

THE ROLE OF THE OFFICE OF THE AUDITOR GENERAL OF SOUTH AFRICA  
IN ENHANCING SOUND PUBLIC FINANCIAL MANAGEMENT, WITH SPECIAL  
REFERENCE TO THE EASTERN CAPE PROVINCE

SUBMITTED IN FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE  
OF DOCTOR OF PHILOSOPHY (PhD) IN PUBLIC ADMINISTRATION

BY

MAWONGA CHRISTOPHER C. DELIWE

**SUPERVISOR:** PROF D. R. THAKHATHI

**DATE:** 27 JANUARY 2016

## **DECLARATION**

I, MAWONGA CHRISTOPHER C. DELIWE, the undersigned and Stud No. 820 2715 – hereby declare that the work contained in this PhD dissertation is my own work, except where due acknowledgement of other people’s contributions is indicated through references in the text.

The dissertation has not been previously submitted to any university or institution of higher education for a qualification or similar other purpose.

Signed: -----

## DEDICATION

I dedicate this report to several personalities.

I dedicate it to my father and mother who together - despite several attempts to get all their older children (my siblings) to pass Matric, to no avail – never lost hope. The abundance of jobs during the siblings' time strongly beckoned, and conventionally, the girls already had husbands waiting in the periphery, as they completed primary or early secondary education. In me, and me only - my parents finally got what they wanted, albeit posthumously.

Secondly, I also dedicate this report to my wife and children, who allowed me to do whatever was necessary in my view - to sustain the family, particularly its standard of living. They may not have understood exactly what it was that I was busy doing at this ripe old age - but supported it nevertheless.

Further, two special friends are unforgettable. I dedicate this book thirdly to a colleague and close friend, N. G. Mtshi, for all the support and encouragement. The communionship established over a long period between us - indeed proved to be crucial in sustaining me as I executed the arduous task.

Fourthly an old friend, now Dr Peppeta (aged 81 to date), comes to mind in times like these - with all the encouraging words, mostly delivered to me via the cellphone, and all the way from Port Elizabeth. He was an inspiration - because he attained his Doctorate at age 67!

Lastly – I dedicate this report to the Almighty God, for giving me the tenacity, the strength to push through - despite all the formidable adversaries that I met along the way.

## **ACKNOWLEDGEMENTS**

Although it might sound like frightening people away from studying as and when they want to – I venture to say that it is not an excellent idea to allow your study instinct to lie dormant until too late in your earthly life. An age of 60 years and above - is defined as “too late” in this note of acknowledgements.

I want to first and foremost express my gratitude to my Supervisor, Prof D. T. Thakhathi – primarily for drumming it into my head: that I would make it despite my age, and that I had what it took to complete a degree at this level. He said all these things without a measure of doubt detectable in his total person. All that I needed, he confided - was a passion for the subject and thus for the project. Further, what I wrote had to make sense, and be reasonably, and persuasively convincing – Prof Thakhathi cautioned.

Most shocking in this journey however, was how I initially got torn into pieces by the same Supervisor - for adopting a village-conversational style in my proposal, when what I was tasked to do was: to put together an academic proposal, an academic piece of writing - which had to meet the academic rigour - as is the convention in this kind of discourse. This rude awakening almost killed my passion. I had not been in an academic environment for more than 20 years prior to this engagement in 2013. It was therefore not easy to break free from the clutches of casual or village report writing.

My second gratitude goes to Prof Ijeoma. He freely donated books to me - books which certainly contributed to this research study, especially those that he authored, including relevant journals. This was not unexpected. He is the first person I got to know for some time when I first made contact with the Department of Public administration in 2013 – having come back from every other thing that I previously did to earn a living.

I guess that my meeting with the two Professors was no accident. All three of us have a common passion, namely, a passion for quality leadership and policy or strategic execution or implementation within government. I believe that I am reading them accurately.

I also wish to thank the staff of the East London Fort Hare library for all the assistance that they gladly offered to me. It was as if they were saying, “you need all this, since your time is almost up”.

Lastly, my gratitude will ultimately always be directed at the Almighty God, who has all along cared for me, through very difficult and trying times in my life. Trials and tribulations – I unfortunately had plenty of.

I close with a quote from God’s Word, the Bible - to indicate to the reader of this note - that I completely rely on His Grace, and not on any wisdom or education - that I might have amassed in this earthly life.

Psalm 23, verse 1 reads thus:

“The Lord is my shepherd; I shall not want.” The verse indeed suffices for my needs.

## **ABSTRACT 2**

The 1996 Constitution of South Africa and the Public Audit Act of 2004 provide the legislative framework for the Office of the Auditor General of South Africa (OAGSA). The Independent Regulatory Board for Auditors further enriched the interpretation of the framework – for government auditing.

Over the years of democratic rule in South Africa, audit performance by State organs was generally poor. Despite the efforts by the OAGSA to improve the performance, very little improvement was notable. Most disturbing was the observation that there was widespread, a prevalence of recurring findings, which indicated that the OAGSA's recommendations and guidelines were not acted upon, or largely ignored.

Firstly, the research study established that the system of capitalist democracy, which comes in different varieties throughout world democracies, indeed brought about a situation where the electorate was effectively removed from its rightful place of being the principal, and had its place taken up by political parties (which are in fact, agents) - which (parties) governed on its (the electorate's) behalf. This system, taken together with the Principal Agency and the Rational Choice Theories – fully explained the prevalence of maladministration and malfeasance in government in South Africa.

Secondly, the study established that the OAGSA has done everything imaginable in its attempts to improve audit performance in government institutions – using the carrot rather than the stick approach. The legislative framework cited above, revealed that the OAGSA has the power to audit and report, while Parliament has the power to enforce

corrective action. The lesson of this revelation is: that there is not much that the OAGSA can achieve without a high level of cooperation between itself and Parliament – if audit performance is to be effectively, and appreciably improved in South Africa.

A disappointing discovery however was indirectly delivered to the world, through the results of a research study conducted by one Wehner in 2002, on Public Accounts Committees (PACs) (alias Standing Committees on Public Accounts (SCOPAs)) in world democracies. The Wehner study clearly demonstrated that there was nothing contained in these committees' founding documents or enabling legislation – which in no uncertain terms, directed the committees on what procedures and processes to follow to ensure that their resolutions were acted upon. In other words there was no enforcement mechanism discernible for their resolutions.

Thirdly, there were developments in case law in South Africa, which augured well for Constitutional Institutions in general. They are contained in court judgements relating to the mandate of the Office of the Public Protector (OPP). The question at the core of these developments was: whether the decisions or remedial action emanating from the OPP, were binding and enforceable.

Two judgements cited as cases in point, one a High Court judgment and another a Supreme Court of Appeal's (SCA's), feature in the research report. The SCA, in summary found that decisions of administrative bodies of State – stand in fact and in law, until such time that a court of law invalidates them. The SCA ruled through citing a High Court judgement passed way back in 2004 - that Constitutional Institutions,



although not organs of State per se – were certainly included in this 2004 finding, if one considers the rationale of this initial finding, taken together with the purpose for which Constitutional Institutions were established in South Africa in the first place.

In conclusion, although visible root causes of poor audit findings appear overall to be poor consequence management and questionable leadership quality in government, the system of capitalist democracy is ultimately to blame. The system certainly had unintended consequences.

# TABLE OF CONTENTS

## CHAPTER 1

### INTRODUCTION

1.1 BACKGROUND	1
1.2 THE MANDATE OF THE OFFICE OF THE AUDITOR GENERAL OF SOUTH AFRICA	7
1.3 CATEGORIES OF AUDITS	8
1.3.1 EXTERNAL AUDITS	8
1.3.2 INTERNAL AUDITS	9
1.3.3 GOVERNMENT AUDITS	11
1.4 INTERPRETATION OF STATUTES	14
1.5 STATEMENT OF THE PROBLEM	14
1.6 RESEARCH QUESTIONS	17
1.7 OBJECTIVES OF THE STUDY	18
1.7.1 THE THESIS OF THE RESEARCH	19
1.8 SIGNIFICANCE OF THE STUDY	19
1.9 SCOPE AND LIMITATIONS OF THE STUDY	23
1.10 ASSUMPTIONS	25
1.11 OVERVIEW OF THE REST OF THE CHAPTERS	27

## CHAPTER 2

### LITERATURE ERVIEW

2.1 INTRODUCTION	30
2.2 PUBLIC ADMINISTRATION	31
2.3 CORPORATE GOVERNANCE	37

2.4 PUBLIC FINANCIAL MANAGEMENT	44
2.4.1 THE CLASSICAL MODEL	44
2.4.2 THE NEW PUBLIC MANAGEMENT (NPM) MODEL	45
2.4.3 THE BARBARD-SIMON GOVERNANCE MODEL	48
2.5 CONTROL MECHANISMS IN DEPARTMENTS AND THEIR PUBLIC INSTITUTIONS	50
2.5.1 THE PUBLIC FINANCE MANAGEMENT ACT (PFMA)	50
2.5.2 PFMA PERFORMANCE MANAGEMENT MECHNISMS	53
2.5.3 AUDIT COMMITTEES	54
2.5.4 THE INTERNAL AUDIT FUNCTION	54
2.5.5 THE EXTERNAL AUDIT FUNCTION	56
2.6 PUBLIC FINANCE MANAGEMENT IN LOCAL GOVERNMENT	57
2.6.1 MUNICIPAL FINANCE MANAGEMENT ACT (MFMA)	57
2.6.2 MFMA AND IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE	58
2.7 THE QUALITATIVE RESEARCH PARADIGM	60
2.8 THEORETICAL FRAMEWORK	64
2.9 PRINCIPAL AGENCY, RATIONAL CHOICE THEORIES AND CAPITALIST DEMOCRACY	66
2.9.1 PRINCIPAL AGENCY THEORY	66
2.9.2 ACCOUNTABILITY IN GOVERNMENT DEFINED	68
2.9.3 ORIGINS OF HORIZONTAL ACCOUNTABILITY IN GOVERNMENT	70
2.9.4 RATIONAL CHOICE THEORY	74
2.10 STRATEGIC EXECUTION, MONITORING AND EVALUATION	76
2.11 ORGANIZATIONAL LEADERSHIP	79
2.12 CONCLUSION	81

## **CHAPTER 3**

### **METHODOLOGY**

3.1 INTRODUCTION	84
3.2 DOCUMENTARY RESEARCH METHODS: AN ADVOCACY	87
3.2.1 A DEDUCTIVE ARGUMENT IN DISCOURSES	87
3.2.2 DOCUMENTARY RESEARCH METHODS	89
3.3 PRIMARY VERSUS SECONDARY DATA	93
3.4 THE CRITICAL RESEARCH METHOD	95
3.5 METHODOLOGICAL QUALITY CONSIDERATIONS	97
3.6 METHODOLOGY	99
3.6.1 SAMPLING	99
3.6.2 AUTHENTICITY	102
3.6.3 CREDIBILITY	103
3.6.4 REPRESENTATIVENESS	103
3.6.5 MEANING	104
3.6.6 DATA REDUCTION AND ANALYSIS	107
3.6.6.1 DATA REDUCTION	108
3.6.6.2 DATA ANALYSIS	108
3.6.6.3 DATA DISPLAY	109
3.6.7 DRAWING AND VERIFYING CONCLUSIONS	110
3.7 LIMITATIONS OF DOCUMENTARY RESEARCH METHODS	112
3.7.1 DIFFERENCE IN PURPOSE	113
3.7.2 RESEARCHER'S SUBJECTIVE AND BIASED INTERPRETATION	114
3.7.3 AUTHORS THEMSELVES BEING MANIPULATIVE	115

