through building *authentic partnerships* within and outside the school community [27], will be difficult to realise. It seems this principle was completely ignored, and that power was more at play. The manner in which power seems to have been wielded, trampled on the basic human rights of certain stakeholders as well as the essential principles of democracy, as earlier articulated in the discussion above.

### *6.4.3 CONSEQUENCES OF THE CASE*

It is evident from the above that the elements of an environment conducive to democracy were largely missing, and the actions of some of the role players were not in line with democratic principles. As a consequence certain parties involved in this admission dispute suffered negative consequences, either prior to the case being heard, or afterwards. First and foremost, the learner was forcefully placed in a classroom without having been lawfully registered or admitted, and then had to be taken out again [2 & 20]. Another negative issue was the pressure on officials to intervene in the admission of the learner [11], resulting in embarrassment and disrespect towards the SGB member who was present at the school when the learner was forcefully placed, as well as towards the principal of the school [11 &

17-20]. Furthermore, the principal was threatened that she would be reported to the MEC [16], she was issued with a letter stating that the admission function of the principal had been withdrawn, and was also informed that the admission function had been given to another departmental official [18]. The principal was subsequently subjected to a disciplinary hearing and was “given a final warning and had a month’s salary deducted” [25]. The dignity and reputation of both the MEC and HOD suffered as a result of losing the case, as it could be construed that they are not familiar with pronouncements made in the national *Admission Policy* (1998) concerning the rights and responsibilities of SGBs and their own powers and rights. The outcome of how the policy was implemented in practice was clearly not aligned to its original intention. I will use my framework to consider the silences, as well as the contradictions between the intention of the policy and what transpired in the court case in the discussion below.

## 6.5 DISCUSSION

The *Admission Policy*, although silent on the creation of an environment conducive for democracy, is aligned with the principles of democracy. However there seems to be a general contradiction between these principles and what is observed from the court judgement with regard to the PED officials. For instance, while *Participation* is intended in the policy (6.3.2.1), it was stalled as not all SG stakeholders could take part in the resolution of the impasse (6.4.2.2(a)). Misrepresentation was evident and not to the advantage of the learner (cf. 6.4.2.2(b)). *Human rights* clearly stipulated in both the policy (6.3.2.4) and in the *Constitution*, were not respected (cf. 6.4.2.2(d)). By disregarding the stipulations of the policy, either intentionally or through ignorance, indicated that there was no respect for the *rule of law*, and in my view, this is the crux of the matter (cf. 6.4.2.2(e)). In addition, *separation of powers* was infringed (cf. 6.4.2.2(f)), *transparency and accountability* were not adhered to (cf. 6.4.3.2(g)), and there was no *promotion of authentic partnerships* (cf. 6.4.3.2(i)). Still, that the school and SGB were absolved by the court implies that they complied with the prescriptions of national education legislation, and that needs to be commended.

One has to however, consider the issues that the policy and the judgement are silent on.

An element that may be perceived to be not too contentious (in the sense that it has not yet been reported as a principle that has been violated or disputed) in view of the policy is *free and fair elections* (cf. 6.3.2.3; 6.4.2.2(c)). The *Admission Policy* is developed and accepted by

the SGB, and unless the SGB elections are free and fair, misrepresentation of different stakeholders might occur, which might have an influence on the pronouncements made in the policies. SGB elections are, however, addressed in the SASA and related provincial policies. It is therefore assumed that SGB elections are conducted in accordance with the stipulations in SASA and respective provincial regulations.

With regard to *free and independent media*, again nothing is mentioned in the texts that I have analysed. I want to refer to the role of the media in exposing issues with regard to admissions, however. A case in point is the recent dispute over admissions at Overvaal Hoërskool mentioned earlier (cf. 1.2.3). I believe the media has a role to play in informing and encouraging SG stakeholders to take part in SGB elections (cf. 3.3.3).

What is evident, however, is the silence of the policy as well as the court judgement on most of the elements that make the environment conducive for democracy.

Firstly, neither the policy nor the judgement makes any reference to *condemning acts of corruption* (cf. 6.3.1; 6.4.2.1). While it is not relevant to this specific case, issues of corruption with regard to admissions may come to the fore. Possible examples include payment of bribes, as parents pursue admission for their children in schools which they perceive offer quality education (Corruption Watch, 2017:45). Although such incidents have not yet been widely reported, it does not mean it could not escalate in future. It would therefore be prudent if the *Admission Policy* would address and reflect on *transparency and accountability*, and by implication, creates an opportunity for corrupt activities in terms of learner admissions or with regard to the *Admission Policy* to be exposed.

The importance of *transforming governance structures into learning organisations* is evident in the case. The judgement confirmed that the SGB was correct in their actions, although they were reminded that due to their position of historic privilege, they need to be sensitive to issues such as race and language (6.4.1). This suggests that SGBs should remain critical of themselves, and be willing to transform (cf. 3.2.5). Importantly though, the ignorance on the part of the PED suggests that the PED should transform themselves into learning organisations, and the judge could have considered stressing this point. A *learning organisation* would constantly try to improve and transform itself, by also explicitly building in checks and balances to monitor its own actions. The judgement ruled that the school and SGB followed procedure by submitting the school's admission policy to the PED (cf.

6.4.2.2(e)). It does not seem as if the *Admission Policy* was either read or considered by officials of the PED when this dispute started. What could possibly help are clear pronouncements on what PEDs should do with admission policies once they receive them from schools as is directed by the *Admission Policy*. If these are dealt with accordingly, maybe many unnecessary disputes can be avoided.

I believe that the issue of lack of *trust* amongst SG stakeholders that seemed to have permeated in the court judgement (probably due to a political past) should have been noted by now or even before or in the Rivonia Primary School court judgement. The element of *deliberation and dialogue* should have been raised by the court as a form of dispute resolution, or that it is important for SG stakeholders to be educated or socialised on the principles of democracy. The foregoing might have limited the negative impact of this judgement (cf. 6.4.3). Neither of these elements were raised or noted, and litigation and antagonism seems to have prevailed, with dire consequences for all SG stakeholders involved in the impasse.

My own reflection is that disputes regarding admissions are common in SA. There seems to be inaction from the side of education departments regarding the review of the *Admission Policy*, however, which was published 20 years ago. Furthermore, I want to question the PEDs' ability and willingness to respond to school admission policies that are submitted to them (cf. 6.3.2.7). One can rightly ask why it should be that the PEDs have a problem with a school's admission policy that was submitted to them earlier, and did not trust the school when the school cited capacity as a challenge, and whether a departmental official actually read and approved the policy when it was submitted. This may imply that PEDs do not know what to do with school admission policies that are submitted, or it can be interpreted as a dereliction of duty by not acting or responding to them. Clear gaps include that the policy does not indicate when it is reviewable, as well as how PEDs should deal with school admission policies that are submitted.

## 6.6 CONCLUSION

The objective of this chapter (Chapter 6) was to determine the usefulness of the derived framework on democracy in the critical analysis of the *Admission Policy*. Towards this, both the *Admission Policy* and case law related to the policy were used as main source documents, while supplementary documentary sources were also used. In this regard, I have purposely

selected the Rivonia Primary School court judgement. In order to determine the usefulness, the study focused on the elements of a conducive environment for democracy and essential principles of democracy.

In short, the framework exposed the importance of two of the elements that are not explicitly highlighted in the policy, namely the *promotion of deliberation and dialogue* and the *promotion and display of trust*. If the officials had used the framework to guide their actions, *promoting dialogue* would have encouraged departmental officials in the Rivonia Primary School case to first have authentic discussions with the school instead of trying to force their hand in forcefully and unlawfully admitting the child to the school. The officials' failure to deliberate (*promotion of deliberation and dialogue*) could be ascribed to a lack of trust (*promotion and display of trust*) in the school and SGB in admitting the learner. This could imply that *education and socialisation for democracy* and subsequently knowledge regarding the elements of a conducive environment for democracy and the essential principles of democracy were not prevalent. Although two of the elements may not be directly related to both documents, the *condemnation and rejection of acts of corruption* and managing schools as learning organisations (*creation of learning organisations*) are also elements that are important. This is especially true since schools also deal with finances, which is referred to in the *Admission Policy*. Reference to *condemnation and rejection of acts of corruption* might be worth consideration in view of the possibility of fraud.

From the findings it is evident that although the objective of the *Admission Policy* was attained, i.e. that learner was ultimately admitted at a school, the framework showed that democracy, in terms of the elements and principles, does not seem to have been realised. Overall the framework showed that if elements and principles are not taken into account, SG practices characterised by issues of inequality, whether perceived or real, may lead to discrimination, racism, disputes and unnecessary litigation. I do not suggest that litigation is wrong, however. If genuine *deliberation and dialogue* as a dispute resolution was used, and if the framework was available and used, litigation might not have been necessary.

Based on the information that the derived framework on democracy could extract regarding the elements of a conducive environment for democracy and essential principles of democracy in SG practices and policies (*Admission Policy* and case law), I conclude that it is useful for this particular policy. In order to consider how the framework on democracy can



be used in different situations, policies and case law, and to confirm its usefulness, a CPA of the *Language Policy* will be undertaken in the next chapter.

# CHAPTER 7: ANALYSIS OF THE NORMS AND STANDARDS FOR LANGUAGE POLICY IN PUBLIC SCHOOLS: LANGUAGE IN EDUCATION POLICY (1997)

## 7.1 INTRODUCTION

In Chapter 6 the usefulness of the derived framework on democracy was tested by using it to critically analyse the *Admission Policy* (cf. 1.4, Objective 3.1). In this chapter, the value of my framework will be further put on trial by critically analysing the *Norms and Standards for Language Policy in Public Schools: Language in Education Policy (1997)*<sup>3</sup> (hereafter *Language Policy*) (cf. 1.4, Objective 3.2). This will again include an analysis of a court case, because through case law the impact of the implementation of the *Language Policy*, as experienced by SG stakeholders, and how it is dealt with in practice and policy in SA, comes to the fore.

It should be noted that the *Language Policy* actually comprises two policies. One is the *Language in Education Policy* in terms of Section 3(4)(m) of the *National Education Policy Act 27 of 1996*, and the second is the *Norms and Standards Regarding Language Policy* published in terms of Section 6(1) of *The South African Schools Act of 1996*. The *Language Policy* states that “[w]hile these two policies have different objectives, they complement each other and should at all times be read together rather than separately”. In this study they are approached as advised, in other words as one single policy.

As in the previous chapter, Taylor’s approach to Critical Policy Analysis (CPA) will be used (cf. 6.1), first providing background to the policy as *context*, and then focusing on *text*. The court case provides insight into the *consequences* of the policy. The chapter will unfold through an

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<sup>3</sup> It should be noted that different versions of the policy in terms of the numbering are available. I used the version published in the Juta’s Pocket Statutes (2016 version) which corresponds with GN 1701 in Government Gazette 18546 of 19 December 1997 as amended by GN 665 in Government Gazette 18887 of 15 May 1998, available at <http://www.up2speed.co.za/Legislation/NORMS%20AND%20STANDARDS%20FOR%20LANGUAGE%20POLICY%20IN%20PUBLIC%20SCHOOLS.pdf> and not the document currently on the DBE website at <https://www.education.gov.za/Portals/0/Documents/Policies/GET/LanguageEducationPolicy1997.pdf?ver=2007-08-22-083918-000>

analysis of the *Language Policy*, followed by the case law. I then conclude with a brief summary and a critical discussion.

## 7.2 BACKGROUND AND AIM OF THE LANGUAGE POLICY (DEPARTMENT OF EDUCATION, 1997)

I believe that it is critical to be conscious of the context in which policy is introduced, not only in relation to this study, but because it can assist SG stakeholders to understand the need for such a policy. Furthermore, it might also provide a sense of how and why particular SG stakeholders might resist embracing new democratic policies, or hindering their implementation.

The *Language Policy* acknowledges that it operates in a milieu characterised by racial discrimination. It states that language “in South Africa has been fraught with tensions, contradictions and sensitivities, and underpinned by racial and linguistic discrimination” (Department of Education, 1997b: Section IV(A)(2)). It further states that it is “the new government’s strategy of building a non-racial nation in South Africa (1997b: Section IV(A)(3)). It subsequently aims to address past inequalities, and “for the redress of previously disadvantaged languages” (1997b: Section IV(C)(1 & 6)). Through the foregoing, there is an acknowledgement that some languages have previously been ignored and disadvantaged, leading to the need to rectify the situation, particularly in schools (1997b: Section V(A)(3)). Schools are therefore expected to address issues of equity, and to contribute towards correcting the “past racially discriminatory laws and practices” (1997b: Section V(C)(2)(b & c)), as especially as it relates to language in education. This is fundamental, not only in the provision of context, but also because this study focuses on democracy in South African SG practices and policies.

The *Language Policy* envisages the achievement of certain outcomes through the implementation of the contents of the *Language Policy*. This is captured in the following aims of the policy (1997b: Section IV (C)(1-6)):

1. *to promote full participation in society and the economy through equitable and meaningful access to education;*
2. *to promote and support multilingualism;*

3. *to stimulate interest towards the improvement and growth of all the official languages;*
4. *to endorse the upholding of all dominant and spoken languages that are used for the teaching and learning in schools and communities, as well as languages used in other contexts outside formal schooling and particular societies;*
5. *to identify challenges that impact on the disparities between home languages and languages of learning and teaching; and*
6. *to introduce measures to improve on the growth of formerly underdeveloped and suppressed languages.*

The aim of the *Norms and Standards regarding the Language Policy* (Department of Education, 1997b: V (A)(1)(1-3)) is to recognise diversity as “a valuable asset, which the state is required to respect” and to promote, to fulfil and assist in the development of “the state’s overarching language goals in school education in compliance with the Constitution”. Some of these goals include:

1. *The protection, promotion, fulfilment and extension of the individual’s language rights and means of communication;*
2. *to introduce mechanisms that are not expensive in enabling citizens to become global communicators; and*
3. *to rectify the mistreatment and disregard of formerly underprivileged language(s) in and across the school system (education).*

Already in the statement of the aims of the two parts of the policy, certain aspects of the framework can be identified, and this will be included in the section below. It is important to note at this stage that the *Language Policy* was drafted in response to the previous Apartheid dispensation, to include all stakeholders and languages, and in support of and to promote democracy.

## 7.3 THE CRITICAL ANALYSIS OF THE LANGUAGE POLICY

(1997)

During the textual analysis of the *Language Policy*, I explore whether and how the elements of a conducive environment for democracy and the essential principles of democracy are addressed within the policy text. As a reminder, the elements of a conducive environment include *condemnation and rejection of acts of corruption, prioritisation of education and socialisation for democracy, promotion of deliberation and dialogue, promotion and display of trust and the creation of a learning organisation (transforming SGBs into learning organisations)* (cf. 3.2). The essential principles of democracy include *participation, representation, free and fair elections, respect for human rights, respect for the rule of law, separation of powers, transparency and accountability, free and independent media, and promotion of authentic partnerships* (cf. 3.3).

### 7.3.1 CONDUCTIVE ENVIRONMENT FOR DEMOCRACY

The *Language Policy* is a product “of discussions and debate with a wide range of education stakeholders and role players” (Department of Education, 1997b: Section 1), and it strives *inter alia* to make citizens “global communicators” (1997b: Section V(A)(1)(1-3)). It furthermore embraces dialogue and debate by making avenues available when misunderstandings or disputes arise. These avenues include the MEC, the Pan South African Language Board (PANSALB), and arbitration (1997b: Section V(E)(1-3)). Based on the foregoing, one can accept that the *Language Policy* promotes *deliberation and dialogue*.

*Prioritisation of education and socialisation for democracy* is emphasised when the policy encourages societies in SA to learn and speak more than one language (multilingualism) (1997b: Section IV(A)(4)). Multilingualism will lower absolute adherence to only one language, and will promote respect for other languages. It may also decrease “ethic chauvinism or separatism through mutual understanding” (1997b: Section IV(A)(4)). Although there are many ways of promoting multilingualism, such as *inter alia* bilingualism, the *Language Policy* nevertheless advises that the home language should not be compromised or disadvantaged in the process (1997b: Section IV(A)(5)). The above clearly regards the *promotion of education and socialisation for democracy* as the means through which both learners and adults can learn to respect their own languages first, and also that of other citizens, who might not share a common mother tongue. This reflects one of the main aims of the *Language Policy* (1997b:

Section IV(C)). In this regard the policy states that support should be provided in “the learning and teaching of all other languages required by learners or used by communities in South Africa, including languages used for religious purposes, languages which are important for international trade, and South African Sign Language” (1997b: Section IV(C)(4)).

In my reading of the text, I realised that the *Language Policy* addresses two of the five elements of a conducive environment for democracy identified in my framework, namely *prioritisation of education and socialisation for democracy* and the *promotion of deliberation and dialogue*. The *Language Policy* seems to be silent, however, on *the condemnation and rejection of acts of corruption, promotion and display of trust, and transforming SGB structures into learning organisations*.

### 7.3.2 ESSENTIAL PRINCIPLES OF DEMOCRACY

The *Language Policy* addresses seven of the essential principles of democracy (cf. 7.3).

#### 7.3.2.1 PARTICIPATION

Firstly, the *Language Policy* acknowledges that it is a product of broad participation, as “a wide range of education stakeholders and role-players” took part in its development and ultimate publication (Department of Education, 1997b: Section I). Sensitivity for participation is further demonstrated in the aim to “promote full participation in society and the economy through equitable and meaningful access to education” (1997b: Section IV(C)(1)). This implies that the *Language Policy* is not only a product of broad participation, but also that it envisages the promotion of full participation in the future.

Provision for learner participation in their choice for the language of learning and teaching implies that learners are recognised as important stakeholders in education (1997b: Section V(B)(1-2)). It can therefore be interpreted that the *Language Policy* makes provision for learner participation, even though learners who are minors, will be represented by their parents or guardians.

#### 7.3.2.2 REPRESENTATION

The section above (cf. 7.3.2.1) acknowledges the different representatives who participated in the development of the *Language Policy*. As a result, it can be assumed that the legitimate representatives of educational stakeholders and role players took part, while representatives

from communities and organisations who might not have direct links with education, were also offered an opportunity to make inputs and offer comments in the development stages of the policy and before it was finally published (Department of Education, 1997b: Section I). In light of the above, it can be accepted that the *Language Policy* recognises representation as an essential principle of democracy through legitimate representation. Representation of learners by their parents were also mentioned in 7.3.2.1, and since stakeholders normally sign off policy to demonstrate participation and approval, this also indicates who the representatives were.

#### 7.3.2.3 FREE AND FAIR ELECTIONS

No reference is made in the *Language Policy* to free and fair elections, and neither could I infer anything to that effect.

#### 7.3.2.4 RESPECT FOR HUMAN RIGHTS

The *Language-in-education Policy* (the first part of the *Language Policy*) states that it:

*recognises that our cultural diversity is a valuable national asset and hence is tasked, amongst other things, to promote multilingualism, the development of the official languages, and respect of all languages used in the country, including South African Sign Language and the languages referred to in the South African Constitution* (Department of Education, 1997b: IV(A)(1)).

The paragraph above seems to resonate with rights that include receiving education in a language of choice and issue s of redress, the use of language in the participation of cultural activities, and that people sharing common cultural, religious or linguistic characteristics should not be denied the enjoyment of such rights, and all these are what is stipulated in the *Constitution* (RSA, 1996a: Sections 29(2)(c); 30 & 31(1)), and hence are basic human rights. In line with the *Constitution* (RSA, 1996a: Sections 30 & 31(1)), which protects the language and cultural rights of all SA citizens, the *Language Policy* also advises that languages of other people in the community need to be respected, and efforts should be made to speak other people's languages (Department of Education, 1997b: Section IV (A)(3)). The protection and promotion of language and cultural rights are also highlighted through the section on equality, as far as the right to enjoying the rights and freedoms relating to language (RSA, 1996a: Section 9(2)). In this regard, the state is expected to provide protection against unfair discrimination based on language (RSA, 1996a: Section 9(3)), and this includes providing an

environment that is conducive to the development and growth of other languages through redress.

Furthermore, the pronouncement on the protection of and enjoyment of human rights is emphasised in the aims of the *Norms and Standards regarding Language Policy*, namely “[t]he protection, promotion, fulfilment and extension of the individual’s language rights and means of communication” as well as “to redress the neglect of the historically disadvantaged language in school education” (1997b: Section V(A)(1) & (3)). Since there seems to be an admission that some languages have been neglected and treated unequally in the past, there has to be sensitivity to treat these equally. The above endeavours to protect the individual rights of learners with respect to their choice of language of learning and teaching, as well as the right and access to education, and again redress towards equality (1997b: Section V(B)(1)-(3)).

Basic human rights, especially as it relates to language and cultural rights, and particularly, respect, equity and equality, are addressed by the *Language Policy*.

#### 7.3.2.5 RESPECT FOR THE RULE OF LAW

Schools and SGBs are implored to abide by the *Constitution* and other laws that govern language in education, and they must stipulate how they will incorporate other languages as well as promoting multilingualism in their schools (Department of Education, 1997b: Section V(C)(1)). Strict adherence to the number of languages a learner in a particular grade needs to study, the language of learning and teaching, the time allocated per language, and promotion requirements for the various grades are strongly encouraged (1997b: Section IV(D)(1-4)). The *Language Policy* further regulates that “[t]he language(s) of learning and teaching in a public school must be (an) official languages” (1997b: Section IV(E)).

In the event that there are at least 40 learners in Grades 1 to 6 or 35 learners in Grades 7 to 12, the school should ensure that those learners are provided tuition in their preferred language of teaching and learning, on the condition that it is reasonably practicable to do so (1997b: Section V(C)(2)).

The exposition above regarding policies and legislation, endeavours to protect the individual rights of learners with respect to their choice of language of learning and teaching, as well as the right and access to education (1997b: Section V(B)(1-3)). The above guidelines suggest



that the policy expects all role players to follow instructions, and in doing so respect the rule of law. Closely linked with this, is the principle of the separation of powers.

#### 7.3.2.6 SEPARATION OF POWERS

The *Language Policy* provides clear guidelines in an effort to avoid confrontation due to a confusion around roles and responsibilities. This clearly enhances the principle of *separation of powers*. It states that when a school is unable to provide education in a language of learning and teaching preferred by a particular learner, it is the responsibility of the PED to assist in this regard (Department of Education, 1997b: Section V(B)(4)). The language policy of the school is the responsibility of the SGB, and it needs to stipulate how it intends to promote multilingualism (1997b: Section V(C)(1)). Furthermore, should the school be interested in introducing other programmes that would promote the use of multiple languages in the school, it would need the approval of the PED (1997b: Section V(C)(1)).

In a case where a school does not offer a particular language as a language of learning and teaching, but qualify for the stipulated minimum number of learners, it is the responsibility of the HOD to ensure that the needs of those learners are attended to (1997b: Section V(C)(2)). If it is not possible to accommodate learners who have requested to be accommodated in their preferred language, the PED needs to keep a register of those learners (1997b: Section V(D)(1)).

In determining a language policy for a new school, it is the responsibility of the new SGB in consultation with the provincial authority to determine the language policy (1997b: Section V(D)(2)). It is furthermore the responsibility of PEDs to provide assistance and guidance with regard to language maintenance programmes undertaken by schools and school districts (1997b: Section V(D)(4)).

As disputes in language issues in public schools are inevitable, the *Language Policy* provides avenues and guidelines to mediate such disputes. Learners or SGBs that are dissatisfied with the decision of the HOD of education may appeal to the MEC within a period of 60 days (1997b: Section V(E)(1)). Learners or SGBs who are still dissatisfied with any decision by the MEC, “may approach the Pan South African Language Board to give advice” (1997b: Section V(E)(2)) (cf. 7.3.1). Should no positive outcome emanate from the involvement of the PANSALB, disgruntled learners or SGBs have the right to approach the Arbitration Foundation of South Africa to try and resolve the matter (1997: Section V(E)(3)).

From the above it can be observed that the different stakeholders' responsibilities are clearly delineated, thus the policy seems to support and enable the *separation of powers*, as an essential principle of democracy.

#### 7.3.2.7 TRANSPARENCY AND ACCOUNTABILITY

It seems the *Language Policy* is a product of transparency and accountability from its inception or development, as a wide range of education stakeholders as well as public comment has been sought and accommodated (Department of Education, 1997b: Section I). In addition, when learners are admitted at a particular school, they are given an opportunity to choose the language of learning and teaching (1997b: Section V(B)(2)), and this implies that the school's language policy would be open to scrutiny. The foregoing also implies that parents of learners at schools should be provided with policies and in particular the language policy of the school, and this promotes transparency and accountability. Due to the composition of the SGB, their development and adoption of the language policy also promotes transparency and accountability (1997b: Section V(C)(1)), as the expectation is that each constituency and representative would have taken their responsibility of contributing to the development and adoption of the language policy.

Furthermore, the *Language Policy* seems to place the responsibility of ensuring that learners have access to learning and teaching in their language of choice in the PED. If schools in the province are unable to provide that language, then the PED should keep a register of such requests (Department of Education, 1997b: Section V(D)(1)). Keeping a register may promote *transparency and accountability* with regard to the policies and processes. This will enable the public to be aware of such a need, and as a result hold the PED accountable for providing a solution. Furthermore, with regard to the promotion of multilingualism, the PEDs should hold schools accountable, and also expect schools to stipulate how they intend to promote multilingualism in their schools (1997b: Section V(D)(1)). This implies that interested members will have access to information regarding the promotion of multilingualism, and will be able to hold schools accountable in the event that multilingualism is not promoted.

#### 7.3.2.8 FREE AND INDEPENDENT MEDIA

The *Language Policy* does not refer to *free and independent media*, and neither could I infer anything to that effect.

### 7.3.2.9 PROMOTION OF AUTHENTIC PARTNERSHIPS

It is evident that the *Language Policy* recognises that in order to correct past inequalities regarding language in education and to promote multilingualism, support and cooperation in this regard is inevitable. In this regard, the *Language Policy* implores on societies, or communities, citizens, structures, or PEDs to cooperate in an endeavour to achieve the aims of the *Language Policy* (Department of Education, 1997b: Sections I; IV(A)(1) & (3 & 4); IV(C)(1 & 4)). Since schools have to develop or implement policy subject to PED or national department approval (1997b: Section IV(D)(4)(d)), implies that they have to cooperate and work in partnership.

Other instances where PEDs and schools are expected to work in partnership include where efforts should be made to ensure a learner receives tuition in a language of preference (1997b: Section V(B)(4)); or in determining language policies for a school or promoting multilingualism (1997b: Section V(C)(1)); or introducing a language of instruction in a grade that did not previously offer such a language (1997b: Section V(C)(2)); or assisting new schools in determining their language policies (1997b: Section V(D)(2)) ; or exploring ways of sharing scarce resources (1997b: Section V(D)(4)); or in matters of appeal regarding decisions that affect a learner (1997b: Section V(E)(1 & 2)).

Furthermore, there is also an assumption that the stakeholders and role players in education worked in partnership, the foregoing is based on participation and representation as alluded to in the *Language Policy* (1997b: Section I) (also see 7.2.2.1 & 7.2.2.2). This is based on the expectation that opportunities for engagement and the resolution of differences had probably been provided for, so its product may be regarded as one of authentic partnership. It is also acknowledged that this is not a final document (1997b: Section IV(A)), but will be improved upon if the need arises. In this regard, the expectation that the promotion of authentic partnerships will be employed then as well should be made realisable.

### 7.3.3 SUMMARY

In the above critical analysis of the *Language Policy*, making use of the derived framework, it is clear that two of the elements for an environment conducive to democracy are present in the policy. These are the *promotion of deliberation and dialogue*, and the *prioritisation of education and socialisation for democracy*. Furthermore, with the exception of *free and fair elections*, and *free and independent media*, all the essential principles for democracy could be

identified. At least on paper, the policy seems to both promote an environment conducive for democracy and the essential principles for democracy. Reality is, however, that despite the referred policy pronouncements quite a number of problems related to language in education have been reported on in the press, some which resulted in litigation. One such a case will be discussed in the section that follows.

## 7.4 CRITICAL ANALYSIS OF THE SEODIN PRIMARY SCHOOL AND OTHERS V MEC OF EDUCATION OF THE NC AND OTHERS (2) (77/04/01) [2005] ZANCHC 6; 2006 (4) BCLR 542 (NC); [2006] 1 ALL SA 154 (NC) (24 OCTOBER 2005/ (CASE 1177/04) JUDGEMENT

In order to further test the usefulness of the derived framework on democracy I have purposely selected the court judgement that follows below, because it relates to a language dispute, and it provides an opportunity to determine or test my framework on democracy.