3.7.4 PROPAGANDA BY SOME AUTHORS	115
3.7.5 PROCESS AND SOCIAL CONTEXT	115
<b>CHAPTER 4</b>	
<b>ANALYSES AND DISCUSSIONS OF FINDINGS</b>	
4.1 INTRODUCTION	116
4.2 CAPITALIST DEMOCRACY	120
4.2.1 ELECTED REPRESENTATIVES	127
4.2.2 ECONOMIC GROWTH, INEQUALITY AND POVERTY REDUCTION	130
4.3 PRINCIPAL AGENCY THEORY	136
4.3.1 SOME CRITIQUE OF THE P-A THEORY	139
4.4 RATIONAL CHOICE THEORY	141
4.5 SOUTH AFRICAN CONSTITUTION DEMOCRACY AND THE PARTY SYSTEM	142
4.5.1 SOUTH AFRICA’S CONSTITUTIONAL DEMOCRACY	142
4.5.2 THE PARTY SYSTEM OF GOVERNMENT	144
4.6 ROLE AND RESPONSIBILITIES OF THE OAGSA	150
4.7 THE MANDATE OF THE OAGSA AND THE IRBA GUIDE BOOK	152
4.7.1 THE MANDATE	152
4.7.2 THE IRBA GUIDE BOOK	152
4.7.2.1 FUNDAMENTAL REQUIREMENT 1	154
4.7.2.2 FUNDAMENTAL REQUIREMENT 3	155
4.7.2.3 FUNDAMENTAL REQUIREMENT 4	155
4.7.2.4 FUNDAMENTAL REQUIREMENT 5	156
4.7.2.5 THE SIGNIFICANCE OF “PARTNER”, “ASSIST” AND “ENCOURAGE”	157

4.7.2.6 FUNDAMENTAL REQUIREMENT 6	160
4.7.3 ASSISTANCE AND INCENTIVES FROM THE OAGSA	161
4.7.4 SPECIFIC DIRECTIVES AND DETERMINATIONS FROM THE OAGSA	163
4.8 THE SUBSTANCE OF RECURRING AUDIT FINDINGS	166
4.8.1 PFMA REPORTS	166
4.8.2 MFMA REPORTS	168
4.8.3 IRREGULAR, UNAUTHORISED, FRUITLESS AND WASTEFUL EXPENDITURE	171
4.9 THE MANDATE OF PARLIAMENT RE: PUBLIC FINANCIAL MANAGEMENT	176
4.10 THE ROLE OF SCOPAs/PACs	177
4.10.1 REFLECTIONS ON THE ENFORCEABILITY OF PAC RESOLUTIONS	182
4.11 CURRENT LEGISLATION AND DEVELOPMENTS IN CASE LAW	183
4.11.1 THE HIGH COURT JUDGEMENT	185
4.11.1.1 THE RELEVANT COURT FINDING	185
4.11.1.2 ANALYSIS OF THE JUDGEMENT’S RATIONALE	185
4.11.2 THE SUPREME COURT OF APPEAL (SCA) JUDGEMENT	197
4.11 2.1 THE RATIONALE OF THE SCA JUDGEMENT	198
4.11.2.2 SPECIFIC RELEVANCE OF THE SCA JUDGEMENT	201
4.11.3 THE RELEVANCE OF THE TWO JUDGEMENTS TO THE OAGSA	203
4.11.4 LIMITATIONS IN CURRENT LEGISLATIVE FRAMEWPRK	207
4.11.4.1 PRESIDENTIONAL DISCRETION	207
4.11.4.2 THE PUBLIC AUDIT ACT OF 2004	212
4.11.4 3 THE MFMA	215
4.11.5 THE IMPLICATIONS OF THE IRBA GUIDE BOOK	220
4.11.5.1 FUNDAMENTAL REQUIREMENT 4	221

4.12 INTERNAL CONTROLS AS A ROOTCAUSE FOR POOR AUDIT OUTCOMES	223
4.12.1 LADERSHIP	225
4.13 CONCLUSION	232

## **CHAPTER 5**

### **CONCLUSION**

5.1 INTRODUCTION	236
5.2 A SUMMARY OF FINDINGS	237
5.3 CONCLUSIONS AND RECOMMENDATIONS	243
5.4 MOTIVATION FOR TWO OF THE RECOMMENDATIONS	248
5.4.1 PUBLIC ROADSHOWS	248
5.4.2 ENHANCED COOPERATION BETWEEN THE OASGSA AND PARLIAMENT	250
5.5 SUMMARY OF CONTRIBUTIONS	253
5.6 CONCLUSION	255

## **LIST OF ACRONYMS**

OAGSA – Office of the Auditor General of South Africa

SCOPA – Standing Committee for Public Accounts

PAC – Public Accounts Committee

P-A THEORY – Principal Agency Theory

OFFICE – The OAGSA

OPP – The Office of the Public Protector

OCAU – Operation Clean Audit Unit (Eastern Cape)

PA – Public Administration (the field of Study)

AGSA – Auditor General of South Africa

PPA – Public Audit Act (of 2004)

NPM – New Public Management

CM – Classical Model

PFM – Public Finance Management

PFMA – Public Finance Management Act (of 1999)

MFMA – Municipal Finance Management Act (of 2003)



NTR – National Treasury Regulations

IIA – Institute of Internal Auditors

CG – Corporate Governance

MPAC – Municipal Public Accounts Committee

IRBA – Independent Regulatory Board for Auditors

## **CHAPTER 1**

### **INTRODUCTION**

#### **1.1 BACKGROUND**

“Eastern Cape politicians meddle with administrative matters instead of playing their oversight role. This was a rampant occurrence in the province .... The slow response of leadership to institute disciplinary action exacerbated the problem .... They have got constitutional power to act, we do not have that. We only have power to audit. Those people are elected, we are not” (National Auditor General of South Africa, Mr Kimi Makwetu, Daily Dispatch: 06 August 2014).

The citation above, does not only implicitly suggest that there exists a perception in the Office of the Auditor General South Africa, that there is a high prevalence of political interference (meddling) and shirking of responsibilities in the Eastern Cape Provincial Administration - but also identifies the areas wherein to look for root causes for audit under-performance, in our attempts to rein in the two-pronged challenge of poor audit outcomes and recurring audit findings - two scourges which feed on each other. One needs only kill one, to ensure that the other disappears.

The first mentioned challenge, in theory goes away as soon as strict and sustained internal controls are in place in public institutions, or so said the Office of the Auditor General in his annual audit reports of at least the last ten years to the 2012/3 financial year. Regarding the challenge of recurring audit findings, a full and effective implementation of all the recommendations and guidelines from the Office of the Auditor General (hereunder often referred to as the OAGSA or simply the

Office) - suffices, or so advised the OAGSA (OAGSA Provincial Report, 2011-12: 32, 40).

Given the above plausible solutions, one would understandably wonder why the two simple remedies apparently did not get taken seriously, or did not pass the test for suitable remedies in the minds of the executive management and leadership of public institutions. It, seen in this light, becomes a challenge for one to figure out why the sustained failure on the part of the responsible government institutional leadership to apply the remedies - prevails to this day, considering that the OAGSA has been hammering on the remedies for at least, the ten years as alluded to above.

The implications of the Auditor General's utterances do not end with the two mentioned above. Also explicitly revealed in the statement is the Office of the Auditor General's further perception that it does not have legal powers to act to curb the recurring audit findings, as well as that the Office's role is only 'to audit and' - taking cue from the Office's legislative framework - 'to report' on the results thereof.

Part of the argument presented in some of the ensuing chapters of the dissertation is: that the Office of the Auditor General of South Africa, working in close cooperation with a willing parliament - could garner more legal powers, as provided for in the relevant legislative and regulatory framework - than it presently manages.

In the light of persistently poor audit outcomes at the local sphere of government, the Eastern Cape Department of Cooperative Government, set up an Operation Clean Audit Unit (OCAU) within the Department - to assist with the efforts to accelerate the rate of improvements in audit outcomes at this level. The unit was

established about six years ago, to date. Also another initiative emanating from the Office of the Premier (OTP) was reportedly (OAGSA Provincial Report, 2012 -13: 12) instrumental in effecting, somehow marginally improved audit results in the provincial departments and their public entities. The Office of the Auditor General in the annual provincial audit report cited above – reported that provincial departments and their entities in the Eastern Cape, performed better than local government institutions. There is however, no indication in their records - other than the annual reports presented to the legislature - which suggests that formal evaluations of the interventions were conducted to date, on the two projects. Judging by the miniscule nature of improvements in audit outcomes to date, there is not much to write home about, regarding the impact of the two interventions.

The South African government adopted a final Constitution in 1996, which guaranteed a constitutional democracy for the country. The South African Constitution also sought to ensure that human rights would form the foundation, the cornerstone of the country's democratic government. In line with the Constitution's provisions, Constitutional Institutions were set up - to support the Constitutional democracy, to ensure that it stands on firm ground, institutions such as the Human Rights Commission, the Office of the Public Protector, the Electoral Commission, and the Office of the Auditor-General of South Africa.

The OAGSA is the supreme audit institution in the country, and subscribes (IRBA, 2012: 12; Integrated Annual AGSA Report, 2012-13: 17) to the International Organization of Supreme Audit Institutions (INTOSAI), and the International

Federation of Accountants (IFAC). The Office's primary function (Public Audit Act, 2004: s4 (1), (2)) is to audit the financial affairs of the public sector.

Two Acts of Parliament were promulgated since 1995, to give effect to the provisions of the relevant sections of the preliminary 1993 Constitution. The Act which currently regulates the work of the Office of the Auditor-General, read together with the Constitution - is the Public Audit Act which was passed into law in 2004. It repealed among others, the Auditor General Act of 1995, and the Audit Arrangements Act of 1992.

While going through some of the Auditor-General of South Africa's (AGSA) annual reports to Parliament and to the general public over the last 10 years (2004 – 2013), the impression one gets is that for a variety of reasons, all presented in the reports, movement through the various phases of audit outcomes by public institutions, to the ultimate pinnacle of the phases, namely, the clean audit outcome – left much to be desired.

Focusing specifically on the local scene, that is, the Eastern Cape – one is left in no doubt that much still needs to be done, since the Province's annual audit reports from the OAGSA are replete with statistics and trends, which point to a province which ranks low with regard to movement from the baseline of, say, the 2006/7 financial year, to date.

The purpose of the research study was to critically analyse the present role, as well as the potential future role of the Office of the Auditor-General of South Africa - with a special focus on the case of the Eastern Cape - in enhancing public financial management in the country. The study is primarily an attempt to find ways in which

the limits of the current mandate of the Office could be stretched, or alternatively to explore the advisability of additionally empowering the Office of the Auditor General (the OAGSA) to render the Office more effective in the execution of its mandate - as provided for in section 5 of the Public Audit Act (2004: s5 (2) (c)).

The tables below clearly indicate the magnitude of the work that still lies ahead in the Province.

### **PROVINCIAL DEPARTMENTS AND THEIR PUBLIC ENTITIES**

<b>Outcomes/Opinion</b>	<b>No achieving outcome in 2006/07 (22 audits)</b>	<b>No achieving outcome in 2007/08 (22 audits)</b>	<b>No achieving outcome in 2008/09 (27 audits)</b>	<b>No achieving outcome in 2009/10 (27 audits)</b>	<b>No achieving outcome in 2010/11 (26 audits)</b>	<b>No achieving outcome in 2011/12 (27 audits)</b>	<b>No achieving outcome in 2012/13 (26 audits)</b>
Clean audit	0	0	3	4	3	1	3
Unqualified	7	10	18	16	16	19	13
qualified	9	9	5	5	6	6	8
Adverse	4	2	2	0	0	0	0
Disclaimer	2	1	1	2	1	1	2

## MUNICIPALITIES AND THEIR ENTITIES

<b>Outcomes /Opinion</b>	<b>No achieving outcome in 2006/7 (44 audits)</b>	<b>No achieving outcome in 2007/8 (44 audits)</b>	<b>No achieving outcome in 2008/9 (55 audits)</b>	<b>No achieving outcome in 2009/10 (52 audits)</b>	<b>No achieving outcome in 2010/11 (55 audits)</b>	<b>No achieving outcome in 2011/12 (55 audits)</b>	<b>No achieving outcome in 2012/13 (43 audits)</b>
Clean audit	0	1	0	1	1	0	0
Unqualified	4	7	15	13	20	17	12
qualified	11	15	15	16	14	20	18
Adverse	10	6	3	3	2	2	2
Disclaimer	19	15	18	19	18	16	11

The tables depict a situation where there is insignificant movement or progress - which is characterised by a few steps forward, followed by almost the same number of steps backwards, over the years covered by the tables. Considering the 2009 resolution taken by the national government (OAGSA, Media Release, 06/18/2010), that the 2013/14 year was to be the year of clean audits all-round, and noting the rate of progress towards this deadline as could be read from the tables - there is evidently still a long way to go in South Africa in general, as the OAGSA has implicitly suggested (OAGSA: Consolidated Audit Reports, 2012/13 - Local

Government and Provincial Administrations), and in the Eastern Cape in particular, as the figures in the consolidated reports as well as in the tables above reveal.