### 7.4.1 BACKGROUND

The Seodin Primary School court judgement is about a dispute related to language of learning and teaching in public schools. I specifically selected this particular case due to its geographical coverage. It incorporates two provinces, namely the Northern Cape (NC) and North West (NW) [2]. The applicant schools are Seodin Primary School, Kalahari High School, Northern Cape Agricultural High School and their SGBs [3]. The respondents were four schools, namely Kuruman Primary School, Wrenchville Primary School, Wrenchville High School, Bankara-Bodulong Combined School and their SGBs (except the SGB of Bankara-Budulong) as well as the MEC and HOD of the NC, and other interested parties [2 & 9]. Furthermore, no fewer than seven schools are cited in case law across four provinces, namely the NC [52; 57-58], Western Cape [29 & 42], Mpumalanga [31 & 39] and Limpopo [60]. This implies that a wide variety of parties was affected. A wide range of cases have been consulted, implying that many sources have been referenced and analysed. Furthermore, similarities and differences were also extracted, enriching the ruling in this case.

The crux of the matter is that schools for predominantly Black and Coloured learners in the Kuruman district of the NC had reached capacity, while this was not the case with schools

from previously advantaged and Model C schools predominantly used by White learners [6-8]. Although the NC Agricultural High School (one of the applicants) uses Afrikaans as the language of instruction, it is not in the Kuruman district, but in the Frances Baard district of the Northern Cape [3]. The involvement of the North West MEC of Education is due to the admission of learners from that province into schools in the Northern Cape. Some areas that were previously in the North West were later incorporated into the NC province.

The MEC produced evidence to the court that it had corresponded with all affected stakeholders (particularly the applicant schools) that the provision of Afrikaans at the expense of a double-medium of Afrikaans-and-English instruction was not in the interests of *inter alia* our constitutional democracy, multi-culturalism or multi-lingualism [9-11]. Furthermore, the MEC asserted that this insistence of the applicant schools on Afrikaans as the only official medium of instruction impacted on the maximum usage of the resources of the province [9]. Repeated interventions and requests from the HOD of the NCDoe fell on deaf ears [11-12 & 19] as the applicants refused to let go of their exclusively Afrikaans medium of instruction [9 & 19]. In order to continue their exclusively Afrikaans character, the applicants advanced various defences, some of which include *inter alia* culture and the fear of losing monetary contributions from parents [14 & 21]. This refusal led to the MEC and subsequently the HOD to instruct the affected schools (applicants) and their SGBs to convert and function as double-medium schools [3]. This would enable them to accommodate and admit learners from nearby communities and schools who needed space.

It seems that the NCDoe had done a thorough analysis, and they were well informed about the situation [10]. They could for example indicate to each of the affected receiving school the number of learners they were to enrol the following year (2005), as well as the primary schools where the learners were coming from [11-12]. The applicant schools and SGBs did not take kindly to the written instructions and sought the intervention of the courts.

After receiving instructions from the NCDoe in 2004 to convert to parallel medium and to admit the affected learners in January 2005, the schools filed for the review and setting aside of the decision of the MEC and instruction from the HOD [3 & 5]. The relief was later amended to seeking a declaratory order stating that both the MEC's decision and HOD's instruction were susceptible or amenable to being set aside [5]. The case dragged on from 2004 to 2005

[1; 4 & 6]. It is however, the contents of the High Court of the Northern Cape Division in Kimberley's ruling of 2005 that is the focus in this study.

Below I will analyse the judgement using my derived framework, to understand whether and how the elements of a conducive environment and essential principles of democracy are addressed in the judgement (text). Thereafter, I consider the impact that the implementation of the *Language Policy* have on particular SG stakeholders (7.4.3 & 7.5).

In the court judgement, issues of history, language, culture and resources were highlighted. In this regard, the judgement reveals an acknowledgement that Afrikaans has been the sole and dominant language of the community over many years [21.2]. It also acknowledged that intentions to introduce dual-medium English-Afrikaans in schools in the community will most probably not be accepted without resistance. In response to this behaviour to cling to language and culture to the detriment of transformation, the MEC for Education in the NC had written a letter to the applicant schools, stating that:

*In fact, I hold a strong view that it is in the interests of Afrikaans to learn to co-exist with other cultures, especially in public spaces. After all, it is the intention of policy to strengthen and encourage the multi-cultural and multi-lingual character of our society. The insular positioning of the Afrikaans-speaking learners in public spaces at the expense of the rights of others is Constitutionally unsound [50].*

The letter by the MEC was part of the evidence used in this judgement, which affords centrality and importance to both language and culture in the critical analysis of policy. It also demonstrates that language and culture inform the context in which the *Language Policy* functions. In line with this, the Amicus Curiae (PANSALB) in the judgement asserted that the manner in which the issue of language has been handled, especially by the applicant schools, was to perpetuate segregation and exclusion, and also to dominate the disadvantaged [49]. This can be regarded as perpetuating racism.

The issue of race came up a number of times in the Seodin Primary School court judgement. The applicant schools accused the MEC of coercing them into embracing and living with other races, and by so doing dismantling their white character [13]. This was emphasised when the applicants responded in a letter written in Afrikaans, accusing the respondents of having malicious intent of opening their schools to other language speaking learners, and this seems

not to have impressed the judge(s) [14]. The foregoing was succinctly put as “an ulterior motive to alter the racial composition of the applicant schools or to transform the governing bodies, or to change the cultural ethos, milieu and traditions of the applicant schools” [5.3.1]. In one of the budget speeches in 2004 the MEC had indicated that it was the department’s strategic objectives to get rid of “all forms of racial discrimination and prejudice in education in our province” [15]. This implies that schools should have been well prepared and waiting for initiatives like these. Some schools obviously did not, hence the dispute in the NC High Court (Kimberley). The court, through an official from the NCDoe legal section, asserted that the refusal to allow learners from disadvantaged backgrounds access to better and well equipped schools in former white communities is tantamount to rendering such schools as “racial enclaves” [18.1]. This can also be construed as the protection of privileges and resources.

The issue of unequal distribution of resources was acknowledged and put as evidence to the court by the MEC. Learners from the Black and Coloured communities had to enrol at schools far away from their homes at great financial expense due to the lack of schools in their communities. This occurred while there is enough space in schools in White communities close by [6; 7; 31.4; 33]. In acknowledging their financial status and history, the applicant schools were concerned that they would forfeit the financial help they receive from the White community [21.1]. This amplifies the historical imbalance of the different communities and, by implication, feels justified to continue to perpetuate that situation of privilege against lower quality education. The foregoing was raised in the judgement as a consequence of the past political system of Apartheid. The court drew on what was highlighted in a previous judgement (*Western Cape Minister of Education & Others v Governing Body of Mikro Primary School & Another 2005 (10) BCLR 973 (SCA)*) to the effect that “the state must consider all reasonable educational alternatives, including single medium institutions, taking into account (a) equity; (b) practicability; and (c) the need to redress the results of past racially discriminatory laws and practices” [8].

The discussion above describes issues in the educational context, such as socio-economic situation, cultural and political issues, issues of inequality and racism, and unfair distribution of resources as matters that SG stakeholders should be conscious of when dealing with the implementation of the *Language Policy*.

In the section that follows, an exploration is given of how and whether the elements of a conducive environment for democracy and essential principles of democracy are addressed in the Seodin Primary School court judgement.

#### 7.4.2 ANALYSING THE TEXT

As in the case of the *Admission Policy*, the elements of a conducive environment for democracy and the essential principles of democracy as addressed in the Seodin Primary School court judgement will be analysed (cf. 6.4.2).

##### 7.4.2.1 Elements of a Conducive environment for democracy

The Seodin Primary School court judgement does not directly address most of the elements of a conducive environment for democracy, although some nuances of *deliberation and dialogue* and the *promotion and display of trust* could be inferred. In this regard, the judgement noted that the SASA, Section 6(1), requires consultation with stakeholders regarding the determination of norms and standards for language policy [8.8], and this implies the prevalence of some form of *deliberation and dialogue*. This is also discussed as part of *participation* below (7.4.2.2(a)). That the applicant schools were reluctant to submit their schools' language policies for scrutiny, or unwillingness to collaborate in the development and/or approval of their policies, and their "Teacher Forum" meeting without legitimate departmental representation [8.8 & 25], may be interpreted as a lack of the *promotion and display of trust*. Furthermore, it seems as if the reluctance of the applicant schools to embrace change could be ascribed to the potential reluctance to *transform SGB structures into learning organisations*. In addition, it appears that *education and socialisation for democracy* was absent. Lastly, the element of the *condemnation and rejection of acts of corruption* could not be identified, although the issue of financial contributions were highlighted.

##### 7.4.2.2 ESSENTIAL PRINCIPLES OF DEMOCRACY

Eight of the essential principles of democracy were addressed in the Seodin Primary School court judgement (cf. 7.3).

###### a) *Participation*

Participation is implied in a number of ways. Firstly the court judgement reminded parties that the SASA prescribes that the Minister of Education and the Council of Ministers must consult when determining norms and standards for language policy in public schools [8.8].



Participation is secondly evident in a letter dated 17 September 2004 from the HOD to the schools, brought as evidence to the court, affording the applicants an opportunity to bring arguments regarding the admission of learners from the other schools [12], in order to find a resolution. This seems to suggest that the applicant schools were given the opportunity to participate in the resolution of a problem, and therefore to take part in the decision-making processes. However, the applicant schools did not make use of that opportunity. On the contrary, the judgement revealed that there was some doubt as to whether the MEC and HOD had provided the applicants an opportunity to respond [17 & 36].

Another reference to participation was made by the legal counsel of the MEC and HOD, who indicated that the applicants could not prove that their language policies were determined in consultation with the NCD of E [25]. This can be seen as another opportunity for participation in determining policy, but was not utilised by the applicant schools. Counsel for the applicants, on the other hand, contended that the presence of the Regional Director and Circuit Manager at the meeting corroborated their stance on the language policy of Seodin Primary School [26]. This again confirms that some form of participation did take place, although the regional director refuted the correctness of the contents of the alleged resolution taken at a parents meeting [25 & 27]. In addition, the District Director also indicated that the Circuit Manager was not mandated to represent the department, and this was confirmed by the HOD [9.5].

During the court hearing reference was often made to the *Northern Cape School Education Act No. 6 of 1996* [24], which is what Taylor *et al.* calls intertextuality (Taylor *et al.*, 1997:46). In particular its reference to the need for consultation in the determination of language policies in public schools [28 & 57], implies that participation is promoted, and highly regarded as an essential principle of democracy. The implication is that without the necessary participation of SG stakeholders in the determination and adoption of schools' language policies, these cannot be regarded as legal instruments to be implemented in schools.

Based on the argument advanced above, it can be interpreted that the essential principle of democracy through participation is addressed, and specifically also links with the element of the *promotion of deliberation and dialogue*. Furthermore, since participation by a Circuit Manager, who was supposed to have represented the district was contested, this implies that participation was also linked to (legitimate) representation, and it is addressed below.

*b) Representation*

In defence of protecting Afrikaans as their exclusive medium of instruction, the Kalahari High School (one of the applicant schools) claimed that the decision to continue with Afrikaans was apparently affirmed at a Teacher Forum (“Onderwysersforum”) established in Kuruman [9.5]. In response, the HOD had argued that he was not aware of the existence of such a forum, and neither had “he given any official of the department or principal of any public school in the town any authority to represent the department on any such structure” [9.5]. The court seemed to accept the version of the HOD, and assumed “that the forum is a body that does not represent any officially sanctioned position” [9.5]. In other words the issue of skewed representation was noted and reflected, and that this was used in a dubious manner. Representation can be used to affirm and advance the implementation of decisions that are divisive, thereby satisfying the objectives of only a few of SG stakeholders.

The court also reminded the parties about representation on the SGB, and also that the principal acts on behalf of the HOD [8.6]. This implies that in cases where principals represent the department, the department would be responsible for decisions that emanate from such representation. The principal is sometimes in a difficult position. On the one hand he represents the HOD on the SGB. He should therefore act in the best interest of the HOD and by implication the Department, but he should also act in the best interest of the school, in his capacity as SGB member. This might lead to conflicting interests, such as in this case. In this case one can expect that the principal would have been familiar with the contents of both the national *Language Policy* and the *Northern Cape School Education Act No.6 of 1996*, particularly on matters of language. He should therefore have been in a position to find a balance in line with the policies of the department. The concerned principals should have been in position to better represent the SG stakeholders, and not remain silent on matters where they should have provided leadership.

Based on the above exposition, it can be construed that representation, as an essential principle of democracy, is acknowledged and addressed in the Seodin Primary School court judgement, although the complexity thereof might not have been fully acknowledged.

*c) Free and fair elections*

The court reminded parties about the composition of the SGB, as well as that besides the principal, the other members should have been elected from their various constituencies

[8.6]. The importance of elected members was raised in light of the voting rights that legally elected members enjoy over those who do not have voting rights.

Since there are instances where members of the SGB are required to vote like for the adoption of a budget, increases in school fees, or the adoption of a policy, it is important that those who are given that responsibility are legitimate members of the SGB. That implies that they should have been legally and duly elected. In this manner, the essential principle of democracy in the form of *free and fair elections* is addressed.

d) *Respect for human rights*

From the judgement, one of the main allegations that the applicant schools levelled against the respondents was with regard to their decision to transfer learners to the Afrikaans-medium schools, and that these Afrikaans-medium schools should accommodate dual-medium Afrikaans-English as language of teaching and learning [5.3]. This has reference to “section 29(2) of the Constitution” [5.3 & 7-8], which refers to the basic human right related to receiving education in the language of your choice. However, the applicant schools seem to postulate that the respondents’ decision intended to “alter the racial composition of the applicant schools or to transform the SGBs, or to change the cultural ethos, milieu and traditions of the applicant schools” [5.3.1]. I do not intend to argue the assertion of the applicant schools’ interpretation, although it is open to be challenged, but recognise that the issues raised in this paragraph are clearly human rights issues as they are reflected in the *Constitution*. The court referred to the Mikro Primary School court judgement, in which parties were reminded that the SASA was promulgated to *inter alia* redress past injustices in educational provision, combat racism and sexism and all other forms of unfair discrimination and intolerance, to protect and advance our diverse cultures and languages and to uphold the rights of all learners, parents and educators [8].