## **1.2 DELIMITING THE MANDATE OF THE OFFICE OF THE AUDITOR GENERAL**

The Constitution of South Africa provides for the establishment among others, of one Constitutional Institution, namely, the Office of the Auditor General to:

“... audit and report on the accounts, financial statements and financial management of ... [all institutions of government]” (Constitution, 1996: s188 (1)).

To give effect to the provision of the Constitution (s 188 (4)), the Public Audit Act (PAA) of 2004 was promulgated, to provide the relevant statute, to thus complete the legislative framework which specifically regulates the work of the Office. The primary objective of the PAA is:

“... to give effect to the provisions of the Constitution establishing and assigning supreme auditing functions to an Auditor-General” (Constitution, 1996: s 188 (4)).

The framework in this way provides for a well grounded point of departure for the enterprising activity of statutory interpretation in South Africa. It is well grounded since the contents of the Constitution and the Public Audit Act collectively provide a firm basis for the Office of the Auditor General to adequately define its operational space - subject of course, to limitations imposed by developments in Case Law and legislative amendments enacted from time to time.



There are various categories of auditing, three of which are: external auditing, internal auditing, and government auditing, that a supreme audit institution, such as the OAGSA or any public auditor, could be mandated, or requested to perform. The definitions or descriptions below present an attempt to provide delineation for each category of auditing.

## **1.3 CATEGORIES OF AUDITS**

### **1.3.1 EXTERNAL AUDITING**

According to Puttick and Esch (1998: 2) the term 'audit' originates from the Latin word 'audire', meaning, 'to hear'. It dates back to earliest civilizations, when stewards in charge of their master's assets had to give an account of how they had managed the master's assets entrusted to them. The servant would then give an account while the master was listening, or 'audire'. In due course the steward's status evolved to be that of an auditor of the master's economic operations as well as his state of wealth.

Relevant texts on auditing (B Marx et al, 2011; Puttick and Esch, 1998; E Woolf, 1997; Millichamp and Taylor, 2012, and Robertson and Davis, 1988) suggest that external auditing as is known today, historically developed out of a need to serve the interests of shareholders or stakeholders to a private incorporated business entity, who necessarily had vested interests in the affairs and operations of the business entity. This was more prevalent particularly from around the era of the Industrial Revolution in Europe, that is, during the seventeenth and the eighteenth centuries of the Christian era.

External auditors were then and to this day, engaged primarily to independently investigate or examine, to “audit and report” (PAA, 2004: s41 (1)) on the state of the financial affairs of an incorporated business entity, to specifically establish: the financial position of the entity as at a specific date, as well as to gauge the extent to which the financial statements of the entity were a fair presentation of the entity’s financial operations for the year, to the date. External auditing also involved examining the extent of compliance by the entity, with generally accepted accounting practice standards, as well as its compliance with the applicable legislative and regulatory framework. The beneficiary stakeholders conventionally included: the taxman (e. g. the South African Revenue Services), shareholders, investors, creditors, financial analysts and so on.

### **1.3.2 INTERNAL AUDITING**

Internal auditing on the other hand, was primarily established to serve the interests of the organization to which the internal audit function belongs. It consequently derives its origins from the need to monitor and audit other operations’ controls, as well as the need to conduct organizational operations with economy, efficiency and effectiveness, to ensure that the organization remains economically sustainable, performs acceptably and above board, and is viable to the distant future. An internal audit is conventionally initiated by an organization’s board of directors, or similar body, in the interest of the entity – as an assurance providing activity.

Barlow et al (1995: 11) define internal auditing as:

“an independent appraisal activity, established within an organization as a service to the organization. It is a control which functions by examining and evaluating the effectiveness of other controls”.

The Institute of Internal Auditors (IIA), an internationally recognized professional association, (Messier, Glover and Prawit, 2008: 746; Millichamp and Taylor, 2012: 296), on the other hand, defines internal auditing thus;

“Internal auditing is an independent, objective assurance and consulting activity designed to add value and improve an organization’s operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes.”

*Economy* refers to the acquisition of the means of production at the lowest cost possible, while *efficiency* refers to the extent of maximisation of an organization’s operational outputs, for a given input. *Effectiveness* on the other hand refers to the extent to which the objectives of the organization are achieved through organizational operations (Millicamp and Taylor, 2012: 460). Robertson and Davis (1988: 159) posit that:

“... the objective of internal auditing is to assist members of the organization in the effective discharge of their obligations”.

It is therefore clear from the citations above, that the internal audit function in an organization does not only ‘audit and report’ financial performance, reporting and

compliance with legislation, as described under 'External Auditing' above. It goes further.

### **1.3.3 GOVERNMENT AUDITING**

As auditing evolved, there was also simultaneously developing, a category of auditing, namely, government auditing as envisaged in the PAA, which for various reasons, could not be carried out exactly as it was done in the private corporate world. Some amendments had to be effected to the then established external audit practice, in line with the unique requirements of government operations. No exact date or era of the emergence of government auditing, as is known today - is specifically mentioned in the sources perused. Puttick and Esch (1998: 2) state that the Greeks and the Romans of the first century of the Christian era had:

“... very complete systems of auditing public accounts [government accounts]”. Before the Greeks and the Romans, “... ancient Egypt and Babylonia’s “practice of checking records was well established” (ibid).

Government auditing has therefore, long been around. It is not new as an audit package for State institutions, although it is certainly evolving.

While introducing government audits, and although not explicitly providing a definition, the 'Guidance for Auditing in the Public Sector' authored jointly by the Independent Regulatory Board for Auditors (IRBA) and the Office of the Auditor General of South Africa (2012: 11), somewhat proffers an illuminating account of what government audits entail. The citation is given in its totality, in order to enable this researcher to pinpoint its defining features, thus:

“The concept and establishment of an audit [in the public sector] is inherent in public financial administration, as the management of public funds represents a trust. An audit is not an end in itself but rather an indispensable part of a regulatory system whose aim is to reveal deviations from accepted standards and violations of the principles of legality, efficiency, effectiveness and economy of financial management early enough to make it possible to take corrective action in individual cases, to make those accountable accept responsibility, to obtain compensation, or to take steps to prevent – or at least render more difficult – such breaches.”

The reader needs only take note of the requirements for the principles of: legality, efficiency, effectiveness and economy to apply in government audits - to see a measure of accord with the operations of internal auditing. In addition, there is also reference to accountability, taking of corrective action, those responsible being made to accept responsibility, and obtaining compensation, presumably for loss or breaches suffered.

Marx et al (2011: 6) went further to assert that government (external) audits are much closer to, or more in line with internal audits, than otherwise.

Interpretation of statutes, which plays a significant role in fine-tuning legislation through a process called *concretization*, thus incorporating context in interpreting law, to suit specific situations - is the subject of the section below.

## **1.4 INTERPRETATION OF STATUTES**

The vast increase in the scope of the field of statutory interpretation brought about by the advent of constitutional democracy in South Africa is an eye opener. Previously the country had a parliamentary sovereignty, where parliament was the supreme law making body in the land. All that the courts could do in interpreting the law then, was to seek what parliament intended to legislate for, the purpose of the legislature, particularly as judged through the meanings assigned to words and phrases used in the statutes. However, the advent of democratic rule changed all that. It brought along with it what Corder (in turn quoting Lord Steyn) asserts in the light of present day constitutional South Africa - namely, that: "In law context is everything" (Corder, 2012: 85). All statutes have since had to be interpreted with due regard being had to the provisions of the Constitution, particularly the Bill of Rights and the values enshrined in the supreme legal document, namely, the Constitution.

The ensuing section sets the scene by stating the problem of the research in a way that succinctly sums it up, while simultaneously briefly recapping on the background to it. No research serves any purpose if it does not articulate a well stated challenge to undertake a research study on. The presentation thereafter, of critical sections such as: the research questions, the objectives of the research, the claim for significance, the research design, the assumptions and the provision of a preview of the ensuing chapters to the reader, completes the introduction.

## **1.5 STATEMENT OF THE PROBLEM**

Annual audit reports on public institutions, compiled by the Office of the Auditor General of South Africa (OAGSA), for much of the period of South Africa's democratic government - all point to a high prevalence of poor audit outcomes within the ranks of public institutions (OAGSA, Annual General Report, 2013) in all three phases of government. The state of affairs prevails despite concerted efforts by the Office, to carry out its mandatory roles and responsibilities, including undertaking own initiatives - in its attempt to improve the situation (OAGSA, Annual General Report, 2013).

What is most disturbing however, which constitutes the focus of this study, remains the recurrence of findings previously pointed out by the Office, often on an annual basis. For instance, according to the minutes of an address to, and discussions with the Parliamentary Portfolio Committee for Public Services and Administration, the then Auditor General, Mr Shauket Fakie (OAGSA, An Address to the Public Service and Administration Portfolio Committee, 2006) commented that it was not desirable for a "... Chapter 9 Institution and a department to hark back to the same issues year after year".

Ijeoma (2013: 174, 177, 201) makes reference to the observation that, not only is the OAGSA not empowered to demand accountability directly from executive authorities of public institutions and their subordinates, but also that there is recurring: irregular, fruitless and wasteful expenditure, and a conspicuous absence of consequences for poor performance or malfeasance.

To further illuminate the point made above, Khumalo (2007: 79) analysed several departmental audit reports for Gauteng for a couple of years, to check for recurring findings, and noted in her masters research thesis on the efficacy of the Office of the AGSA in the Gauteng Province, that:

“Out of the eleven sampled departments, eight departments constantly had the same recommendations made to them by the Auditor –General.”

Although Khumalo did not specify the number of years covered by the analysis, it is reasonable to assume that it was a number of years which sufficed as the premise for her argument. The reader should also note that a record of achievements of audit outcomes by the Gauteng province, presented in the thesis (2007:61), clearly indicated that, relatively speaking Gauteng was at the time, not a bad performing province, with regard to audit outcomes. The reference was therefore, of a province which was evidently located in the upper half of audit performance ratings of the nine provinces of the Republic of South Africa. If this was the case for a relatively better performing province, how much worse would the situation be for a poorly performing province? One may be interested to know.

The observation thus presents one instance which supports the view that: recommendations, guidelines, and red flagged risk areas identified by the OAGSA, are often either not implemented/effectively implemented, or not sufficiently taken note of, for whatever reasons, as expressed in the OAGSA’s audit reports. The Office of the Auditor General of South Africa also reports that, there was adequate evidence that consequences did not often follow up on poor performance, gross



negligence, fraudulent behaviour, or general malfeasance (OAGSA, Media Release, 2012).

The Eastern Cape's annual audit reports for the last three financial years (2010-11; 2011-12; 2012-13) generated by the OAGSA, reveal that the root causes for poor performance in audit outcomes - reside in several practices or factors, the most critical of which are (not necessarily in order of impact):

- A wide spread lack of minimal capacity levels within the ranks of executive management in public institutions
- Lack of consequences for much of poor, negligent, or corrupt performance in the Public Sector
- Leadership, (political and/or administrative), which does not strictly and effectively apply and monitor internal controls, or sufficiently commit to rooting out poor audit performance in their respective institutions. Put simply, there is a notable lack of political and bureaucratic will to act against these anomalies.

The data collection phase of the envisaged study includes perusing reports (annual or periodic reports) from the OAGSA, documents from SCOPA/PAC, the enabling legislative and regulatory, and selected relevant literature. The study therefore primarily proposes to do an extensive, as well as an intensive critical review of relevant literature and documentation, to explore avenues in which the OAGSA could be assisted to play a more effective role in containing the recurring findings, and thus in rooting out the evidently perennial poor audit outcomes. The research

questions crafted below take into consideration, or are directed at addressing, the root causes as listed above.

## **1.6 RESEARCH QUESTIONS**

- To what extent does modern capitalist democracy - such as South Africa's constitutional democracy - impact (if at all), on the status of the electorate as the primary principal ('principal' as used in the classical sense of the Agency Theory of economics)? Does capitalist democracy also impact, if at all, on accountability relationships between the primary principal, namely, the electorate, and those who govern? Could this brand of democracy explain, even if partly – the apparent lack of, or the lukewarm political and bureaucratic will to firmly act against poor audit outcomes in general, and recurring audit findings in particular, in South Africa?
- To what extent can the OAGSA, assist, support and enhance its cooperation with the legislative and the executive arms of government, in the exercise of their respective powers to deal with audit underperformance in general, and in the perennial challenge of recurring audit findings in particular, as identified by the same OAGSA.
- If found indispensable, how could current legislation be reviewed, in an attempt to empower the OAGSA to be more effective in realizing its objectives? That is, what legislative amendments could be effected, if need be, to not only empower the OAGSA, but to also enhance the cooperative efforts of parliament and the OAGSA, in their attempts to ensure that there

is an accelerated improvement in audit outcomes, and thus improved financial administration in the Public Sector in South Africa?

### **1.7 OBJECTIVES OF THE STUDY**

- To engage in a critical analysis of relevant documentary sources on the origins of, as well as on the current nature and limitations of modern capitalist democracy as adopted by many countries of the world, including the South African brand of the political system – and particularly on its impact on public sector accountability in South Africa, and on the South African government’s commitment to consequent management.
- Acting within the constraints emanating from the political system as cited above: to explore avenues in which the Office of the Auditor General of South Africa (OAGSA) could assist, and support the Legislative function in the execution of its (the legislative function) mandate to act against poor audit performance in general, and recurring audit findings in particular, in South Africa. The reader should note that only parliament holds the right to, in the language of the Public Audit Act of 2004 – ‘to take remedial action’. Put in simpler language, parliament holds the power to enforce corrective action, or alternatively effect consequence management - in its efforts to arrest poor audit outcomes. The OGSA does not have this power.
- To engage in exploratory studies on the enabling legislation, with a view to finding areas for possible amendments to existing legislation, or to identify areas of possible exploitation to assist the OAGSA, to

effectively achieve its objectives. It is hoped that the explorations would open the way for this researcher to ingeniously, and persuasively prevail through valid and sound deductive arguments - on the legislative and the judicial functions of government, to effect such amendments to current legislation, to give effect to the envisaged empowerment of the OAGSA.

### **1.7.1 THE THESIS OF THE RESEARCH**

In essence, this researcher's considered opinion is that, the thesis of the research could more or less be stated as follows:

The Office of the Auditor General of South Africa - although evidently, historically constrained by a lack of sufficient political will within government, to rein in perennially recurring poor audit performance – is nevertheless best placed, given sufficient space in law - to significantly assist and partner with willing legislative and executive arms of government (IRBA, 201: ) , to accelerate the current infinitesimal rate of improvements in audit outcomes in South Africa. It would in this manner, be empowered to play a more effective role in improving public financial management, or so this researcher claims.

### **1.8 SIGNIFICANCE OF THE STUDY**

Analyses and discussions, which serve to support the contention that this study is significant, are contained in the body of this research study. However, this researcher believes that enumerating some of the significant exploratory and

analytic activities of the study – has the potential to drive the point home to the reader, that the study is significant.

Tracing the origins of capitalist democracy was to this researcher not only instructive, but also effective in providing a firm foundation for the understanding by readers of the report – of the limitations that the political system clothed itself with from the outset, thus creating an environment in which present day vices of the political system find expression.

Secondly, the analyses and discussions entail an intensive analysis of the *principal agency theory* and its complexities when applied to the public sector. Relevant literature (Shapiro, 2005: 267 - 269); Rosmezek, 2001: 22- 31; Kiser, 1999: 151 - 167) has long been propagating the view that, with a few exceptions, all politicians and public functionaries or officials - including executive management, which are collectively conventionally viewed as constituting the *principal* group - do assume the role of *agents* at the same time, both concepts used as defined in the classical principal-agency theory. That is, they double up as principals and agents simultaneously at all times. The collective thus possess the potential to, at times act contrary to the interests of the ultimate principal, namely, the electorate. The study therefore brings to the fore the existence of fertile ground for the government collective, to act in their own interests, as opposed to those of their common principal, the electorate - if not monitored properly by the principal.

Thirdly, accountability in the exercise of public power, which also features as a theoretical base for the study, comes to add another dimension to the significance of the research. Also, the many accountability relationships existing within the South

African government, illuminate the complexities of accountability in government, which in turn, derive from the provisions of the 1996 Constitution.

Fourthly, the research explores the areas where the OAGSA could assist, support and work highly cooperatively with the Legislature, as part of its efforts, to rein in the challenge of recurring audit outcomes and thus poor audit outcomes in the public sector generally. This should be viewed in the light of the opening citation of this introductory chapter, wherein it has been shown that the OAGSA considers itself, to be powerless to stop the meddling in administrative affairs, and the shirking of responsibilities by the political leadership of government institutions. It is argued in one of the ensuing chapters, that as a constitutional institution, the OAGSA needs to take note of not only developments elsewhere on the legal front, but also perceived gaps in current legislation – both of which augur well for the Office, and look promising if they get taken into consideration - to give the Office marginally more capacity to turn the situation around in public financial management in the country.

Lastly the reports on all the attempts that the structures mentioned earlier, namely, SCOPA, OCAU, and the OAGSA itself, undertook in the past – indicate that the institutions did some well intentioned work. However, the efforts evidently, largely came to nought – for various reasons, most of which stem from the fact that some of the players are doubling up as principals and agents, and act accordingly, that is, act at times contrary to the interests of the ultimate principal, namely, the tax payer and the general voting public.

Enhanced contribution to knowledge is particularly possible, when the reader considers the context of or the environment within which the OAGSA operates, as summed up in the statements:

- That a combination of the Legislative arm of government, a powerful institution presently in South Africa, and the OAGSA - working cooperatively to reduce or eliminate recurring audit findings - has the potential to add new knowledge to South Africa's efforts to arrest the challenge. The OAGSA is one of a few, if not the only Institution amongst Constitutional Institutions, which in addition to the Constitution and other enabling legislation – it also has a code of professional conduct to contend with, which openly accentuates independence, objectivity and ethical professional conduct above all else.
- If the unquestioning and ready acceptance of the annual audit reports of the OAGSA by all stakeholders is anything to go by, in particular by the Ruling Party (the African National Congress), the Legislative and the Executive functions of the State – the OAGSA generally commands credibility all-round as a Constitutional Institution. The OAGSA is thus seemingly considered capable of engaging in an honest, diligent, effective and cooperative discharge of its mandate - although evidently, currently not highly impactful in the improvement of public financial management - if one considers the record of poor audit outcomes achieved by public institutions over the years. The OAGSA, working cooperatively with a willing Parliament - is therefore well placed to be the vehicle of choice for the purpose of arresting the challenge -

the challenge as belaboured under the 'Statement of the Problem' section above.

## **1.9 SCOPE AND LIMITATIONS OF THE STUDY**

Regarding the scope, the study sought not only to analyse the role of, and to briefly reflect on the impact of modern day capitalist democracy on accountability relationships in the public sector, and in particular, on the status of the electorate as the primary principal to account to, in the classical sense of the agency theory of economics – but also how the Legislature and OAGSA could, even more cooperatively work together, than is presently the case - to rein in the two-pronged challenge of recurring audit findings, and poor audit outcomes in general in the public sector. An analysis of the legislative framework is also undertaken, to identify, or to find ways in which the OAGSA could be empowered to assist in the fight against the two-pronged challenge, where feasible.

A fairly extensive literature search conducted - indicated that there probably exists no extensive literature on either the scope of work of the OAGSA, or the OAGSA's impact on audit outcomes in South Africa, to date - save that which is generated by the Office itself, and SCOPA.

Furthermore, as the literature review chapter below would argue, one theoretical base for the study, namely, *the principal – agency theory*, which originates from *economics* as a field of study – provides much evidence of the existence of great potential for the theory to play itself out well in the public sector. Executive government leadership which correctly masquerade as the principal – is in one way



or another, also an *agent*, in the classical sense of the economics theory. Consequently the possibility therefore exists for some, or even much of the findings and recommendations of the study, to not receive the necessary attention from the powers that be - that they would be shown to deserve, or hopefully be generally seen to deserve. The possibility therefore always exists that the doubling up of roles (principal and agent) would negatively impact on the achievement of improved audit outcomes.

Also the multiple *accountability* relationships in the public sector, create challenges which complicate and even negate the processes and procedures applied to arrest poor public financial management.

A few limitations resulting from the fact that documentary research methods have been used in responding to the questions of the research or in establishing the thesis of the study – are briefly discussed in the method chapter of this report.

Amongst others, the limitations include: the difference in the purposes for the production of the documents, and that of the present research study; authors being manipulative, through their choice of content to include or exclude in their documentary sources; possible propaganda within the ranks of the authors, such as to pursue undisclosed agendas; and researchers themselves overlooking critical processes that the authors employed in constructing the documents, or in collecting their data, as well as researchers overlooking the social contexts prevailing during the times of the writing of the documents.

Greenberg and Folger (1988: 34 - 37) contend that, the fundamental ethical requirement of informed consent in social research does not only, often scare some potential participants away, but also often becomes a major contributor to participant manipulated reactions to research variables.

There is however, fortunately, no intention on the part of this researcher, to conduct interviews, undertake social surveys or engage in participant observations of any kind. That is, there is no intention to engage any participants at all.

Lastly, the assumptions hereunder discussed, which underpin the research, present another source of limitations to the study – that is, if some of the assumptions turn out to be, generally not true statements, or unfounded.

### **1.10 ASSUMPTIONS**

In an attempt to define assumptions Hoftee (2006: 88) writes as follows:

“Assumptions are things [statements] that you take to be true without checking whether or not they are true. You also expect your reader to believe them without offering further evidence [perhaps because they are generally considered to be common knowledge]”.

Hostee’s, is the sense in which the concept of ‘assumptions’ is used in this report, and particularly in this section. The assumptions which are considered most applicable in the research study are categorised below, but not necessarily in order of criticality or impact, namely:

- That audit performance in South Africa is far from the ideal, and that this is common knowledge,
- That the Office of the Auditor General yearns for improved cooperation with the legislative and the executive arms of government, to bring about a significant change in audit outcomes - for the better,
- That cooperative engagements between Parliament and the OAGSA have not been optimised to date, and therefore that there is room for improvement.
- That the Office of the Auditor General South Africa is well known for its independence, objectivity and professionalism – and consequently enjoys nation-wide credibility in this respect, and that all three arms of government, namely, the Executive, the Legislature and the Judiciary, readily accept the Office’s audit reports in consequence.
- That the option to pull in the legislative and the judicial functions in their joint capacity as law makers, to assist the OAGSA in improving public financial management – ranks among other feasible solutions to the challenge of recurring audit findings.
- Lastly, that the South African electorate generally accepted constitutional democracy - believing that it was best placed amongst other political systems, to serve their interests.

Hereunder follows a presentation of a preview of the rest of the chapters of the research report.