Furthermore, it emerged in court that in one of the letters of the MEC to the applicant schools, he stated that the education system should be sympathetic and considerate of the best interests of the child [9.3; 9.9; 31 & 41]. This is enshrined in the *Constitution* (RSA, 1996a: Section 28(2)), and as such is a human right. Another issue that the letter seemed to have is the equality of treatment of learners with regard to the resources that some schools enjoy, and others not [9.6], and this is also a human rights matter (RSA, 1996a: Section 9). In an effort to address some of these inequities, the MEC had postulated in a Budget Speech in the

Legislature on 1 May 2004, that “[o]ne of our strategic objectives, Madam Speaker, is to fully deracialise our schools and eradicate all forms of racial discrimination and prejudice in education in our province” [15]. Furthermore, the MEC committed the NCDoe “to work together in conditions of entrenched democracy ... [and] respect for human rights” [16]. The court ultimately asserted that the right to education and the right to receive education in a language of choice should be recognised [56]. The right to receive education and to receive it in a language of choice are human rights issues (RSA, 1996: Chapter 2, Sections 29(1-2).

Clearly, from the above, issues pertaining to human rights were highlighted during the court case.

*e) Respect for the rule of law*

The respect for the rule of law is about respecting what the law says or has ruled [20]. The court used a statement from the judgement of Innes ACJ in *Shidiack v Union Government (Minister of the Interior)*, (1912 AD 642) to demonstrate what happens when a judicial functionary or departmental official may either respect or be in breach of the rule of law. In this regard, it maintains that if the official has disregarded the express provisions of a statute, then he/she may be judged to have violated the rule of law [20]. Furthermore, that judgement implores on public officials to be mindful of the “exercise of public power through the bill of rights and the founding principles enshrining the rule of law” [20]. I need to state that more reference to case law in the paragraph cited deals with the essential principle of the rule of law, however, I need not explicate further.

An example of not having done as the law requires, the judgement referred to the applicant schools not having complied with the provisions of the *Northern Cape School Education Act* read with 6(2) of the SASA, as well as “the norms and standards regarding language policy or the Language-in-Education policy or the relevant provisions of the Constitution” [24]. This implies that the applicant schools did not respect the rule of law [29]. In an effort to comply with the rule of law, the court decided to reproduce the entire Section 16 of the *Northern Cape School Education Act of 1996* [28] in its judgement. I am convinced that this was done to guide them in their actions in pursuit of respecting the rule of law. Some of the important sections addressed, include *inter alia*, that the schools’ language policies should be determined in consultation with the NCDoe (again referring to *deliberation and dialogue*), and subject to the approval of the MEC; that “[s]chool language policy should be designed to

facilitate the maximum participation of learners in the learning process”; and that “[n]o form of racial discrimination shall be practised by the SGB of a public school in exercising its language policy” [28]. The reference to section 16 seems to have particularly not been observed in this judgement, as a result, it implies that the rule of law might not have been adhered to.

I further contend that the above exposition demonstrates that as one of the essential principles of democracy, *respect for the rule of law* was considered in the judgement handed down in this particular case.

#### *f) Separation of powers*

In an effort to avoid confusion regarding the different parties’ responsibilities, the court focused on these responsibilities. These include the MEC, with regard to the provision of public schools in a particular province; functions and responsibilities of the school management team; and the SGB [8.5-8.6]. Without repeating what has already been mentioned on this essential principle in the other cases, it can be accepted that this aspect also assists in delineating the powers that are vested in the various stakeholders. The intention of this reminder by the court seems to be that different stakeholders should be conscious of the limits of their power. Furthermore, this delineation also serves to highlight and separate their powers, with the concomitant aim of suggesting that the separation of powers should be respected. This was demonstrated by referring to the Mikro Primary School case, wherein that court that presided over Mikro P/S court case ruled that the department was not empowered to determine the language policy of the school [55].

In line with the Mikro judgement, the Seodin P/S judgement also referred to the *Laerskool Middelburg v Departemenshoof, Mpumalanga Departement van Onderwys 2003 (4) SA 160 (T)*. It states that Section 6(1) of the SASA “authorizes the Minister of Education to determine norms and standards for language policy in public schools”, but does not authorise “him or herself to determine the language policy of a particular school” [55]. The foregoing was emphasised by the court that even though the applicant schools contemplated to meet with the MEC with the view of convincing him to permit them to continue with their language policy [57], the separation of powers was once more emphasised. The court also used the Norms and Standards to highlight the different powers vested in *inter alia* the provincial

department of education, the Minister of Education, and the Council of Ministers regarding the norms and standards for language policy determination [8.8].

In light of the above, it can be acknowledged that the *separation of powers* as an essential principle of democracy is addressed.

*g) Transparency and accountability*

In seeking relief against the decision and implementation of the MEC and HOD respectively, the applicant schools had asserted that the actions of the two respondents were based on ulterior motives [5.3.1]. This implies that the MEC and HOD were not acting in a transparent manner. This assertion or suspicion from the applicant schools was presented even though the MEC and HOD went to great lengths in having explained and given reasons for their actions.

As such, one can therefore accept that *transparency and accountability* came to the fore in this case as an essential principle of democracy.

*h) Free and independent media*

The Seodin Primary School court judgement does not refer to *free and independent media*, and neither could I infer anything in this regard.

*i) Promotion of authentic partnerships*

The court noted that the applicant schools preferred to continue with Afrikaans as their language of instruction, and planned to meet with the MEC with the intention to persuade him to allow for such a provision in their language policy [57]. In this regard, the court reminded the applicant schools that it is critically important to acknowledge that the “[d]epartment and the MEC are not obliged to rubber-stamp a language policy that offends against the legal precepts set out in the aforesaid legislation” [57]. However, the applicant schools need to appreciate that the *Northern Cape School Education Act No.6 of 1996* (Section 16(1)) demands of them to determine the language policy of schools after they have consulted with the Department, and with due regard to the *Constitution* and other relevant legislation [57].

Furthermore, it also seems the interpretation of the applicant schools regarding the concept “community” was narrow, as they did not consider the broader community which include

Blacks, Coloureds and Whites [22.1; 28.2 & 58]. Therefore, as the court has noted this in the judgement, it could also be interpreted to mean that the broader community should be considered if the principle of authentic partnerships as espoused by the SASA (preamble) is to be acknowledged.

The idea of working together was once again highlighted with regard to entrenching democracy, “respect for human rights, peace and stability to ensure that we succeed in our mandate of opening the doors of learning and culture to all” [16]. A careful reading of this paragraph is that the word “we” is emphasised and this implies working in partnership.

The above implies that the determination of language policies of public schools is to be done in partnership with *inter alia* the broader community and the State, and this reflects and promotes the essential principle of democracy through promoting authentic partnerships.

It was possible to draw enough valuable information regarding the presence of elements of a conducive environment for democracy and essential principles of democracy from the above court case to demonstrate the usefulness of the derived framework. Below is a discussion that will provide information regarding the impact of the *Language Policy* for SG stakeholders.

### 7.4.3 CONSEQUENCES FROM THE CASE

This case seems to have been an emotive affair in which issues of history, language, culture, and resources were highlighted. The applicant schools perceived the intervention of transferring learners from nearby overcrowded schools to theirs as an intrusion on language and culture. They vehemently resisted this attempt by the NCDoe through particularly the HOD and MEC, and sought the intervention of the courts.

The applicant schools seem to have shown disregard to many of the essential principles addressed in the judgement (cf. 7.4.2.2). There were opportunities for genuine participation, particularly for the applicant schools, but it seems as if they had no interest in this (cf. 7.4.2.2(a)). The representation of a departmental official was contested (cf. 7.4.2.2(b)), and the applicant schools apparently did not abide by the rule of law of submitting their language policies to the NCDoe (cf. 7.4.2.2(e)). Human rights issues relating to potential racial discrimination and issues of inequality and access to quality education are prevalent in the case (cf. 7.4.2.2(d)), that the applicant schools were suspicious of the motives for the transfer

of learners to their schools, this implies that the NCDoe was perceived as not being genuine and transparent (cf. 7.4.2.2(g)). Lastly, it seems that the manner in which the applicant schools determined their language policies were not done in partnership with the broader community and the department of education (cf. 7.4.2.2(i)). The implication is that their practices were inconsistent not only with both language policies (national as well as provincial), but also with the essential principles of democracy.

Although the judgement seemed to expose the lack of the *promotion and display of trust*, it was silent on many elements that create an environment conducive for democracy. In particular, I believe that if the *promotion of deliberation and dialogue*, as well as the *prioritisation of education and socialisation for democracy*, were consciously considered, it would have provided the applicants with benchmarks to consider their attitude and approach. The absence, or lack of understanding of essential principles of democracy discussed in the previous paragraph, shows that the SGB structures were not able to transform themselves into *learning organisations* that enable democracy, and thus ignorance was exposed.

Although the NCDoe had to approach the courts, learners were ultimately transferred to the schools that had available space [55-56]. The placement in alternative schools correlates with the *Language Policy* and the NCDoe, namely that they could have access to education in a language of their choice, and also under favourable conditions [55-56].

## 7.5 DISCUSSION

At face value, it seemed as if there was resonance between the essential principles referred to in the national *Language Policy* and the Seodin Primary School court judgement. The interplay between the elements that makes the environment conducive for democracy and essential principles of democracy exhibited contradictions and silences, however. The *Language Policy* addressed the *prioritisation of education and socialisation for democracy* and the *promotion of deliberation and dialogue* (cf. 7.3.1). It was silent on *condemnation and rejection of acts of corruption*, *promotion and display of trust*, as well as *transforming SGB structures into learning organisations*. In the court case, the absence of specific elements that make the environment conducive for democracy can be pointed out, namely *deliberation and dialogue*, and *prioritisation of education and socialisation for democracy*. All of these aspects could have mitigated the dispute. Importantly, the failure of the SGBs as well as departments of education with reference to their ability to transform themselves into *learning*



*organisations*, must be pointed out. This is in relation to the lack of understanding on the part of the SGBs of the applicant schools as well as with regard to the DBE for not being critical of their own policies and revising them. This suggests that the government itself is not focusing on being a *learning organisation* that constantly tries to improve itself (cf. 7.4.3).

It seems the silence on the elements of a conducive environment for democracy through the court judgement impacted adversely on the essential principles of democracy. The origin of the dispute, namely the applicant schools' refusal to allow learners from nearby communities to be transferred to their schools that had capacity, is based on their insistence on Afrikaans as the exclusive language of learning and teaching (cf. 7.4.1). This dispute emanated despite the NCDoe having attempted to deliberate (*promotion of deliberation and dialogue*) on the matter, and most importantly against the directives of both the national *Language Policy* and *Northern Cape School Education Act No. 6 of 1996*. Not only was the element of the *promotion of deliberation and dialogue* absent, and *the rule of law* as an essential principle of democracy violated, but as a consequence more of the elements and principles were adversely impacted upon.

The applicant schools tried to circumvent compliance with the policies, which exposed their potential lack of knowledge of the elements and principles of democracy. For example, the court judgement revealed that the applicant schools did not engage in genuine *participation*, despite the NCDoe having made several attempts to have them respond to a proposal the department had made regarding the transfer of learners (cf. 7.4.2.2(a)). The principle of *representation* was contested as it was alleged that the NCDoe had representation in one of the SGB (Teacher Forums) meetings, which the contents thereof were disputed (cf. 7.4.2.2(b)). The court reminded the parties in dispute about the voting rights of particular members of the SGB as opposed to those who do not. In other words, the essential principle of *free and fair elections* was addressed by the court (cf. 7.4.2.2(c)). To some degree this court judgement was about racial discrimination, perpetuation of inequality, and the right to access education in a preferred language. These are actually *human rights* issues and were resisted by the applicant schools (cf. 7.4.2.2(d)). The crux of the dispute was that the applicant schools did not abide by the directives of the national *Language Policy* and that of the *Northern Cape School Education Act No. 6 of 1996* (cf. 7.4.2.2(e)). The applicant schools failed to determine their language policies in consultation with the NCDoe and other stakeholders, and also failed to submit their language policies as prescribed. This implies that the *rule of law* was violated

(cf. 7.4.2.2e). That the court reminded the parties in dispute about the different roles and responsibilities of each stakeholder, implies that the *separation of powers* had not been adhered to, particularly in respect of an awareness of what SGBs and PEDs should and should not do (cf. 7.4.2.2(f)). This also implies that the applicant schools should have been aware of their roles with regard to the determination and implementation of their schools' language policies, contrary to them having taken it upon themselves to just implement it without approval (cf. 7.4.2.2(f)).

Furthermore, the court judgement seems to allude that the applicant schools had doubts regarding the intention of the NCDoe of transferring learners from overcrowded schools. This was despite the fact that the NCDoe was transparent from the beginning of the impasse (cf. 7.4.2.2(g)). It appears from the foregoing that the NCDoe acted in a transparent and accountable manner. Another aspect that can be ascribed to the dubious behaviour of the applicant schools, is the lack of a *display of trust*. This lack of *the promotion and display of trust* could be as a result of the historical past of SA (cf. 6.5). These are issues that should have been highlighted by both the national *Language Policy* and the court judgement. While the essential principles of democracy, except for *free and independent media*, came to the fore in both the policy and the court case, the essential principle of *free and independent media* was not contested or highlighted (in the sense that it has not yet been reported as a disputed or violated principle) (cf. 7.4.2.2(h) & 6.5). The publication of information concerning disputes regarding issues of language in schools can, however, be attributed to the media in SA (cf. 1.2.3 & 6.5). That the applicant schools did not operate in partnership with the NCDoe in the resolution of the dispute, and their determination and implementation of their language policies, imply that they did not work in *authentic partnership* (cf. 7.4.2.2(i)). This contradiction between what the policies say and what was implemented by the applicant schools can seemingly be ascribed to either a lack of knowledge about the elements and essential principles of democracy, or a deliberate attempt not to transform.

In light of the above, it seems as if the SGB members from the applicant schools need *education and socialisation for democracy*. They also need to learn to embrace *deliberation and dialogue* as a dispute resolution mechanism, and to embrace the idea of *transforming SGB structures into learning organisations*. This is raised in light of the applicant schools having resisted the proposed dispute resolution efforts that were undertaken or presented. It seems as if they did not understand that transformation needs to take place through the

implementation of policies such as the national *Language Policy*. Another element that did not seem to have been highlighted by either the national *Language Policy* or the court judgement is the issue of potential acts of corruption. While it may not be relevant to this case, this does not mean it cannot happen, or has not happened (cf. 6.5). It is unfortunately true that parents who would like to have their children enrolled in specific schools might be open to bribe school officials to admit their children. It is also possible that schools that resist transformation by enforcing single-medium instruction, may pay bribes so that departmental officials will turn a blind eye to such practices. Another way of using language to exclude specific learners could be by offering learners sponsorships through the use school funds, and increasing learner numbers in this way. Since this may not necessarily be illegal, but may be the national *Language Policy* should limit or pronounce on such matters, so that this should not be abused. In this regard, issues of the *condemnation and rejection of acts of corruption* should be highlighted, particularly in the *Language Policy*.