## **1.11 OVERVIEW OF THE REST OF THE CHAPTERS**

The introductory chapter provides the background to the study, as well as the essence of the problem to be investigated, including its rationale, significance and the limitations of the study. The chapter on research literature firstly embed the research topic in a broad subject or field of study, namely, Public Administration, solely with the purpose of illustrating that what public administration mainly entails – that is, designing and implementing public policy – enjoys good support from the operations of the Office of the Auditor General of South Africa, or the operations of any supreme audit institution elsewhere in the world. After dwelling on the qualitative research paradigm, the chapter introduces two major components of the theoretical framework for the research, namely, the theories of: capitalist democracy, the principal-agency which originates from economics, and accountability – as theories which equally apply to the public sector.

Democracy, governance, accountability, revocracy, strategic execution, monitoring and evaluation – all critical concepts in the implementation of public policy – take many of the ensuing pages of the chapter. Public financial management, and a more focussed analysis of the mandate, or more specifically, the scope of work of the OAGSA – occupy the rest of the pages of the literature review. There is also a presentation of findings as contained in the reports of the SCOPA, taken together with those of the OAGSA - with regard to various issues relating to the challenge of generally poor audit findings in the province of the Eastern Cape.

The research methodology consists in adopting a critical analysis, an intensive and exploratory study, a close scrutiny of a selected set of documentary sources or documents, on a variety of issues relating to the work of the OAGSA.

The focus of the analysis and the discussion of findings dwell at length on matters such as: the origins of capitalist democracy, its virtues and vices, the enabling legislative and regulatory framework for the work of the OAGSA, ground breaking judgements of the judicial arm of government, in discharging its duty to concretize and interpret the law, to give effect to the provisions thereof. Two critical judgements are dissected, to illuminate their implications for Constitutional Institutions in South Africa, including the Office of the Auditor General.

Also, perceived gaps in relevant legislation are identified, which if not attended to – tend to not assist the OAGSA in its efforts to improve public financial management. While doing these analyses, sight is not lost of the nature of government audits as discussed earlier on in this discourse, including the assertion that government audits are more in sync with internal audits in nature and scope of work, than they are with external audits – a situation which has always had the potential to assist the quest for clean audits in government institutions.

Chapter 3 expounds the methods of this research study - particularly the principal research method preferred, namely, the documentary research method. The chapter does not only give an account of the origins and the place of the method in earlier times, but also how it has been used, albeit in supportive roles, to the 'big three' methods of social research, namely, social surveys, in-depth interviews and participant observation. There is also a reference to how exponents of the method

have attempted to ensure that documentary research methods meet the conventional quality standards of the social research community.

Chapter 3 samples relevant documentary sources, and come up with three categories of sub-samples – which gave a total core sample of twenty such documents. Each sub-sample consists of six to seven documentary sources focusing on: capitalist democracy, the role and the scope of work of the Office of the Auditor General of South Africa, and the enabling legislative framework.

It characteristically rounds off its discussions by briefly discussing what this research considers to be critical limitations of documentary sources of data.

An analysis of the contents of the documents included the processes of data reduction, data analysis and display.

Chapter 4 provides space for the discussions of the findings emanating from the analyses of the sub-samples of chapter 3. Findings from each of the sub-sample analyses are thus analysed and discussed at length, to establish not only their meaning, but also their potential to provide plausible answers to the questions of the research.

Chapter 5, the last chapter, gives a summary of findings from each subdivision on which the discussions of chapter 4 were founded, and subsequently consolidates these findings. Utilizing the approach of valid and sound deductive argumentation, conclusions were then drawn and verified. Recommendations inevitably followed, and where possible, avenues for further research on the themes of the study are suggested

## **CHAPTER 2**

### **LITERATURE REVIEW**

#### **2.1 INTRODUCTION**

This study is situated in the realm of social research, particularly the qualitative research paradigm. There is decidedly more leaning towards the exploratory and the critical literature review and analysis research inquiry approaches, albeit with a small measure of the mixed method approach. This will be more evident when the research processes envisaged, apply a critical examination of appropriate sources of literature, in an attempt to realise the objectives of the study – as well as collecting and displaying some numerical data, in support of selected claims relating to the topic – such as has, for instance been presented in the introductory chapter. A description of the qualitative research paradigm therefore forms part of this chapter. A selection of its most fundamental characteristic features only, will feature in the introduction of the research approach.

With a view to touching on the overarching field of study of the research topic, a subject, named, 'Public Administration', in which the topic of the research study is embedded, takes first position in the order of presentations. The section briefly defines the substance and the scope of the field of public administration. This is followed by an introduction of the concepts *governance* and *good governance*. Because of the central position that public financial management occupies in public administration, its theory, structure and regulation becomes the focus area after governance.

Hosten (2006: 30), in introducing the concept of a *theory base* (theoretical framework) in one of his dissertation writing workshops, contended that a research study without a theory base, a theoretical framework - is like a house that is built on sand. Such a house certainly does not stand on firm and non-shifting ground. It often soon succumbs to the onslaughts of weather changes and falls down. It is in this light that a discussion of the theoretical foundations of the research finds expression in the ensuing pages, after introducing strategic execution, monitoring and evaluation. A brief discussion of the significance of organizational leadership to organizations, as well as the correlation between the quality of leadership and the level of organizational performance – becomes the focus theme of the closing section of the chapter. Concluding remarks summing up all what has gone into the chapter, finally closes down the curtain.

## **2.2 PUBLIC ADMINISTRATION**

It is the author's wish to allude hereunder, only in passing - to a perspective of the assumed definition, and the scope of Public Administration as a field of study, to bring out, the sense in which the concept is used in the research. The researcher reckons that it might turn out to be a futile attempt to dwell much on a field of study as old, and as popular as public administration, save to briefly expatiate on the author's perspective of the aspects as isolated below.

Katsamunskaja (2012: 167) states that traditional public administration is old and that it developed alongside the notion of government. He further asserts that it defied attempts to subject it to changes with the times initially, but had to succumb to the pressures of changing times and circumstances in due course, and consequently it



underwent minimal transformations in the 20<sup>th</sup> century. Its evolution was also shaped, not only by rising populace's dissatisfaction levels, but also by neo-liberal influences of the mid 1900's which were brought to bear on Britain and America, as well as on some former colonies of the British Empire. Rondinelli (2007: 5) reports that an effort was made by Australia, New Zealand, the United Kingdom, Canada and the United States of America, to facilitate reforms in the practice of public administration by the countries - through issuing a publication collectively named the 'New Public Management' which presented guiding principles on reinventing public administration, to ensure that governments were more responsive to evolving social needs and expectations.

The ten principles for the governance contained in the publication were: Catalytic; community empowering; competitive rather than monopolistic; mission driven rather than rule bound; results oriented; customer driven; enterprising; anticipatory; decentralized; and market driven. The publication of these guiding principles was evidently an attempt to render the practice of public administration more effective.

In an attempt to locate the focus of Public Administration as a field of study in Britain, Chapman and Greenaway (1980:189) state that:

"... the study of public administration in Britain developed from the study of government and politics, in contrast to many other European countries where it has been more related to the study of constitutional and administrative law".

The citation seeks, not only to draw readers to the historical link between politics and government or public administration, but also to the foundations of public policy, namely, constitutional and administrative law. The two authors further state (ibid) that the expertise of senior administrators around the middle of the 20<sup>th</sup> century, lay not – “in economics, accountancy or law”, but in “the workings of the system of government [of the day]”. That is, their prerogative lay in being experts in the knowledge of the policies of the government of the day, and complying with conventional bureaucratic approaches in the implementation thereof. Concurring with this view, while at the same time not explicitly defining public administration, Thornhill (2011: 119) posits that:

“... public administration is necessarily based on political values and not business motives and principles. Nevertheless political functionaries and public officials are also bound by the reality that resources are inadequate to satisfy all the needs”.

The ‘political values’ that Thornhill refers to - are necessarily embodied in the public policies of the government of the day. In South Africa’s case, the public policy values have to be in line with the values enshrined in the Constitution of 1996. The citation further suggests that, the political values basis of public administration notwithstanding - there is no way that public institutions can ignore the applications of the fundamental principles of organizational management in the private sector, namely, economy, efficiency and effectiveness - in the production and delivery of public goods and services.

Where, one may want to know - is the connection, between public policy and public administration? The section below attempts to link the two concepts.

Cloete, Wissink and De Coning, they in turn citing Hanekom (1987) - define public policy as:

“... a formally articulated goal that the legislature intends pursuing with society or with a societal group” – [‘with society’ evidently suggesting cooperative or collaborative operations with society or the State’s citizens].

On the other hand Van der Waldt and Du Toit (1999: 13), describe the field as follows:

“Public Administration is concerned with handling public matters and the management of public institutions in such a way that resources are used efficiently to promote the general welfare of the public.”

To the authors (Van der Waldt et al, 1999: 208) public policy entails:

“... a series of related decisions, taken after liaison with public managers and political office bearers, that convert certain needs of the community into objectives to be pursued by public institutions”.

Interestingly, Greenwood and Wilson (1989:3) assert that “Policy and administration are largely indistinguishable.” They argue that although policy making is primarily the responsibility of politicians, administrators do also have a role to play in policy making. It is reasonable to deduce from their argument, that the role of the administrators is similar to that of the courts of law in law making. Botha (2012: 158 – 161) persuasively, and successfully argued that although the legislature is the

primary authority empowered to make law, it has to admit that it does so in partnership with the judiciary. Courts of law concretize the law, that is, in discharging their interpretative responsibilities, they move from the abstract or general level where the legislature often operates, down to the specific - and practical or concrete level wherein the courts conventionally operate.

As soon as the public policy framework is handed down from politicians to administrators, there are policy decisions that administrative leadership is best placed to take, in view of their responsibility for the implementation thereof, particularly the practicalities and the legalities attendant upon such administrative actions as needed, to achieve public policy goals - the authors argue. There is thus evidently collaboration between politicians and administration in designing policy, as it turns out.

Presthus (1975:3) explicitly describes the connection between public policy and public administration, through defining the field thus:

“Public Administration may be defined as the art and the science of designing and carrying out public policy”.

Drawing from a variety of sources, Ijeoma (2013:16) defines Public Administration (PA) variously, such as: that PA is “law in action”, by which statement he means that it (PA) entails interpreting and executing/implementing public law, such as is embodied in for example, the Constitution of 1996 in South Africa. He further (2013: 17) defines PA as a “management speciality”, meaning that it is always within management’s power, and in fact primarily the responsibility of public management,

bestowed on them through election or by appointment – to “efficiently and effectively manage the human and the material resources of the State to advance development” (ibid.).

In summary, Ijeoma (2013: 1) defines Public Administration as:

“... the management of government affairs to achieve the common good of society, or rather the systematic implementation of government policies.”

Therefore according to him, and viewed from this perspective, PA consists in relying on, or is the process of engaging public sector leadership to manage a country’s resources, thus inevitably interpreting and implementing the prescripts, in the case of South Africa - of the Constitution, and all its derivative law. A thread runs through the few definitions of public policy and public administration, as cited above. The author elucidates these below.

With regard to public policy, what comes out clearly in the above mentioned citations - is that political and administrative leadership of government work collaboratively to design public policy. Public policy consists in the declarations of intent of the government of the day, through the legislature, or the constitution, in precise terms: what it intends to achieve, that is, its goals – in an attempt to best serve the needs of, and the interests of society or its citizens. It then becomes the prerogative of public administration to, if need be, redesign or refine the public policy, break the policy goals into manageable strategic objectives and groups of performance activities and targets, to facilitate monitoring and evaluation of the extent to which the goals of the public policy are being achieved. It is also evidently

true to say that there is public policy for each of whatever government considers as a crucial, critical or priority need of society.

In sum Public Administration constitutes the policy designing, operationalization, and implementation arm of government. In a nutshell, it is an instrument in the hands of the conventional executive arm of government – for the design and execution of public policy.

The following section takes a closer look at the concept of 'governance', which, according to the South African Constitution, is a responsibility of the same executive arm of government.

### **2.3 CORPORATE GOVERNANCE**

The author believes that a few definitions of, or rather a few descriptions of what 'governance' entails below – suffice for purposes of distilling its substance as well as delimiting its scope, as this section seeks to achieve. The focus would mainly be on governance in the public sector, although the concept in its general sense, applies to all organizations (incorporated or otherwise) - that is, whether they be in the private or in the public sector.

Defining governance in general Adejuwon (2012: 25) posits that:

“... it [governance] broadly means the process of decision making and the process by which decisions are implemented or not implemented .... In a more precise manner we can say that governance is the way those in power, use the power”.

According to him, this latter elucidation of *governance* is in line with the World Bank's, where it defines (ibid) governance (focusing on governance in countries of the world) as:

"... the manner in which power is exercised in the management of a country's economic and social resources for development".

Fatile (2012: 47) on the other hand defines governance (referring to the public sector) thus:

"... the use of political authority and exercise of control over society and the management of its resources for social and economic development".

The King Committee on Governance, named, King 111 makes no mention of the term 'definition' in its conceptualization of 'governance'. It nevertheless asserts that (focusing more on the private sector):

"Corporate governance mainly involves the establishment of structures and processes, with appropriate checks and balances that enable directors [of companies or organizations – as defined in the South African Company Act 71 of 2008] to discharge their legal responsibilities."

Writing on the evolution of corporate governance in Britain, Rhodes (1997: 48) also chooses to describe rather than define, what corporate governance entails. The author asserts that:

Corporate governance concerns itself with:

“... giving overall direction to the enterprise, with overseeing and controlling the executive actions of management and with satisfying legitimate expectations for accountability and regulation by the interests beyond the corporate boundaries” (1997: 48)

What would then constitute good governance?

It is interesting to note Adejuwon’s definition above, where he implicitly suggests that, the failure to implement decisions is still governance. This is understandable since governance is in large measure, the manner in which power or authority is exercised by the executive arm of government - in an attempt to govern. When one does not implement certain decisions or public policy imperatives - one is in this way, still exercising one’s power or authority, because he/she is still holding the power to govern. In effect, one can intentionally or unintentionally - fail to exercise public power or authority, whilst still holding the power or authority to govern.

In fact Havenga (2012: 1) cites King 111 Code on good Corporate Governance which presents a set of principles as guidance for incorporated entities, all of which, according to Havenga (ibid), can be summed up as:

“... good governance is essentially about effective leadership, sustainability and corporate citizenship. Ethical values of responsibility, accountability, fairness, and transparency are important aspects of good leadership. ”

He goes further to say that sustainability is equally important as a millennium goal. Sustainability is a newly coined concept which requires of all incorporated entities to pay special attention to a threefold responsibility, namely: the maintenance,



development and preservation of the social, economic and natural environments of the company or organization.

The King 111 Code (2009) further asserts that good governance consists in the adoption by organizations in general, of appropriate standards of governance practices, which abide by the prescriptions of public law. The code goes on to say that courts of law, in determining what is considered good governance – look around them, for established governance practices or codes of conduct, legislated or not – on which to base their opinion of whether a reported governance practice is good or bad.

There is, to close the exposition of selected perspectives on 'governance' - a reference by Rhodes (1997:49) to what he calls 'good governance' wherein he posits, (he in turn citing Lefwich: 1994) that good governance:

“... involves an efficient public service, an independent judicial system and a legal framework to enforce contracts, the accountable administration of public funds, an independent public auditor responsible to a representative legislature, respect for the law and human rights at all levels of government, a pluralistic institutional structure, and a free press.”

Taking into consideration all the definitions or descriptions of the nature and the scope of '*governance*' and '*good governance*' as concepts, one gets the impression that in the public sector, there is - as part of the constitution of governance - exercise of power or authority (political or otherwise) to govern, exercise of control over society, decision making, and implementation of decisions, directors discharging

their legal responsibilities – for purposes of promoting social and economic development and societal welfare. Further, for this to translate to good governance, the following characteristics of governance need to be in place: an efficient public service, an independent judiciary, an independent public auditor (independent from the whims of politicians and the executive), a representative legislature, and respect for law and human rights.

For all organizations, whether they be profit driven or non-profit making entities, meeting sustainability prescripts as cited above, is a strong statutory requirement in the current millennium.

The expositions of the foregoing paragraphs probably give a reader of this report, the impression that the concepts of '*governance*' and '*public administration*' are prime facie, synonymous in the public sector - given this report's definition of public administration and its scope in the preceding section. This is understandable. There is indeed a good measure of overlap between governance and public administration. Or better still the two are largely indistinguishable. In the incorporated business entities of the private sector, there is policy making by the powers that be (shareholders, often represented by directors), and implementation thereof by the directors, as part of their "duty of care, skill and diligence, and [as well as their] fiduciary duties" (King 111 Report, 2009:10) – and this is referred to as administration. Similarly in the public sector, governance entails decision making or designing public policy, and the implementation of same by those with political and administrative power or authority to govern. This is precisely the substance of public administration.

However, there exists at least one fundamental difference, between public administration and governance, as literature perused reveal, or so this researcher is led to believe. Whereas the focus of public administration is more on how public policy is to be refined and concretized, or operationalized, to assist the implementation thereof - governance's main focus on the other hand, is how this - the policy design and execution/implementation - is to be achieved. Governance provides the 'how' part, in other words. The following extracts from the few definitions or descriptions given above, bear testimony to this view:

Adejuwon – "... the process of decision making and the process by which decisions are implemented or not implemented."

World Bank – "... the manner in which power is exercised in the management...".

King 111 Report – "... involves the establishment of structures and processes, with appropriate checks and balances that enable directors...."

Havenga: "... good governance is about effective leadership".

Rhodes – "... an efficient public service... respect for law and human rights... [etc]".

There would for instance be bad governance - if through the chosen 'decision making, manner, processes, checks and balances, extent of respect for human rights, etc' - the goals of public policy are not achieved, or not achieved with economy, efficiency and effectiveness.

Furthermore the King 111 Code is a case in point in support of this view, namely, that in the main, governance provides the 'how' part of public administration. The Code presents generally accepted principles and practices of corporate governance processes.

Also, it is worth mentioning that, The King 111 Report on Corporate Governance, was primarily directed at incorporated business entities in the private sector. The King 11 Report of 2002 was reviewed in anticipation of the then envisaged enactment of the new Companies Act 71 of 2008. The Codes were a new development, having been in place only with effect from 1994 in South Africa. They were initially occasioned by large scale deferment of management roles and responsibilities by owners, to professional managers in the 1980's (Marx et al, 2011: 97 – 98). That is, there developed a trend where owners of companies resolved, increasingly not to directly involve themselves in the management of their own companies, but rather to appoint managers to run the operations of the companies on their behalf – thus resulting in a pronounced agency risk in their midst.

Other developments in the early 1990's to the early 2000's - where giant corporations collapsed, such as Enron and WorldCom in the United States of America (King 111, 2009: 7), as well as where there was a growing need to accommodate emerging shareholder and societal interests and expectations – also played a big role in bringing about the need to amend the Codes over time. For instance, South Africa moved from King 1 in 1994, to the current King 111 of 2009. The Codes - although they went by different names, such as the Cadbury Report, later named the Combined Report in the United Kingdom, and the Sarbanes-Oxley Act of

2002(SOX) in the United States of America - were more or less universal in character, focusing on basically the same governance principles and practices (The King 111 Report, 2012: 8 – 9). The codes were however somewhat customised to suit individual countries' needs.

Many governments have since increasingly resolved to adopt the King Code equivalents, for the regulations of governance in their public and private corporates.

## **2.4 PUBLIC FINANCIAL MANAGEMENT**

Tracing the development of public financial management, Bovaird and Loffler (2003: 101) argue that with the evolution of government from hierarchical bureaucracy to democracy with multiple stakeholders:

“... the task of public managers have been transformed from direct control to balancing the interests of stakeholders...”.

There had consequently developed a need to align models of public financial management (PFM) with the changing circumstances, to the extent that there were transformations (Bovaird and Loffler, 2003: 101) of the classical model of PFM, to the New Public Management (NPM) model, although the ideas in the NPM themselves originated from the insights of Simon (1945) and Barnard (1968) - and finally to the Barnard-Simon Governance model, all to be described below.

### **2.4.1 THE CLASSICAL MODEL**

The fundamental features of the classical model (CM) entailed: describing PFM as consisting of revenue collection and expenditure thereof - albeit the revenue

collecting was often down-played while more attention was being paid to the management of expenditure; it was assumed that actual PFM commenced from the point where budget appropriations were done, hence the magnified focus on expenditure; PFM consisted in carrying out spending policies and following prescribed expenditure procedures and processes; there was no, or negligible emphasis on the economy and the efficiency of operations, nor was there evidence of sufficient interest in adopting best practices on economy and efficiency, as notable, within especially the private sector (Bovaird and Loffler, 2003: 102). The focus of PFM was consequently, on complying with legal and regulatory requirements. It is instructive to note that PFM bureaucracies nevertheless, had vested interest in seeing their political leaders maximizing their budget appropriations, in order to ensure that they would have the resources necessary to carry out spending policy priorities.

The two authors' critique of the model was that it did not have the capacity to solve problems related to intentional or politically motivated budget deficits, and operational efficiency.

#### **2.4.2 THE NEW PUBLIC MANAGEMENT (NPM) MODEL**

The NPM on the other hand, saw no difference between public administration and business management. It advocated the adoption of business principles and practices from the private sector, although it did not argue for a blind borrowing of these without due regard being had to the structure and the operating environment of the public sector. NPM argued that bureaucrats had to be changed from being budget maximizing managers, to being "cost-conscious and revenue-hungry

entrepreneurs” (Bovaird and Loffler, 2003: 103). Furthermore NPM preached for the adoption of the accounting principles and practices of the private sector.

Writing on the part of public administration which is the chief enabler and facilitator of public policy implementation, namely, Public Finance, Pauw et al (2009: 1) assert that :

“The private sector is the sector in which profit is allowed as a main measure of success, [whereas] the public sector is the sector in which service to the populace is the main measure of success”.

They further argue that, in the case of the public sector, there is often insufficient funding for the identified and prioritized needs of citizens, which (state of affairs) effectively limit the extent to which the service provision to the citizens is carried out. It therefore becomes imperative that the so-called 3E’s, namely, economy, efficiency and effectiveness - generally applied in the operations of the private corporate sector, taken together with the requirement of appropriateness (of any prioritised administrative action or policy implementation which is intended to achieve public policy goals) – play a major role in the management of the scarce resource.

Rondenelli (2007: 4, 5) boldly markets the NPM model throughout his presentation.

Note where he states that:

“In response to widespread citizen dissatisfaction, governments in Australia, New Zealand, The United Kingdom, the United States, ... Canada, ... Portugal, ... Mexico, ... and other countries, adopted new approaches to public

administration and governance reform in the early 1980's that collectively came to be known as the 'New Public Management'... the government is seeking ways of 'doing more with less' ".

Reading through the Rondinelli article, one gets the impression that the new approach to governance was faultless.

Bovaird and Löffler however begged to differ with Rondinelli. Lofty as their ideas may have been in their original conception of the NPM, its advocates lost sight of the fact that in a democracy: balancing the effect of market failure, and equity, even more than efficiency and economy, including a high level of effectiveness – were far more important than 'cost-consciousness and revenue-hungriness', or so contended the authors.

There developed from the NPM concept, a new model called: the New Public Financial Management (NPFM), coined by Oslo et al in 1998 (Bovaird et al (2003: 103).

Bovaird (2003: 104) cites Oslo as follows:

"Yet, despite extensive experimentation in half a dozen countries over two decades, a 'global standardized NPFM system still does not exist', as there is 'no one way of understanding NPFM' ."

Despite its acceptance by many countries, and unlike capitalist democracy, NPFM in other words, has not gravitated towards universal adoption and globalisation, in for instance, the same manner that generally accepted accounting practice standards - have been globalised. Different countries interpreted NPFM variously.