The framework also demonstrated that the national *Language Policy* is silent on what should be done once schools have submitted their language policies to the PED. In the case of the NCDoe, it is addressed (cf. 7.4.2.2(e)). It seems that it is on the basis of the non-submission and subsequent non-approval of the applicant schools' language policies that the court *inter alia* ruled in favour of the NCDoe (HOD and MEC) [54-57]. Furthermore, I believe the disputes that have been highlighted in this judgement and those of the Hoërskool Ermelo (cf. 5.3.2), Mikro Primary School [54], Overvaal High School (cf. 1.2.3) and Seodin Primary School (cf. 7.4), suggest that there are indeed serious challenges regarding language of learning and teaching, and probably warrants a review. Such a review should include all contentious matters that are relevant to the issue of language and the issues that have been raised in this study.

An observation that could be made from the above is that SGB members from specifically the applicant schools exhibited reluctance towards contributing to democratic practices through embracing other official languages and multilingualism (cf. 7.4.1). This is contrary to what the *Language Policy* deems to be important, namely embracing other languages (cf. 7.2). As a consequence this exposed their attitude towards promoting democracy through SG practices and policies. In order to address this potential deficiency, and to address such undemocratic practices, a requisite *education and socialisation for democracy* is proposed.

Apart from the apparent lack of implementation of the elements and principles of democracy in the implementation of the applicant schools' language policies, I also find the NCDoE and by implication the DBE to be complicit in language disputes in schools. This is based on the impression that the PED, and in particular the NCDoE, only reacted when they realised that certain schools were overcrowded. In other words, were it not for this overcrowding, they would have remained unaware that there are schools that have not submitted their language policies, as compelled by the provincial and national policies. In addition, the fact that the applicant schools were implicated and exposed, implies that more schools could be non-compliant. This could actually just be the tip of the iceberg, implying that much needs to be done in this respect. The derived framework, in light of the exposure of so much relevant information, is therefore deemed to be useful.

## 7.6 CONCLUSION

The objective of this chapter (Chapter 7) was to determine the usefulness of the derived framework on democracy in the critical analysis of the *Language Policy*. Towards this end, both the *Language Policy* and case law were used as the main source documents, together with supplementary documentary sources. In this regard, I have purposely selected the Seodin Primary School court judgement. In order to determine its usefulness, the study focused on the elements of a conducive environment for democracy and essential principles of democracy. Besides that the principles were evident in both documents, the framework showed inconsistencies between what policy directs and how these principles were implemented, as well as an assumption that the environment was already conducive for democracy.

The framework exposed the importance of all the elements, whether highlighted in the policy or in the judgement. For example, if the officials and members from the applicant schools used the framework to guide their actions, *promoting deliberation and dialogue* would have encouraged them to have authentic discussions with the NCDoE, instead of ignoring the contents of both the national and NCDoE's language policies. The failure by the officials and members of the applicant schools' SGBs to deliberate (*promotion of deliberation and dialogue*) could be ascribed to a lack of trust (*promotion and display of trust*) in the NCDoE to address their concerns in an amicable manner. This could imply that *education and socialisation* regarding the elements of a conducive environment for democracy and the essential principles of democracy were not prevalent. Two other elements not directly related

to the documents, namely the *condemnation and rejection of acts of corruption* and managing schools as *learning organisations (creation of learning organisations)*, are also important. In a situation where bribes might possibly be offered to departmental officials to ignore or allow the applicant schools and others like them to continue with Afrikaans as medium of instruction could be presented. Not hearing this mentioned could either imply that it is not happening, but this does not mean it is not happening or cannot happen in future. Reference to this element in the policy might therefore be worth considering.

From the findings it is evident that the framework showed that the objective of the *Language Policy* was attained, namely that the learners were ultimately transferred away from the overcrowded schools to the applicant schools where they could access education in their language of choice in a conducive environment. However, it does not seem as if democracy, through the elements and principles, was adhered to and practised. Besides the *Language Policy's* silence on the elements, specifically, it also showed gaps. These include that the policy does not indicate when it is reviewable, and also not how PEDs should deal with submitted school language policies. The NCDoe provides guidelines before schools' language policies can be implemented. Viewed overall, the framework showed that if elements and principles are not taken into account, SG practices characterised by issues of inequality, discrimination, racism, disputes and unnecessary litigation may arise. Furthermore, twenty one years after the policy was enacted, equality in terms of language in South Africa seems not to have been attained, hence these disputes characterised by litigation. I do not suggest that litigation is wrong, however, if the elements were considered, in other words if the framework was available and used, litigation might not have been necessary, particularly as it has huge financial implications.

It now seems evident that a conducive environment should not be taken for granted, and the creation of a learning organisation, which is not directly linked either, can be helpful. Managing SGBs as learning *organisations inter alia* promotes learning (cf. 3.3.5), which includes elements and principles of democracy, and this also promotes *education and socialisation for democracy*.

Based on the information that the derived framework on democracy could extract regarding the elements of a conducive environment for democracy and essential principles of

democracy in SG practices and policies (*Language Policy* and case law), I conclude that it is useful for this particular policy.

I used the conclusion of this study, as well as the information from the previous chapters, to offer critical comment on the derived framework on democracy.

# CHAPTER 8: CRITICAL COMMENTS ON THE DERIVED FRAMEWORK ON DEMOCRACY

## 8.1 INTRODUCTION

The aim of this study was to derive a theoretically grounded and legally aligned comprehensive framework on democracy to critically evaluate school governance (SG) practices and policies in South Africa (SA). Towards this, I had to navigate my way through existing theories, perspectives and literature on democracy that can guide SG practices and policies (Chapter 2). Through a critical engagement with different theories, perspectives and literature on democracy, not only internationally but also in the context of Africa and South Africa, I found that the realisation of democracy in SG practices and policies in SA depends on two important pillars (cf. 2.8). Firstly, certain *elements* create an environment that is conducive for democracy. These *enable* the realisation of democracy. Secondly, democracy can best be defined by identifying its constitutive essential principles. Based on this, the framework on democracy was derived in Chapter 3 (cf. 3.4, figure 3.2). To fulfil the “legal alignment” requirement, I evaluated the extent to which the derived framework resonates with the South African legal framework for education. This was accomplished by analysing the extent to which the elements of a conducive environment for democracy (Chapter 4) and essential principles of democracy (Chapter 5) are in line with the South African legal framework for education, which I drew from the *Constitution*, the *NEPA*, *SASA*, and *EEA* as well as case law. I then applied the derived framework to two policies and one related court case each, in Chapters 6 and 7, respectively, in order to evaluate the usefulness of the framework to critically analyse policies and practice. In these two chapters I regarded the court cases as a selection of practice, and also as a consequence of the policy.

In this final chapter I draw from insights gained in the course of the study to critically consider the derived framework on democracy (cf. 1.4, Objective 4). I firstly provide a synopsis of each of the elements and principles, and the insights that I gained on these throughout the study (8.2). I then present a framework adapted from the previous framework, based on new insights that I gained (8.3). In addition, I ponder on my journey with this study (8.4), consider

the contribution of the study (8.5), acknowledge the limitations of the study (8.6) and propose some ideas for future studies (8.7), before I conclude (8.8).

## 8.2 SYNOPSIS OF THE ELEMENTS AND PRINCIPLES OF THE FRAMEWORK

Throughout my study, I distinguished between *elements for a conducive environment for democracy* and *essential principles of democracy*. The essential principles of democracy are those principles through which democracy can be manifested. Through the experience of those *principles*, the realisation of democracy can be observed (cf. 2.2; 2.4.4). It furthermore became apparent that democracy, through its constitutive principles, can be enabled or obstructed, and those enablers were referred to as *elements that are conducive for democracy* (cf. 2.4.4.3).

In order to make sense of the adapted framework that I propose in 8.3, it is important to first revisit each of the elements that contribute to an environment that is conducive for democracy and essential principles of democracy, and consider insights gained from the study on each.

### 8.2.1 ELEMENTS THAT CREATE AN ENVIRONMENT CONDUCIVE TO DEMOCRACY

The derived framework on democracy includes five elements that create an environment conducive to democracy. These are *condemnation and rejection of acts of corruption*, *prioritisation of education and socialisation for democracy*, *promotion of deliberation and dialogue*, *promotion and display of trust*, as well as the *creation of a learning organisation* (transforming School Governing Bodies (SGBs) into learning organisations) (cf. 3.2). Each will be discussed below.

#### 8.2.1.1 CONDEMNATION AND REJECTION OF ACTS OF CORRUPTION IN SCHOOL GOVERNANCE PRACTICES

Corruption occurs when persons illegally enrich themselves, materially or otherwise. This often happens through some form of power abuse, and specifically also relates to bribery, and the misuse and looting of state funds (cf. 3.2.1; 4.2.1.1).

Corruption has serious consequences for individuals, nations and democracy itself. Globally and nationally it causes instability, and undermines the rule of law and economic growth.



Crime flourishes and sustainability is threatened through acts of corruption. The people who are negatively affected the most by corruption are the poor and vulnerable (cf. 3.2.1). It is therefore essential that states and organisations do all they can to prevent, condemn and reject acts of corruption. Some international organisations who are vocal against corruption are the United Nations (UN) and the African Union (AU), and nationally *Corruption Watch* can be noted (cf. 3.2.1). The South African legal framework for education in general, and the *Constitution* in particular, clearly condemns and rejects acts of corruption, and provides for institutions such as the Public Protector and the Auditor General to expose acts of corruption (cf. 4.2.1.1).

In the context of schools, the SGBs are responsible to manage both school finances and other assets (cf. 4.2.1.3). They should be the custodians of a corruption-free school environment. Yet reports indicate that corruption in schools in South Africa is widespread (cf. 3.2.1). Reported incidences relate to fraud within nutrition programmes for needy children, manipulation of examination results, selling of examination papers, dishonesty regarding the appointment of educators, and the irresponsible and inappropriate usage of school funds (cf. 3.2.1). Corruption in the context of education is not limited to schools, but also include departmental officials, amongst others (cf. 3.2.1). Departments of education and SGBs should put structures in place to combat this evil (cf. 4.2.1.2), and policies on all levels should be vocal on the issue. This study, however, found that not all policies acknowledge the potential corruption that can take place, and is therefore silent on the issue. For instance, the *Admission Policy*, and the related court case, is silent on the matter (cf. 6.3.1; 6.4.2.1) in spite of the possibility of bribery in the process of admission, to name but one (cf. 6.5). Similarly the *Language Policy* does not refer to corruption (cf. 7.3.1; 7.4.2.1), and again the potential exists for corruption. Based on the above discussion, it is evident that the derived framework on democracy is able to alert SGBs on the potential of corruption. Furthermore, conscious consideration of ideas and insights on potential corruption, *condemnation and rejection of acts of corruption* and ways to prevent corruption can therefore emerge. These ideas and insights can be considered in an effort to influence or enhance democracy in SG practices and policies in SA.

#### 8.2.1.2 PRIORITISATION OF EDUCATION AND SOCIALISATION FOR DEMOCRACY

*Education and socialisation*, which are implicit in each other, are concerned about learning and experiencing, and in the context of this study this includes learning about and

experiencing democracy (cf. 3.2.2). This could include learning of and experiencing each of the elements of a conducive environment for democracy, and also the essential principles of democracy. Besides *education and socialisation* being a prerequisite for democracy, SG stakeholders who have been exposed to *education and socialisation* for democracy have a better chance to meaningfully participate in democratic school governance (cf. 3.2.2). On the other hand, SG stakeholders who are not knowledgeable regarding issues of democracy, and who have never experienced it, may *inter alia* find it difficult to confidently defend their decisions regarding SG matters (also linked with *promotion of deliberation and dialogue*) (cf. 3.2.2). This implies that the elements and principles of democracy may be manipulated, which may result in undesirable consequences. For example, issues of *corruption, consultation, deliberation and dialogue, participation, and the rule of law*, which are all critical for democracy, may be adversely impacted upon (cf. 3.2.1). In this regard, both the UN and AU recognise and advocate for *education and socialisation*, so that citizens and SG stakeholders may contribute to the realisation of democracy (cf. 2.4.4.4; 2.5). The South African legal framework for education highlights the advantages and importance of having stakeholders that are educated and socialised in terms of the elements and essential principles of democracy (cf. 4.2.2). However, practice does not necessarily seem to resonate with what the South African legal framework for education directs. This was evident through an analysis of the interaction of the different SG stakeholders' handling and managing of disputes emanating *inter alia* from policy interpretation and practice (cf. 6.4.3; 6.5; 7.4.3; 7.5).

Not only have the attitudes of schools, SGBs, and provincial education departments (PEDs) towards embracing *education and socialisation* for democracy proven to be problematic, but silences in either policy or court judgements, or both, were prevalent (cf. 6.4.3; 6.5; 7.4.3; 7.5). In the critical analysis of the *Admission Policy*, both the policy and court judgement were silent on the *prioritisation of education and socialisation for democracy*. In this case it was particularly evident that the PED officials were not familiar with the contents of the national *Admission Policy* regarding the elements and principles of democracy (cf. 6.4.3; 6.5). In the case of the national *Language Policy*, *education and socialisation* was prioritised in the policy (cf. 7.3.1), however the court judgement was silent on it (cf. 7.4.2.1). In particular, the applicant schools involved in the court judgement with the NCDoe, clearly showed a lack of knowledge regarding the elements and principles of democracy, hence issues of racism, human rights violations, and the lack of respect for the rule of law were evident (cf. 7.4-7.6). The above makes it clear that *education and socialisation for democracy* needs to be

prioritised in national education policy documents, so that SG stakeholders are able to identify undemocratic practices, issues of social justice, or acts that would seem to manipulate democracy.

#### 8.2.1.3 PROMOTION OF DELIBERATION AND DIALOGUE

Since democracy entails the involvement of stakeholders in decision-making regarding matters that affect them (cf. 2.2; 2.3), it can be assumed that the decisions would have been preceded by *deliberation and dialogue* (discussion). This positions the *promotion of deliberation and dialogue* as an element that can contribute to the realisation of democracy. The advantage of *deliberation and dialogue* is that it can enhance cooperation, foster partnerships, promote participation in decision-making, and can be used to reach agreements and solve conflict (cf. 3.2.3). In the context of schools and SGBs, SG stakeholders are expected to deliberate and engage in dialogue, particularly if they have to collectively develop, adopt and implement policy (cf. 6.3.2.1). Their practice should therefore be informed and based on *deliberation and dialogue*.