### **2.4.3 THE BARBARD-SIMON GOVERNANCE MODEL**

Bovaird and Loffler, described the third model, which they called, the *Barnard and Simon model* (named after the two researchers who pioneered it) – as asserting that governance can be effectively improved through engaging other stakeholders who have the necessary resources, empowering them - to govern on its behalf (indirect government or third party government as the authors called it). Bovaird cites the United States of America which in the 1999 fiscal year, outsourced 70% of its budgeted expenditure. It, in the process, was not exercising direct control over the activities, particularly where it lacked the capacity to execute with economy, efficiency, and effectiveness.

The authors consequently view the three models as rewarding financial managers variously thus (Bovaird and Loffler, 2003: 108):

“... for their contributions to conformity (classical model), [for] short-term efficiency and economy (NPM model), and [for] long-term effectiveness and equity ([Barnard and Simon] governance model)”.

It is therefore reasonable to assume, taking cue from the summary appraisal of the three models given above - that there is some good to be gained from each of the models – if an all-encompassing system of public financial management is the end goal.

In the light of the three models, one could be forgiven for wondering what the situation has been in South Africa, since the advent of the new democratic dispensation.

Firstly the democratic government of South Africa has been in power for twenty years to date. The Constitution of 1996, numerous parliamentary statutes, regulatory and policy frameworks, all have been put in place as instruments of governance and control – to provide a legal and regulatory framework for amongst others, public financial management - which to some people, might somewhat appear as over-regulated. To name the most relevant instruments in public financial management, there is: the Constitution of 1996 as amended, The Public Finance Management Act of 1999 as amended, the Municipal Finance Management Act of 2003 as amended, the annual Division of Revenue Acts, the National Treasury Regulations of 2005, the National Supply Chain Management Policy, and the Preferential Procurement Policy Framework Act of 2000, and recently, the Broad Based Black Economic Empowerment Act of 2009.

Secondly, as will be argued in this and in Chapter 4, the political system of government, named 'capitalistic democracy or liberal democracy' was adopted, and is increasingly being adopted by a number of countries, precisely to ensure that democracy and capitalism do not ever become mutually exclusive. That is, that the presence of one, does not ensure the absence of the other.

The adoption of the system of government was an attempt to explore the virtues of the system in accommodating capitalism on one hand - whilst on the other hand, simultaneously accommodating the universal and fundamental principles of democracy, namely: equity, transparency, public participation, universal suffrage, various individual and group freedoms, human rights, equality and so on. It

therefore makes sense to assume that even in the case of South Africa, borrowing from each of the three models in Bovaird and Loffler, was desirable.

## **2.5 MONITORING AND CONTROL MECHANISMS IN DEPARTMENTS AND THEIR PUBLIC INSTITUTIONS**

### **2.5.1 THE PUBLIC FINANCE MANAGEMENT ACT**

Section 42 (3) of the Constitution of 1996 suggests that Parliament is the highest authority in South Africa to which the executive arm of government accounts, that is, amongst others, the final public financial management accountability is rendered to parliament. All members of the executive arm of government therefore report to parliament on among others, their use of public funds. Section 216 (1) of the same Constitution provides for the establishment of a National Treasury with a clearly stated mandate:

“... to ensure both transparency and expenditure control in each sphere of government”, and that: “... [The Treasury] must enforce compliance with the measures established... and may stop the transfer of funds to an organ of state if that organ of state commits a serious or persistent material breach of those measures”.

The same section provides in particular, for the enactment of a national legislation which would establish the National Treasury. From this the Public Finance Management Act of 1999 (PFMA) arose. However Section 2 of the PFMA states categorically that the Act provides for all government institutions in the national and

the provincial spheres of government, thus effectively excluding the local sphere of government.

Section 5 of the PFMA indeed establishes the National Treasury as directed by the Constitution. Amongst other functions, the Treasury has the responsibility (5 (1) (g) to:

“promote and enforce transparency and effective management in respect of revenue, expenditure, assets and liabilities of departments, public entities and constitutional institutions...”.

It was with this responsibility (among others) in mind, and in line with the provisions of PFMA Section 76 (1) - that the National Treasury resolved to put together National Treasury Regulations (NTR) (2005), to facilitate the exercise of stricter controls over the management of public finances. According to Sections 38, 39 and 40 of the PFMA, the final responsibility and accountability for the maintenance of acceptable standards of public financial management rest with or are vested in the office of the accounting officer in the case of government departments, and with the accounting authority in the case of public entities. A specific responsibility of the accounting officer or authority, contained in section 38 of the PFMA and sections 8.1 and 8.2 of the National Treasury Regulation - is the maintenance of internal procedures and controls within their institutions.

The PFMA (Section 81) did not fail to provide for disciplinary procedures, as if it knew that financial misconduct or mismanagement was bound to come about at some time or another in the public sector.

The wording of Section 86, read together with Sections 38, 39 and 40 of the PFMA certainly nails down the accounting officer, or the accounting authority, in the event of non-compliance with the provisions of sections 38, 39 and 40 – if it (the non-compliance) is deemed to amount to a criminal act or omission. The three sections (38, 39, 40) detail all that, which is expected of such accounting officers or authorities, as referred to above. For an offence or a non-compliance with regulations which falls short of a criminal offence, Section 84 provides for the institution of disciplinary processes against the allegedly offending accounting officer/authority or official, whilst Section 83 (4) provides that such cases of public financial misconduct could result in suspension or even dismissal of the transgressor. The duty to determine if a case for financial misconduct exists, evidently rests with the accounting officer or authority for all officials reporting to them - and with the member of the executive (Cabinet Minister or Member of Executive Council), if the accounting officer or authority him/herself is implicated.

In respect of Supply Chain Management, Treasury Regulations (Section 16) provide a framework for procurement, as required by 76 (4) (c) of the PFMA. Of particular importance is section 16A6.4 of this framework. The significance of this section is found in the fact that it provides for a deviation from prescribed procedures, where it states:

“If in a specific case, it is impractical to invite competitive bids, the accounting officer or accounting authority may procure the required goods or services by other means, provided that the reasons for deviating from inviting competitive

bids must be [sic] recorded and approved by the accounting officer or accounting authority”.

Similarly Section 16 (1) and 25 (1) of the PFMA provides for the national Treasury Ministry and the Member of the Executive Council (MEC) for Finance in a province respectively, to use funds in cases which he/she deems to be emergency situations of “exceptional nature”.

The above extracts from the Constitution, the PFMA and the National Treasury Regulations serve as evidence that there is sufficient legislation in South Africa, to enable accounting officers and authorities to bring officials who commit financial misconduct to book, or sufficient legislative provisions to bring the accounting officers and authorities themselves to account for their misdeeds or misconduct in this regard. There are unfortunately, also loop holes that dishonest people could use to serve their own selfish interests, as Section 16A6.4 (NTR), and Sections 16 and 25 of the PFMA provide.

### **2.5.2 PUBLIC FINANCE PERFORMANCE MONITORING MECHANISMS**

With a view to putting in place general monitoring mechanisms, Chapter 9 of the Constitution of 1996, the PFMA Sections 76 (4) and 77 (a) provides amongst others, for an external audit, an audit committee, a framework for procurement, an internal audit function for a government institution, although it left the detail on what each mechanism’s structuring and mandate would be, to the National Treasury. Treasury Regulations indeed adequately provides for all these in its contents, as would be noted in the ensuing paragraphs.

### **2.5.3 AUDIT COMMITTEES**

According to Section 3.1 of the National Treasury Regulations (NTR), an Audit Committee reports to executive management of a government institution, including the executive authority - and advises them on various matters relating to governance, risk management, internal controls, financial reports, the internal audit function, external audit reports, fraud, corruption, (if any), etc.

A close reading of section 3.1 suggests that an audit committee in effect serves as an extension of; the eye, the ear and the watchdog of; and an advisory body to - the executive management/authority of a government institution and the legislature. It advises consequent upon obtaining reports which reviewed selected areas of institutional operations, to fulfil its mandate to deliver financial and non-financial information and advice, to the institutional authorities. The Audit committee only reports and advises. The implementing agent remains the accounting officer.

### **2.5.4 THE INTERNAL AUDIT FUNCTION**

Section 76 (4) (e) of the PFMA provides for the National Treasury to set up and regulate internal audit functions for government institutions. Section 3.2 of the NTR consequently establishes and regulates the Internal Audit function for such institutions. Its overall function is embodied in the definition of the internal audit function as given in Chapter 1 of this report. According to Barlow et al (1995: 11), in turn citing the Institute of Internal Auditors (IIA) at the time - state that internal auditing is:

“... an independent appraisal activity, established within an organization as a service to the organization. It is a control which functions by examining and evaluating the effectiveness of other controls”.

On the other hand the Institute of Internal Auditors (Millichamp and Taylor, 2012: 296) later on, defines internal auditing as:

“... an independent, objective assurance and consulting activity designed to add value and improve an organization’s operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes.”

The function therefore is a control mechanism which monitors and evaluates the effectiveness of other controls, such as risk management, governance, and all other internal controls, including management and financial controls. The overall purpose of the function is evidently to ensure that organizational objectives are accomplished with economy, efficiency and high effectiveness, whilst remaining compliant to the law.

Writing on the advent of non-financial performance audits in South Africa with effect from 2004, Roos (2012:19) posits that a poor state of internal controls is behind the perennial challenges of poor financial management and non-compliance with legislation in South Africa’s public sector. Roos’s conclusion presents nothing new. The OAGSA’s annual audit reports are replete with lamentations of poor internal controls in the public sector.



### **2.5.5 THE EXTERNAL AUDIT FUNCTION**

Within government, the Office of the Auditor General of South Africa (OAGSA) serves as the External Auditor for a well-defined set of government institutions. The OAGSA is a Chapter 9 institution, a chapter of the Constitution of 1996 which deals with state institutions commonly referred to as a Constitutional Institutions.

The OAGSA ranks, according to the De Vos (2012: 169) amongst the Public Protector, The Human Rights Commission and the Electoral Commission in its requirement for stricter legal guarantees for independence from the Legislative and the Executive arms of government. Needless to say, like all other Constitutional Institutions, it is subject only to the Constitution and the law (Constitution, 1996: s 181 (2)). A statute of parliament which currently specifically regulates the work of the Office of the Auditor General of South Africa (OAGSA), was enacted in 2004, namely, the Public Audit Act of 2004, thus effectively repealing a couple of other Acts which went before it. The reader will recall the lamentations of the current Auditor General of South Africa, Mr Makwethu, in Chapter 1 of this report - to the effect that he had no power to act on irregularities or transgressions of the legislative and regulatory framework, identified in the course of the execution of his mandate - that he only had powers to audit and report. The OAGSA has however correctly identified the root causes for the perennial challenge of recurring findings. Chapter 1 recounts all three root causes, according to the latest annual audit reports from the Office.

## **2.6 PUBLIC FINANCIAL MANAGEMENT IN THE LOCAL SPHERE OF GOVERNMENT**

### **2.6.1 MUNICIPAL FINANCE MANAGEMENT ACT**

An Act of Parliament, the Municipal Finance Management Act (MFMA) was enacted in 2003, to regulate public financial management at the local sphere of government. Whilst realising that the PFMA catered for government departments, their public entities and constitutional institutions, to the exclusion of the local sphere of government as alluded to above. Further, considering that the two pieces of legislation, namely the PFMA and the MFMA, need not collide, since they operate in distinct spheres of government – it would still be naïve to expect them to conflict each other in a manner that could send the message that they were not aware of each other's existence.

Section 3 (3) of the PFMA ensures that the MFMA act in unison with the PFMA, and not against it. It states that:

“In the event of any inconsistency between this Act and any other legislation, this Act (the PFMA) prevails.”

In response and in its attempts to protect its operating space, the MFMA Section 3 (2) states that:

“In the event of any inconsistency between a provision of this Act and any other legislation in force when this Act takes effect and which (legislation) regulates any aspect of the fiscal and financial affairs of municipalities or municipal entities, the provisions of this Act prevail.”

The impression one gets in reading both these extracts is that the MFMA may not be in conflict with the PFMA, if one considers the fact that Section 3 (3) of the PFMA, directs its provision to “any other legislation”.

This is however to be expected, since the same National Treasury coordinates the implementation of the two Acts, and it (the National Treasury) is correctly required to provide a uniform regulatory framework for all spheres of government.