Schools and SGBs are required to promote *deliberation and dialogue*, if they are to be democratic (cf. 3.2.3). However, SG stakeholders need to uphold certain standards in order for them to have *deliberation and dialogue* embraced. This implies that *deliberation and dialogue* can also be used in a manner that can frustrate participation in decision-making, and as a consequence obstruct the realisation of democracy. For example, if particular SG stakeholders are disrespectful, arrogant, do not listen, or use their power to overrule those stakeholders perceived to have less power or authority, this may be perceived as undermining the less powerful stakeholders (cf. 3.2.3). In addition, *deliberation and dialogue* can be manipulated by using voting based on numbers to take decisions (cf. 3.2.3). As a consequence, participation of all stakeholders in decision-making, which is regarded to be critical in and for democracy, may be impacted upon (cf. 2.3). Due to the challenges experienced in Africa regarding conflicts regarding for example elections and election results, *deliberation and dialogue* is particularly prioritised (cf. 2.5; 2.5.2). In this regard, South Africa as a country is respected for its experience of a negotiated political settlement referred to as CODESA (cf. 2.6). The example set by CODESA can be replicated in SG practices and policies. This amplifies the power of the *promotion of deliberation and dialogue* in SG and democracy.

The South African legal framework for education indeed promotes *deliberation and dialogue* (cf. 4.2.3). My analysis of the national *Admission Policy* showed that, through participation in the development of school policies, *deliberation and dialogue* is promoted (cf. 6.3.1). However, in practice, the court judgement exposed a lack of constructive deliberation in that specific departmental officials had placed a learner in a classroom without the learner being legally registered or admitted by the school (cf. 6.4.2.2(a)). I found that the national *Language Policy* also advocated for *deliberation and dialogue* (cf. 7.3.1). The court judgement demonstrated that *deliberation and dialogue* could be inferred through the various ways in which participation and consultation is provided for (cf. 7.4.2.1; 7.4.2.2(a)). It is evident that *deliberation and dialogue* can be used to contribute towards an environment conducive for democracy, but it can also obstruct democracy. Based on the above, information and insight regarding *deliberation and dialogue* should be acknowledged and highlighted as one of the essential elements of a conducive environment for democracy that could be included in policies such as the national *Admission Policy* and *Language Policy*. I want to, however, make the point that there is potential to manipulate during deliberation and dialogue, and it is imperative that deliberation and dialogue are authentic, open and honest. I contend that it should find some prominence in policy documents, so that it is not conceptualised as merely an act of talking for the sake of talking, but actual engagement and listening to one another (to contribute towards the realisation of democracy in SG practices and policies in SA).

#### 8.2.1.4 PROMOTION AND DISPLAY OF TRUST

Trust has to do with a belief that something good from another person may be forthcoming, or that you believe that you can accept that another person will not try to deceive you (cf. 3.2.4), especially under the guise of democracy. In the context of SGBs, SG stakeholders' trust amongst each other depends on the level of participation. In other words, the more SG stakeholders participate, or work in partnership, the more they will learn to trust one another (cf. 3.2.4). Furthermore, a partnership characterised by *inter alia* mutual trust and respect, shared decision-making, shared goals and values, common vision, open communication and good teamwork, is associated with democratic school governance (cf. 1.1). This refers to SG practices that are based on the principles of democracy, which has been made possible by the element of trust. In this manner, it can be accepted that trust can be regarded as an enabler or an element that can contribute towards a conducive environment for democracy (cf. 3.2.4). Trust can be enhanced through the level of participation of SG stakeholders, or through positive past experiences, or character traits. However, the opposite could also be

true (cf. 3.2.4). Trust can be obstructed by deception, manipulation, false pretences, power and gullibility (cf. 3.2.4). The implication is that one would have to be conscious of these acts, as they impact on trust, and as a consequence can obstruct democracy. These were particularly evident in and through acts of corruption particularly perpetrated in education, hence the lack of trust of citizens in political leaders in the country and the bureaucratic system (cf. 3.2.1; 3.2.4).

There is an assertion that people, and in this case SG stakeholders, trust leaders who are honest, just, and competent (cf. 3.2.4). This also resonates with the South African legal framework for education (cf. 4.2.4). Whether it resonates with what is actually happening in practice was analysed through the directive of national education policy and court judgements relevant to the selected two national policies. The national *Admission Policy* does not directly address the *promotion and display of trust*, but it could be inferred through the pronouncements on the *promotion of authentic partnerships* (cf. 6.3.1). The court case relevant to the national *Admission Policy* demonstrated that the departmental officials involved in the judgement did not trust that the SGB and principal would admit a learner they had demanded to be admitted at the school (cf. 6.4.2.1). On the contrary, the department could also not be trusted not to exceed its powers and potential misuse of power (cf. 6.4.2.1). The national *Language Policy* was also found to be silent on the *promotion and display of trust* (cf. 7.3.1). The court judgement, however, demonstrated that the applicant schools involved in the court judgement did not *display trust* in the NCDoe regarding the development and submission of their schools' language policies (cf. 7.4.2.1). Whether the *promotion and display of trust* is directly addressed in policies or not, it seems clear that both departmental officials and SGB in the applicant schools did not *promote and display the element of trust*, and this is not beneficial for either SG or democracy. This can be observed through the violation of the *rule of law*, *separation of powers*, or undermining the authority of SGBs or principals as evidenced in the language court judgement. The potential deficit in trust by SG stakeholders could be ascribed to *inter alia* SA's historical past (cf. 1.1), and to remedy this will be a process. It may not happen instantaneously, but will need gradual nurturing. It is therefore imperative that the element of the promotion and nurturing of trust should be recognised and be visible in national education policies.

### 8.2.1.5 TRANSFORMING SGB STRUCTURES INTO LEARNING ORGANISATIONS

A *learning organisation* has to do with its members being prepared and willing to equip themselves with the necessary and required knowledge, skills, methods and tools to make their organisation effective, and to be able to embrace change (cf. 3.2.5). The advantages of a *learning organisation* are that it *inter alia* will be able to identify challenges and provide solutions, improve communication, adapt to change, and encourage teamwork. The identified advantages of a *learning organisation* are closely linked with those of the characteristics of a harmonious partnership (cf. 1.1), which are also linked to democracy in that the collective is the focus. Furthermore, the UN and AU promote and encourage its member states to learn about best practices regarding democracy and issues of good governance, growth and development (cf. 2.4.4.4; 2.5.2). These ideas can therefore be used in democracy and in SG practices and policies. In this regard, the South African legal framework for education acknowledges and advocates for the *transformation of SGB structures into learning organisations* (cf. 4.2.5). Organisations that are reluctant to transform into *learning organisations* can for example be identified by their reluctance to adopt or implement policies that seek to transform SG structures, such as the national *Admission Policy* or *Language Policy* (cf. 3.2.5). The implication is that its members will refuse to learn to be part of a dynamic community prepared to embrace democracy in SG practices.

From the application of my framework and CPA, it was evident that both the national *Admission Policy* as well as the related court judgement were silent on *transforming SGB structures into learning organisations* (cf. 6.3.1; 6.4.2.1). While the national *Language Policy* was silent on *transforming SGB structures into learning organisations* (cf. 7.3.1), it was addressed in the related court judgement (cf. 7.4.2.1). From the court judgement related to the *Language Policy*, the applicant schools' refusal to accommodate learners from other races or communities, exposed their unwillingness to implement policies geared towards transforming education and SG practices and policies. They displayed a reluctance, in other words, to assist in contributing towards transformation aimed at creating a democratic society, and by implication SG practices and policies. In light of these undemocratic practices in SG exhibited by the applicant schools, it is imperative that policies propagate the importance of learning organisations within the context of democracy in SG practices and policies. In addition, SG stakeholders need to be aware that to be relevant now and the in future, they need to be prepared and willing to be exposed to ideas and strategies that can assist them to navigate change through the introduction of new policies or amendments.

### 8.2.1.6 DISCUSSION

It is evident from the discussion above that not only are these elements individually important as enablers of democracy, they are also largely interrelated, and inform each other. While they can create an environment that is conducive to democracy, they can also act as barriers to democracy and each other, if not in place. If the framework is used, stakeholders will be made aware of the effect on democracy of these elements, and highlight that these elements can be used to enhance democracy in SG practices and policies in SA, or to obstruct it. This insight led to an adjustment of the framework in 8.3.

## 8.2.2 ESSENTIAL PRINCIPLES OF DEMOCRACY

In the previous section, I highlighted the important role that certain elements play to create an environment in which democracy can be realised. Within that environment democracy will be observable through its constitutive principles – what I referred to throughout the text as *essential principles of democracy*. I have identified nine of these principles to include in my framework, namely *participation, representation, free and fair elections, respect for human rights, respect for the rule of law, separation of powers, transparency and accountability, free and independent media, and promotion of authentic partnerships* (cf. 3.3), and the insights that I gained in relation to these will be discussed below.

### 8.2.2.1 PARTICIPATION

Participation is regarded as the cornerstone of democracy. This is acknowledged by different scholars over the world, as well as international organisations such as the UN and AU (cf. 2.2; 2.3; 2.4; 2.7; 3.3.1). Apart from the other essential principles of democracy identified in this study, *participation* seems to be perceived as a measure of democracy itself, because it is asserted that democracy can be measured in terms of how close or far one is from authentic *participation* (cf. 3.3.1). The level of participation in decisions that affect stakeholders can be used to determine how democracy can be realised. In the context of schools and SGBs, participation by all affected SG stakeholders is highly recognised and even legislated through the NEPA and SASA (cf. 2.7; 5.2.2.1; 5.2.3.1). The SA legal framework, which includes the two selected court cases, emphasises the importance of *participation* (cf. 5.2; 5.4). The type of participation that SG requires is genuine, empowering, and emphasises that SG stakeholders should be involved in the development and implementation of policies, and in all matters that affect them (cf. 3.3.1). If these criteria are not satisfied, it implies *participation* may be constrained, and subsequently democracy is weakened (cf. 3.3.1).

Arnstein's ladder of citizen participation can be helpful to provide insight into how participation can be enhanced or constrained. It cautions against equating participation to non-participation, or to tokenism (cf. 3.3.1). To provide more clarity, non-participation can be manifested through what Arnstein labels as "manipulation" (rubberstamping of decisions) or "therapy" (some pseudo involvement that is not real but has malicious intent). "Tokenism" comprises informing, consultation and placation which includes being provided with information without expecting feedback, or not considering the ideas mentioned by others, or co-option with no-decision-making powers. Lastly, it is "citizen power" that promotes partnerships, or where delegation with decision-making powers is provided, and this is regarded as authentic *participation* (cf. 3.3.1).

Through a critical analysis of the national *Admission Policy*, and a related court judgement, it was found that the policy adequately addresses *participation*. This was evident through its directive that PEDs and ordinary public schools adhere to participation and consultation of SG stakeholders in for example the development of their admission policies, and the admission of LSEN, as well as school zoning (cf. 6.3.2.1). However, the court judgement seemed to suggest that the departmental officials involved in the court judgement did not allow the principal or the SGB member that was present to participate in the resolution of the dispute (cf. 6.4.2.2(a)). They summarily placed the specific learner in a class without the school having legally admitted the learner, and this points to non-participation. The national *Language Policy* also addresses *participation*, and this is evident through the broad *participation* that preceded the development and adoption of the *Language Policy* (cf. 7.3.2.1), in which a wide range of SG stakeholders were involved. It also allows learners to be involved in their choice of language of learning and teaching (cf. 7.3.2.1). The court case related to the language dispute however indicated that the applicant schools involved in the court judgement were not prepared to participate in the resolution of the dispute (cf. 7.3.2.1). This is evident through the applicant schools' reluctance to consult or engage with the NCDoe regarding their language policies. In both court judgements it seems as if some stakeholders showed reluctance to deliberate and become involved in some form of dialogue. From the exposition, it seems that practice was not in line with policy, and to some extent, that policy was not emphatic enough in qualifying the type of participation envisaged.

Both court judgements pointed to a hostile environment, as some parties were unwilling to even deliberate with the other parties (cf. 6.4.1; 6.4.2.2(a); 7.4.1; 7.4.2.2(a)). By so doing,



participation was stalled, and as a consequence, democracy was adversely affected. It may therefore be important for policy to suggest participation that is meaningful and authentic, because as it is currently reflected, policy-makers seem to assume that it will be implemented in a meaningful and authentic manner. In light of the above, the framework may alert SG stakeholders to be conscious of the potential manipulation of participation as an essential principle of democracy (cf. 3.3.1).

#### 8.2.2.2 REPRESENTATION

Democracy acknowledges the importance of representatives who are given the responsibility to either govern on behalf of others, or that other people may take decisions on their behalf (cf. 3.3.2). This is based on the assumption that those representatives have been legally elected and would represent the interests of the electorate (cf. 3.3.2). However *representation* can be manipulated, and as a consequence democracy can be impacted upon, when representation is merely symbolic or when representatives are coerced or intimidated into serving the interests of individuals or factions against that of the organisation or structure. If representatives do not succumb to the wishes of those who are in power, they may lose certain benefits they may ordinarily be entitled to (cf. 3.3.2). Another way of manipulation is gender discrimination, for example preferring a particular gender over another (cf. 3.3.2). By implication, if representation is skewed, then participation may be negatively affected, particularly against those who may not be adequately represented (cf. 3.3.2).

Representation is the basis on which SG functions, and this is legislated in for example the *NEPA* and *SASA* (cf. 5.2). Furthermore, the South African legal framework, including the two court judgments, adequately address the principle of *representation* (cf. 5.4). Likewise, both the *Admission Policy* (cf. 6.3.2.2) and the *Language Policy* (cf. 7.3.2.2) address *representation*, and court judgements revealed non-compliance to this principle. In the case of the *Admission Policy*, the departmental officials who thought they represented the learner, were not the legitimate representatives of the learner (cf. 6.4.2.2(b)). They were also not the representatives of the MEC, who was supposed to intervene in the impasse (cf. 6.4.2.2(b)). In the language court judgement, the applicant schools had asserted in court that the NCDoE had representation in a Teacher Forum meeting where it was decided that the applicant schools could continue with Afrikaans as the only language of learning and teaching (cf. 7.4.2.2(b)). In other words, they believed that this legitimised the resolutions taken at that

meeting. This was disputed by the HOD, and the court seemed to agree with the NCDoe and HOD (cf. 7.4.2.2(b)).

From the exposition above, it seems as if it is important that when policies address representation, issues regarding the structure or organisation should be emphasised. In addition, some form of caution or reminder should warn representatives about the potential abuse of positions of power. This will serve as the checks and balances (cf. 6.5; 8.2.2.10).

### 8.2.2.3 FREE AND FAIR ELECTIONS

Linked with the notion of representation, is *free and fair elections*, which is regarded as an important principles of democracy. In Africa it is particularly regarded as a pillar of democracy (cf. 3.3.3). *Free and fair elections* is the process through which representatives are put in office and then are able to participate on behalf of others (cf. 3.3.1). It is however dependent on an environment that is conducive for such free and fair elections, which can be negatively affected by coercion, intimidation, or non-secret ballot. SGBs normally hold elections every three years, and are regarded as the second largest national elections in the country after the national elections for political parties (cf. 3.3.3).

While the essential principle of *free and fair elections* is addressed in the South African legal framework, it is not referred to in the two court judgements discussed in Chapter 5 (cf. 5.4). Furthermore, the national *Admission Policy* and its related court judgement on *free and fair elections* (6.3.2.3; 6.4.2.2(c)), and also the national *Language Policy*, are silent on free and fair elections (cf. 7.3.2.3). The court judgement regarding the *Language Policy* however addresses *free and fair elections*, although no significant issue of dispute was highlighted (cf. 7.4.2.2(c)). Since it has been observed that SG stakeholders do not show willingness to participate in SGB elections (cf.3.3.3), this should be incorporated into education policies or relevant departmental documents. SG stakeholders need to be educated about this essential principle of democracy (and this again relates to creating a learning organisation (cf. 8.2.1.5)). Failure to take this seriously has the potential to impact adversely on most of the other essential principles of democracy, such as legitimacy of participation in decision-making, authentic participation, and legitimacy of representatives.

### 8.2.2.4 RESPECT FOR HUMAN RIGHTS

It is generally accepted that basic human rights are the foundation of democracy (cf. 2.7; 3.3.4). Certain basic human rights have been adopted by international bodies such as the UN

and AU, and in this regard, declarations and resolutions have been adopted (cf. 2.7). To measure how democratic a state or organisation is, *respect for human rights* is used as a measure. Although SA has embraced democracy and certain basic human rights enshrined in the *Constitution*, SG has been shown to be fraught with human rights violations, particularly in schools and SGBs (cf. 1.2; 3.3.4). Some of the violations include physical attacks on learners and educators, acts of corruption in schools, xenophobic attacks, racial discrimination and inequality in terms of the language of learning and teaching, and discrimination in admissions of learners, particularly into former Model C schools (cf. 3.3.4).

The South African legal framework for education, including the two court judgements, all address and advocate the *respect for human rights*, particularly in SG practices and policies (cf. 5.4). An analysis of human rights by means of two national education policies (*Admission Policy* and *Language Policy*) seems to confirm the importance of addressing and advocating for *respect for human rights* (cf. 6.3.2.4; 7.2.3.4). However, the court judgements exposed human rights violations. The court judgement regarding admissions showed that the departmental officials who placed a learner in a classroom without being legally registered by the school, had misinterpreted this to be a refusal by the school, probably based on racial discrimination (cf. 6.4.1; 6.4.2.2(d)). The SGB and school were therefore found not to have violated human rights based on racial discrimination (cf. 6.4.2.2(d)). Furthermore, the fact that the departmental officials were not prepared to deliberate, and did not display trust, could potentially have contributed to this impasse. In the case of the language dispute, the court ruled against the applicant schools' refusal to have learners transferred to their schools (cf. 7.4.1; 7.4.2.2(d)), and issues of racial discrimination, inequality, rights to quality education and the best interests of the learners were highlighted. These are all human rights issues. Lack of proper *deliberation and dialogue* as well as the *promotion and display of trust* have once again surfaced in the language dispute. The analysis of the two national education policies and related court judgements demonstrated the importance of *respect for human rights* as well as the impact that a conducive environment has on democracy. Although it does not seem as if there are gaps in the policies or the court judgements, there does, however, seem to be inconsistencies in their implementation.

#### 8.2.2.5 RESPECT FOR THE RULE OF LAW

The *rule of law* is *inter alia* about what is legally allowed or not, or the respect for the prescripts of policies and court rulings (cf. 3.3.5). SA, as a democratic state with a *Constitution*

(cf. 1.1), has laws and courts based on the *Constitution*. Non-adherence to the policies, court rulings and legislation that are based on the *Constitution* can be interpreted to be in breach of the *rule of law*. The implication is that democracy will be negatively impacted upon. For example, it was found that the NCDoE had on several occasions not implemented court rulings against it, that SGBs were found to have been in breach of the national *Admission Policy* and *Language Policy*, acts of corruption take place in schools, human rights violations take place, and this had the effect that the South African Human Rights Commission had to intervene in some cases (cf. 1.2; 3.3.4; 3.3.5). It is clear that the above has a negative impact on democracy through the SG practices and policies of PEDs and schools.

The undemocratic practices referred to above seem to be prevalent despite the fact that the South African legal framework for education, including the two court judgements, address and advocate for *respect for the rule of law* (cf. 5.4). In addition, the two selected national education policies against which implementation was analysed, both address *the rule of law* (cf. 6.3.2.5; 7.3.2.5). The court judgement related to the *Admission Policy* showed that the function and responsibility of the *Admission Policy* lies with the SGB, and not with the HOD (cf. 6.4.1; 6.4.2.2(e)). The judgement related to the *Language Policy* showed that the applicant schools did not comply with the directives of both the NCDoE and the national *Language Policy* (cf. 7.4.1; 7.4.2.2(e)). It implies that practice does not resonate with policy, and as a consequence the *rule of law* is not respected. It implies that democracy is not being implemented or realised through practice. In many cases SG stakeholders simply do not abide by what legislation and policy direct.

#### 8.2.2.6 SEPARATION OF POWERS

The *separation of powers* includes the non-interference of one body or constituency into another's sphere of responsibilities, functions or duties (cf. 3.3.6). In the context of SGBs and SG, it refers to the different structures between and amongst the school management team and principal, SGBs, PEDS and the HOD or MEC, who are not permitted to interfere in another's sphere. In other words, each structure or constituency needs to be aware of its limitations. This is supported by the legal framework for education including the two court judgements mentioned (cf. 5.4). In addition, the two national education policies also confirm respect for the *separation of powers* (cf. 6.3.2.6; 7.3.2.6).

The derived framework on democracy showed that the *separation of powers* can be negatively impacted upon by either the abuse of power or mere interference. This was confirmed by the court judgements used in the analyses of the *Admission Policy* and *Language Policy*. In the admission court judgement, the court noted that the responsibility for the admission of learners and dealing with the admission policy of schools was the responsibility of the SGB and the school, and not that of the departmental officials and HOD (cf. 6.4.2.2(f)). In the case of the *Language Policy*, the court noted that the applicant schools did not have the power to unilaterally develop their schools' language policies and implementing them (cf. 7.4.2.2(f)). It seems from the two court judgements that there was an abuse of power, both by the PED and the applicant schools. It implies that the violation of *separation of powers* can occur by either side or structure. It is important to note that disrespecting the *separation of powers* negatively impacts on democracy. Furthermore, it seems as if the South African legal framework for education does address the *separation of powers*, although implementation does not always demonstrate resonance.

#### 8.2.2.7 TRANSPARENCY AND ACCOUNTABILITY

*Transparency and accountability* is about being open in the manner in which decisions are made, and being answerable to those who elected or entrusted you with certain responsibilities (cf. 3.3.7). This is regarded as an important principle of democracy (cf. 2.7), and is recognised as such in the *Constitution* (cf. 5.2.1.7). In the context of SGBs and SG, the expectation is that all constituencies involved in education and SG, should attempt to democratise education in a transparent and accountable manner (cf. 5.2.1.7; 5.2.3.7). In addition, the legal framework for education, including the two selected court judgements, address and advocate for the respect for *transparency and accountability* through SG practices and policies (cf. 5.4). The derived framework on democracy exposed that *transparency and accountability* can be negatively impacted upon by keeping information away from other stakeholders or being arrogant and disrespectful (cf. 3.3.7). It is therefore important that SG stakeholders are mindful of the ratification of decisions and the adoption of school policies during general parents' meetings. This promotes *transparency and accountability*.

The national *Admission Policy* and the *Language Policy* adequately address *transparency and accountability* (cf. 6.3.2.7; 7.3.2.7), although implementation may be inconsistent with what policy directs. The departmental officials withdrew the admission function of the principal

and SGB without giving them any reason (cf. 6.4.2.2(g)). This implies that they were not transparent, and that they seem to have undermined the SGB and principal by implying that they were not accountable to them. Furthermore, the court noted that parents are responsible for learners' admission and school attendance (cf. 6.4.2.2(g)), meaning that they are to be held responsible for these aspects. In the language dispute, the applicant schools alleged that the NCDoe was not transparent regarding their decision to transfer learners from overcrowded schools to theirs (cf. 7.4.2.2(g)). They suspected the NCDoe had ulterior motives, including that they (NCDoe) wanted to change the racial composition of the schools. The court ruled against the applicant schools, and found that the NCDoe had been open with them and had done all within its power to engage with the applicant schools (cf. 7.4.2.2(g)). From this it seems that policy and implementation were not aligned, and as a consequence, practices were undemocratic. It is also important to acknowledge that, from the perspective of the NCDoe, its practice was consistent with what policy directs.

#### 8.2.2.8 FREE AND INDEPENDENT MEDIA

*Free and independent media* is regarded as a tool to transmit information through the print media, electronically, radio, internet, or television (cf. 3.3.8). Information relevant to democracy and SG may be disseminated using any of the mentioned media, which makes it important for democracy and SG. For example, it is through *free and independent media* that acts of corruption and human rights violations, and issues regarding non-compliance with separation of powers, rule of law, transparency and accountability, as well as other elements and principles of democracy are exposed. SG stakeholders also need to be careful and vigilant, as the media can be abused, especially by those in power (cf. 3.3.8). The media can also be used to indoctrinate or report information in a biased manner (cf. 3.3.8). Fortunately in SA, due to different media houses and an environment that allows the free flow of information, there is no monopoly that can easily control or influence the content of what is reported. Although the South African legal framework for education supports a *free and independent media* (cf. 5.4), SG stakeholders still need to be vigilant. The two national education policies and related court judgements used in the analysis are both silent on *free and independent media* (cf. 6.3.2.8; 6.4.2.2(h); 7.3.2.8; 7.3.2.2(h)). The study did not find instances where *free and independent media* was necessarily contested, which explains the silence in both the national education policies and court judgements. However, the study still acknowledges its importance, particularly in democracy (cf. 3.3.8), and as a consequence in SG practices and policy. This can be highlighted through the emphasis of acceptable behaviour, and the

exposure of unacceptable behaviour with respect to democracy in SG practices and policy in SA (cf. 3.3.8). The implication is that *free and independent media* will always play a critical role towards the realisation and sustainability of democracy in SG practices and policies in SA.

#### 8.2.2.9 PROMOTION OF AUTHENTIC PARTNERSHIPS

A partnership is when a number of people who have a common goal cooperate with one another by contributing something of value to a relationship (cf. 3.3.9). It is a principle that the Inter-Parliamentary Union, AU, and EU all subscribe to, and they all regard it as important for democracy, human rights, social justice good governance, as well as the rule of law (cf. 3.3.9). The implication is that without cooperation in partnership, democracy will not be realised. SG stakeholders should note that such *partnerships* can be abused or manipulated, making it disingenuous. Those with power and influence may use partnerships for their own selfish interests, or try to sabotage its objectives if it does not serve their interests (cf. 3.3.9). The idea of the *promotion of authentic partnerships* is the foundation on which the democratisation of education and SG is based (cf. 5.2.3.9). The implication is that parents, educators, learners, the state and members of the community need to work in partnership in executing their SG responsibilities, and as a consequence contribute to the realisation of democracy. In addition, the South African legal framework for education also addresses and supports the *promotion of authentic partnerships* (cf. 5.4).

The two national education policies used to analyse how and whether the principles of democracy were addressed, both address and advocate the importance of working in partnership (cf. 6.3.2.9; 7.3.2.9). From the court judgements, however, it seems as if SG stakeholders' practice contradicts the policy. In the *Admission Policy* dispute, the court showed that the departmental officials were unwilling to cooperate when they placed a learner who had not been legally admitted by the school and the SGB (cf. 6.4.2.2(i)). It is as if they wanted to display their power. In the *Language Policy* dispute, it seems as if the manner in which the applicant schools behaved, was not consistent with the principle of *promoting authentic partnerships* (cf. 7.4.2.2(i)). Instead of cooperating with the NCDoe, they opted to exclude them, and finally decided to escalate the dispute to the courts. This implies that they were not interested in *promoting authentic partnerships*, and as such, implementation was inconsistent with policy.

#### 8.2.2.10 DISCUSSION

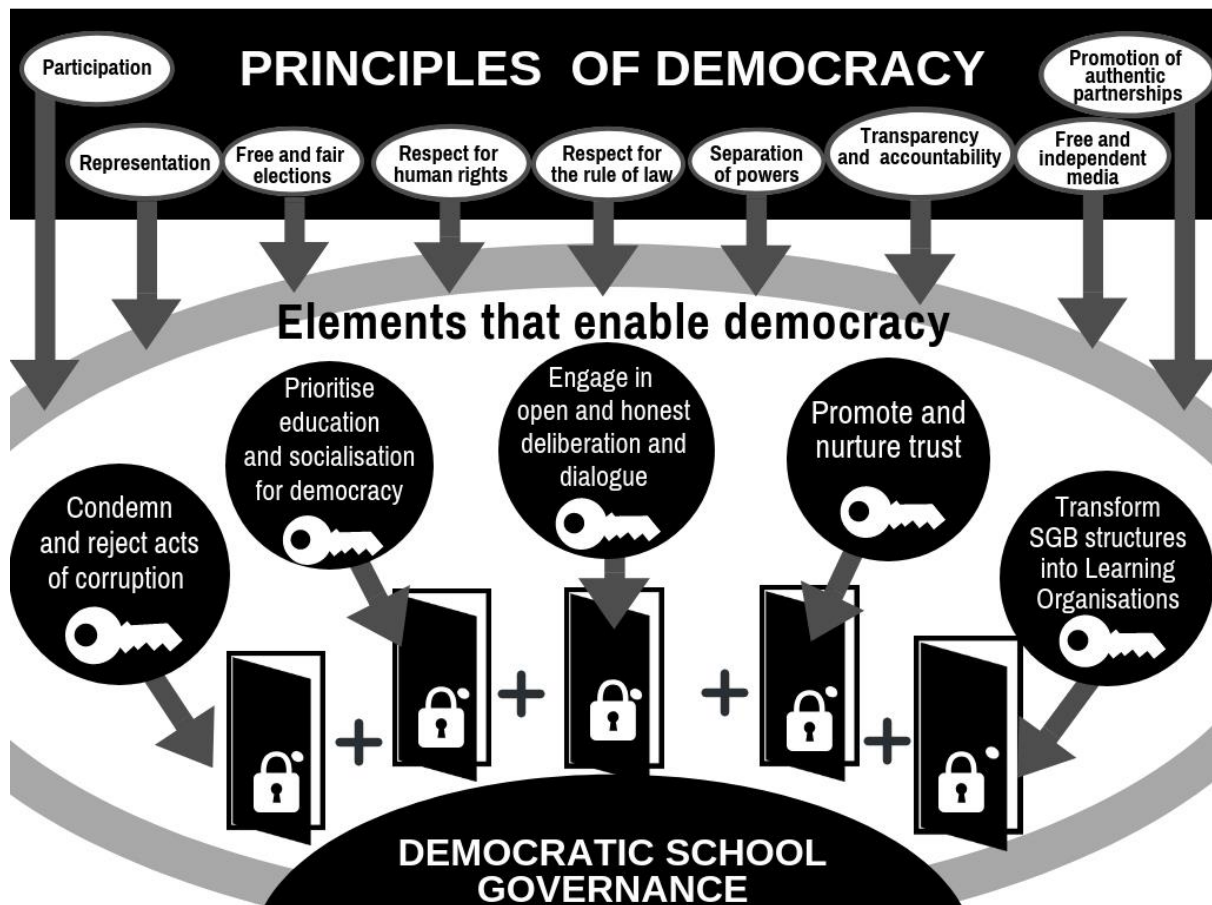
In the process of deriving the framework on democracy and testing its usefulness, it was found that the essential principles of democracy were largely impacted upon by a conducive environment for democracy. In addition, it seems that democracy could be manipulated through its principles, or simply violated or ignored. This also seems to be prevalent in SG practices (cf. 1.2). The framework can therefore make SG stakeholders aware of the need to think and consider checks and balances when faced with a situation where the principles of democracy might be compromised.

The exposition above provided insight into the importance and relevance of each of the elements and principles of democracy as exhibited through SG practices and policies in SA. Besides the fact that the realisation of democracy through its constitutive essential principles depends on a conducive environment, it was demonstrated that it is important that SG stakeholders should be aware of the ways in which democracy can be obstructed. In addition, it is also important that policy should contribute towards providing clarity regarding both the elements and the essential principles of democracy, in other words providing clear checks and balances towards the realisation of democracy. From the insights gained (cf. 6.5; 8.2), the need arose to adapt the derived framework (cf. figure 3.2), and the adapted framework will be presented below.

### 8.3 ADAPTED FRAMEWORK ON DEMOCRACY THAT CAN GUIDE SCHOOL GOVERNANCE PRACTICES AND POLICIES

Throughout the study I worked with the framework as set out in Figure 3-2. In that initial framework, I placed the essential principles at the heart of the matter, with the elements feeding into it. While I agree with my initial thinking that the essential principles are fundamental to democracy, during the course of the study, and in particular when working on chapters 6 and 7, I came to the realisation that those elements are more influential than merely creating a specific context. Particularly also from the discussions in 8.2 above, it is evident that if the elements are not in place, it prevents democracy from being realised, even if the principles are present. The elements therefore hold the key to democracy (or the *enablement of democracy*). I therefore propose the following adapted framework on democracy:





**Figure 8-1: Adapted framework on democracy that can guide SG practices and policies in SA**

Firstly I put the principles at the top, feeding into democracy. I then changed *elements of an environment that are conducive to democracy*, to *elements that enable democracy*. By doing so, I wanted to highlight that they have the power to make democracy realisable, or illustrate that if they are not in place it would obstruct the realisation of democracy (cf. 6.5; 6.6; 7.5; 7.6). Thirdly, to be more decisive, I opted to use action verbs in relation to the elements. In other words, in order to enable democracy, one needs to *condemn and reject acts of corruption*, *prioritise education and socialisation for democracy*, *engage in open and honest deliberation and dialogue*, *promote and nurture trust*, and *transform SGB structures into learning organisations*. I therefore propose that the action verbs replace those used in the derived framework. The grey oval symbolises the environment that is conducive to democracy, but I have emphasised the *enabling/preventing* nature of the elements using doors with keys to democratic school governance (DSG), making the point that the principles will not lead to DSG unless the elements are in place.

## 8.4 REFLECTION

When I was reading and re-reading the literature towards this thesis, I was struck by a number of incidents in SG that did not seem to be consistent with what can be regarded as a democratic state. Some of the incidents relate to SG practices and policies, and these manifests through incidents which include *inter alia* violence against learners and sometimes educators, xenophobic attacks, learners being denied admission to schools due to alleged racism, (cultural) discrimination or language issues, undermining of school principals and SGBs by PED officials through *inter alia* forcefully admitting learners in schools, and acts of corruption in schools which may have the effect of denying learners infrastructure and basic amenities such as proper toilets (cf. 1.2.7; 3.2.1). I was furthermore struck by the contention that “[t]he provision of safe schools that supports learning is not only fundamental to realising the constitutionally guaranteed rights to education, health, equality and human dignity, but also a life and death question” (TNA Reporter, 2018:17). The above are typical issues relevant to democracy. In this regard, I reflected that for us to be able to address this challenge, it would be prudent that an introspection and critical evaluation of SG practices and policy interpretation and implementation be considered. This was one of the main driving forces behind this study, and ultimately to the derivation of a framework on democracy to critically evaluate SG practices and policies in SA.

Through this study it became clear that the democratic character of SA was well grounded on its legal framework, which includes *inter alia* the *Constitution*, legislation, national education policies, and case law. Since SG stakeholders (and by implication the national education policy) are not perfect (Mill in Mousourakis, 2013:388), silences, gaps and contradictions were exposed. However, one profound realisation was that there appears to be ignorance and a lack of knowledge regarding the elements that enable democracy, the essential principles of democracy, and the contradictions between what policy directs and how it is implemented in practice. In some cases there also seemed to be a deliberate attempt to disregard what policy prescribes, particularly regarding issues of democracy (Chapters 6 & 7). Through the use of the derived framework, some examples to illustrate inconsistencies between policy and practice were exposed. These include *inter alia* allowing for participation, but participation which was not authentic, or engaging in deliberation and dialogue but not really considering others’ ideas. With regard to elections, the fact that citizens use their right to vote, does not necessarily imply that they will enjoy democracy, but that it may rather just be an illusion

(Mpofu-Walsh, 2017:iv; Bam, 2017:10). It seems as if Bam's frustration through a letter to a local newspaper titled "Real democracy a mere pipe dream" (Bam, 2017:10), and Mpofu-Walsh's book titled "Democracy and delusion: 10 myths in South African politics" confirms the potential of democracy to be manipulated. This amplifies the relevance and importance of this study to the wider SG community. In other words, where some semblance of the elements that enable democracy or the essential principles of democracy were applied, these were not always done in an honest and genuine manner, hence my assertion that they can be manipulated. In light of the above, I contend that if we are not careful and conscious of how democracy in SG practices and policies in SA can be misrepresented, we will fail in making SG institutions truly democratic. Furthermore, it will be difficult to expose oppressive structures, practices and policies, and contradictions inherent in SG in SA.

In this study I made use of documentary sources to illicit information about democracy in SG practices and policies in SA. I suggest that SG stakeholders' perspectives, elicited through interviews, would provide more information regarding their experiences about democracy in SG practices and policies. Based on the derived adapted framework on democracy, I have identified particular elements that enable democracy and essential principles of democracy. However, these are not exhaustive. What is key, is that this framework on democracy has demonstrated that once the elements that enable democracy and essential principles of democracy have been identified and proven to be relevant, it can be used to critically evaluate practice. In this regard, I suggest that researchers should critically evaluate other institutions of government that profess to be democratic, while anecdotal evidence suggests otherwise.

From the perspective of this research, I have practically been confronted with some of the characteristics of qualitative research. One of these states that qualitative research can provide thick descriptions, and if not properly delineated or demarcated it can be broad (cf. 1.5.2), even to the extent that it can impact on the length and demarcation of the study. The first title I registered for this study was broad, and I must admit that one of my supervisors hinted towards this. It was "Critical interpretation of democracy in school governance contexts in South Africa". After spending some time with my studies, I came to that realisation, and I effected a change in my title to "A framework on democracy to critically evaluate school governance practices and policies in South Africa". This was useful, as it allowed me to come to a conclusion.

## 8.5 CONTRIBUTION OF THE STUDY

In light of the critical perspectives raised, in which challenges such as silences or a lack of clarity and contradictions were highlighted regarding SG practices and policies in SA, I believe that this study will be valuable on a number of levels:

- It contributes to the expansion of knowledge in the fields of Policy Studies in Education, specifically on the subject of democracy in SG practices and policies as a contested education phenomenon in SA.
- It contributes to the establishment of scientific knowledge that can be used by education planners and policy-makers to critically evaluate SG practices and policies in SA. This can lead to improved policy development, implementation, and evaluation.
- I hope that school officials and school governors will use the framework to evaluate and reflect on their own practices.
- The study exposed gaps and silences in both the *Admission Policy* and *Language Policy* and could therefore be helpful in informing policy improvement.
- I trust that the study will provide critical perspectives on current and ongoing contentious issues which face school communities, such as how to reflect on and deal with perceived racism in school admission and language choices in schools.

## 8.6 LIMITATIONS OF THE STUDY

The limitations of the study are methodological, and also related to my own position and limitations.

I am not a law expert, and although I made use of the principles of law and other legal sources, I acknowledge that it would have been better if I had more background. One result is that I may possibly have deliberated too much on certain points, in order to make sense of the issue for myself.

I should make it clear that besides the education policies as texts, I have used court judgements to analyse the implementation of policies. In other words, I made use of document analysis in a broad sense, and did not elicit the views, interpretations or

experiences of any stakeholders through either interviews or observations. This could be seen as not having applied triangulation, which would have aided in confirming my interpretation. However, the court judgements are generally regarded as authentic and reliable information, and most of the information from other sources have been peer reviewed and published as documents or articles.

As a researcher, I am resident in the Northern Cape Province, and employed by the NCDoe. My use of NC court judgements, as well as NC media reports regarding SG practices and policy issues, may be construed to contribute to bias, either for or against NCDoe, but it also suggests conflict of interest. Furthermore, since I have also used other court judgements, I acknowledge that I could be perceived to have shown some bias especially regarding issues of race and/or power neutrality, by either overemphasising issues, or downplaying them. Earlier in the study I do however mention that the court judgements, especially, were not used to test its veracity or otherwise, but to corroborate or justify my argument in line with the objective of the study. I applied for and was granted ethical clearance prior to writing Chapters 6 and 7 (the document analysis, and therefore the empirical work, in a sense) (Ref **UFS-HSD2018/0203**).

This study and SG practices and policies were based on what I could discern from what had happened at and with the schools, SGBs, PEDs mentioned in the documents. No generalisations can or should therefore be made to other schools *per se*, particularly with regard to the contents of media reports, selected court judgements and other sources.

## 8.7 SUGGESTIONS FOR FUTURE STUDIES

In line with the limitations highlighted above (cf. 8.6), I suggest that future studies should *inter alia* consider the gaps or limitations identified herein. These suggestions include:

- Doing a similar study using the derived framework on democracy, but including the experiences of SG stakeholders (possibly through interviews, observations or surveys);
- That a similar study using the derived framework on democracy be conducted, but not including schools and SGBs who were involved in some form of legal challenge (different schools and SGBs);

- Conducting a study using the derived framework on democracy, but only concentrating on the status of a conducive environment. Such a study could be done in a district, or on a larger scale;
- Challenging the inclusion of some of the elements of a conducive environment for democracy or essential principles of democracy or both; or
- Using the derived framework on democracy to critically evaluate other education policies in SA.

## 8.8 CONCLUSION

In South Africa we have an acclaimed *Constitution*, providing us with the essential principles of democracy. Our experience over the last decade and beyond, however, is that in spite of the signposts clearly provided by the *Constitution* and subsequent legislation, we have seen a decay in terms of democracy and unity that had and still has devastating effects on the state of the nation. I want to make the point that at the core of this is that the elements that enable democracy are largely missing, which prevents democracy from flourishing. Furthermore, it seems that democracy in SG practices and policies in SA is susceptible to abuse, manipulation and misrepresentation, whether innocently through ignorance, or consciously. As a consequence, it is clear that democracy requires vigilance and requisite knowledge, and requires definite checks and balances. In light of the above, I believe my framework could be applied, and it could be applied beyond the context of SG.

I am hopeful that the derived adapted framework on democracy will assist in galvanising the citizens of the country to continue to make a stand towards the realisation of democracy in SA. One way of doing this is by promoting critique and enquiry, and in this regard, Foster (ND:6) says:

*Two cheers for Democracy: one because it admits variety and two because it permits criticism.*

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26-Apr-2018

Dear Mr Hamilton Shushu

**Ethics Clearance: A framework on democracy to critically evaluate school governance practices and policies in South Africa**

**Principal Investigator: Mr Hamilton Shushu**

**Department: School of Education Studies (Bloemfontein Campus)**

**APPLICATION APPROVED**

With reference to your application for ethical clearance with the Faculty of Education, I am pleased to inform you on behalf of the Ethics Board of the faculty that you have been granted ethical clearance for your research.

Your ethical clearance number, to be used in all correspondence is: UFS-HSD2018/0203

This ethical clearance number is valid for research conducted for one year from issuance. Should you require more time to complete this research, please apply for an extension.

We request that any changes that may take place during the course of your research project be submitted to the ethics office to ensure we are kept up to date with your progress and any ethical implications that may arise.

Thank you for submitting this proposal for ethical clearance and we wish you every success with your research.

Yours faithfully

146 Kluh.

Prof. MM Mokhele  
Chairperson: Ethics Committee

Education Ethics Committee

Office of the Dean: Education

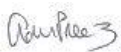
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## ADDENDUM B: PROOFREADING LETTER

To whom it may concern

This is to state that the Doctoral thesis of H.H. Shushu titled **A framework on democracy to critically evaluate school governance practices and policies in South Africa** has been language edited by me, according to the tenets of academic discourse.



Annamarie du Preez

B.Bibl.; B.A. Hons. (English)

30-11-2018