The Municipal Manager becomes the centre of operations at this tier of government. She/he is the accounting officer, while the mayoral Committee constitutes the executive authority (MFMA, 2003: s 58, 60).

### **2.6.2 MFMA MEASURES TO PREVENT IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE**

Section 32 (1) directs the municipality to where liability lies for irregular or fruitless and wasteful expenditure. The provision gives hope to the taxpaying and voting citizen – until one gets to section 32 (2) and (3) of the MFMA, where the municipal council is authorised to write off some expenditure brought before as irrecoverable, on advice from an own investigating committee, that is, a committee which consists of councillors. Therein is located the first loop hole in the Act’s attempts to protect the assets of municipalities and their entities. The Office of the Auditor General should ideally be empowered to rule on such write-offs, in view of its perceived competence, independence and objectivity.

To instil financial discipline to municipalities, the MFMA (2003: s 38 and s 39) authorises the National Treasury to stop paying over to a municipality its portion of

local government equity share for a limited period, if it fails to fulfil certain responsibilities, all listed in the provision. While this state of affairs prevails, the municipality is placed at the mercy of the member of the provincial executive responsible for municipalities. He only, determines the extent of the impact of the funding stoppage to the provision of basic municipal services, and advises the National Treasury on the appropriateness of continuing or discontinuing with the measures.

Even without going to the various municipalities' respective supply chain management policies, the door is left open for them through the provisions of MFMA s 112 (a) (b) - to decide on what procurement processes are open and available to municipalities, and when they may resort to them.

Just as is the case with the PFMA, the MFMA did a good job - with a few exceptions, some of which are cited in the foregoing sections - of making provisions for all sorts of transgressions of the legislative and regulatory framework by the accounting officer, the mayor, the mayoral executive committee, the councillors and officials of a municipality. It therefore troubles one's mind to realise that, despite the tight security net around state assets, there still could be irregular, fruitless and wasteful, and unauthorised expenditure to the large scale notable nowadays in South Africa.

As has been alluded to in the introduction to this chapter, the qualitative research paradigm constitutes the vehicle through which the research study is conducted. The paradigm is introduced below.

## 2.7 THE QUALITATIVE RESEARCH PARADIGM

The author reckons that it might be appropriate at this point, to present a selection of some of the most fundamental features of the qualitative research paradigm – as a relatively new, and emerging approach to research. Many early researchers have written about the subject in the past, as it evolved. Prior to Braun and Clerke, cited below - authors such as N. Denzin and Y. Lincoln (2005), L. Butler – Kisber (2010), J. Greenberg and R. Folger (1988), J. Mouton (1996), C. Badernhorst (2008), B. Morgan and R. Sklar (2012) - did not only trace the history of the foundations of the research approach, but also established the substance of the paradigm. However the author resolves to present hereunder, a selection of literature sources and perspectives, which illuminate the sense in which the concept 'qualitative research' is used in this research.

The paradigm had a small and hesitant beginning in the 19<sup>th</sup> century, but "regained a foothold" as a relatively new paradigm, from the 1980's, according to Braun and Clerke (2013:7). The two authors (2013: 3) define qualitative research as fundamentally consisting in using "words as data, collected and analysed in all sorts of ways". In effect, the words provide an opportunity for one to analyse, understand and interpret their meanings - in context. Morgan and Sklar (2012: 72) on the other hand, state (they, in turn citing Merriam, 2009), that:

"... it [the qualitative research paradigm] is interested in understanding how people interpret their experiences, how they construct their worlds, and what meaning they attribute to their experiences".

Morgan and Sklar further allude to one of the fundamental philosophical traditions of the paradigm, namely, that "reality is a socially constructed phenomenon and [that] there are therefore multiple realities" (2012: 73). In an attempt to locate the foundations of the qualitative approach, Butler–Kisber (2010:4 – 5) first defines a world view, as follows:

"... a basic set of [human] beliefs which directs action" and goes on to say that: "... worldviews used by qualitative researchers vary with the set of beliefs they bring to research".

Of equal significance in this author's assertions – is the statement (Butler – Kisber, 2010:4) that:

"... theorists began to question the existence of an objective reality. The nature of interaction, the importance of context and the need to understand interaction as [a] process rather than a product forced researchers to turn to qualitative research to conduct their work."

In other words, Butler–Kisber is of the view that worldviews, taken together with context - are the foundations which help one to determine the meaning contained in interactions or general text messages. Furthermore Butler–Kisber's assertions support the view generally held in qualitative research communities, namely, that the world consists of multiple realities, depending on the worldview of the interpreter, and the context.

With regard to the concept 'validity', which is fundamental in quantitative research, Denzin and Lincoln, (2005: 24), instead of referring, for instance to 'internal and

external validity' when they discuss the validity requirement (as in a quantitative research study) - a concept which Mouton (1996: 109) viewed as synonymous to the "... best approximation to the truth" – contend that the concepts of *trustworthiness*, *credibility*, or *dependability* - are what qualitative researchers seek to achieve in a qualitative research study. It is a research quality which, like 'transferability' (defined below) – depends in large measure in its determination - on the detail provided, of the modus operandi and the circumstances of the research - to persuade the reader to want to believe the findings, or even to convince the reader to accord a good measure of credibility, of trustworthiness to the findings of the research. Viewed from this perspective, it is therefore logical to conclude that the qualitative research paradigm, inevitably feeds on the phenomenological/relativist/constructionist, as opposed to the positivist/realist foundations of quantitative research. (see definition of concepts under 'Appendices' to this report. A common characteristic running through all the concepts cited above is: they all have at the core, the incorporation of context and worldviews in distilling, interpreting and understanding meaning as expressed in words, phrases and sentences.

In line with the message of the preceding paragraph, several authorities contend that qualitative research, contrary to the quantitative research paradigm - embraces subjectivity and reflexivity (also see Appendices' for the concepts' definitions), and values them highly (Braun and Clarke, 2013: 19 – 26, 28 – 36; Butler–Kisber, 2010: 5 – 22; Denzin and Lincoln, 2011: 1 – 4).

Because of the paradigm's focus on specific situations, with specific or unique characteristics or attributes, the need for probability sampling is often not considered

essential, since the paradigm does not, normally seek to generalise its findings, nor does it often seek to subject the findings to quantitative analyses.

To conclude this brief interlude, this researcher presents another of the fundamental features of the qualitative research paradigm alluded to above, namely, the 'transferability' attribute of the findings of a qualitative research study. The concept is an equivalent of 'generalizability', a well-known concept in quantitative research. Its mention should provoke a question in one, akin to asking (in quantitative research): to what extent are the findings of a given research generalizable? Braun and Clarke (2013: 338) define transferability thus:

"the extent to which qualitative research results can be 'transferred' to other groups of people or contexts".

To facilitate ease of determining the extent of transferability of qualitative research results, the authors cited above suggest that:

"The key to enhancing the transferability of a [qualitative] study is to describe the *specific* contexts, participants, settings and circumstances of the study in detail..." - and this is the responsibility of the researcher, the authors further contended.

Furthermore the authorities state categorically, that the onus to finally judge the extent of transferability of results actually rests with the reader (2013: 282). In effect the citations above suggest that transferability will apply, but only in situations which replicate or approximate the unique circumstances or characteristics of the researched situation.



## **2.8 THEORETICAL FRAMEWORK**

The author considers it most appropriate to define the concepts 'theory' and 'theoretical framework' as separate, although related concepts, and often used interchangeably - to enable the reader to understand the sense in which they are used in this research study.

A perspective of 'theory' and 'theoretical framework' as they relate to research, is therefore presented below.

Badenhorst (2010: 101) posits that:

"In academic research, theories help us to explain, to understand and even suggest what the outcomes of research should be."

There is also a reference in her writing to a view that when one uses a theory, one is aligning oneself "with a particular way of viewing the world" (ibid).

On the other hand, Athanasou et al (2012; 42 – 43 ) use the concepts 'conceptual framework' and 'theoretical framework' interchangeably, thereby creating in one's mind the impression that 'conceptualisation' or 'providing a theoretical framework', or a 'conceptual framework' for a research study – amounts to doing the same thing. They perceive 'conceptual framework' as the provision of a theoretical base for a research, although they evidently describe the term as entailing: "a higher level of abstraction". Viewed from this perspective, the conceptual framework, alias theoretical framework is - according to them, simply:

“... the underlying theory that describes the situation and explains what is happening” (ibid).

Mouton (1996: 202) similarly defines a theory thus:

“In its most fundamental sense, a theory provides an explanation of events or phenomena. Theories explain by way of causal models or stories; by postulating a set of causal mechanisms (causal process) that accounts for phenomena like rural poverty or events like the 1976 uprising in Soweto [South Africa]”.

Babbie (2008: 12) on the other hand, puts it very simply and asserts that social science research:

“... can help us know only what is, and why.”

From the above perspectives, one should be able to note that a theoretical framework in summary, is a logical system of abstract knowledge, involves high level abstractions, describes phenomena/situations, helps one to explain or understand a phenomenon, presents an ideal or hypothetical situation, explains, and even suggests what the results of a research should be. The descriptions, characterisations, abstractions, modelling, etc, around ‘theory’ - all point to a conception which seeks to describe situations, to explain phenomena or what is happening, or to even foresee what the results of a research would turn out to be like.

In respect of social research however, and taking cue from Babbie - theory can only assist in establishing what is, and why.

It in particular, often describes and explains in research situations - what relevant works have gone before the present time, with a view to pointing the way forward to what could be explored in the future. Interestingly, it also is seen as presenting a perspective on the phenomenon under consideration - as one to which the author of a discourse subscribes in full, or in part.

Furthermore it is worth noting, according to the authors cited above - that besides providing the underlying theory which describes and explains a phenomenon, a theoretical framework sometimes also presents a model – all these descriptions, explanations, and models are proffered with a view to providing a basis for further research. The author concurs with all these views, and adopts Babbie's as cited above, for purposes of this research study. One of the major theoretical frameworks of this research is the *principal-agency theory* of economics, hereunder presented.

## **2.9 THE PRINCIPAL-AGENCY THEORY, RATIONAL CHOICE THEORY, ACCOUNTABILITY, AND CAPITALIST DEMOCRACY**

### **2.9.1 PRINCIPAL-AGENCY THEORY**

It has often been written by authorities on the principal-agency theory - (for instance, Jensen and Meckling (1976), Ross (1973), Kiser (1999), Shapiro (2005), in their capacities as economists and sociologists - as though the theory has its origins in the early 1970's. However, Kiser (1999: 148) provides evidence in the form of a citation - that Adam Smith understood the agency theory as far back as the 18<sup>th</sup> century - although he (Smith) did not realise that he was harping at a theory that

would occupy the minds of economists two centuries later (Kiser, 1999: 148). Kiser quoted Smith (1776) thus:

“The directors of such companies, however being the managers rather of the other people’s money than of their own, it cannot well be expected, that they should watch over it with the same anxious vigilance with which the partners in a private copartnery frequently watch over their own .... Negligence and profusion, therefore, must always prevail more or less, in the management of such a company.”

The principal-agency theory contends that whenever a person is appointed (the agent) by another (the principal), to act on the principal’s behalf – there is more often than not, a detectable or covert measure of acting in own interest on the part of the agent, rather than in the interest of the principal (Institute of Chartered Accountants, England and Wales: Audit Forum, 2005; Kiser, 1999: 146; Spiller, 1990: 66; Shapiro, 2005:263 – 265; Atkinson and Fulton, 2013: 387 1999). The protagonists of this theory further posit that the principal needs to consequently design ways and means through which to counteract, minimize or even eliminate the tendency of the agent, namely, to at times act in his/her own interests. The measures, taken together, seek in effect to align the interests of the agent with those of the principal - conventionally through using the carrot and/or the stick approach.

The theory had its origins in economics and took shape and was presented as a theory in the early 1970’s (Kiser, 1999; Shapiro, 2005; Spiller, 1990; Attila, 2012). As soon as it was taken out of the confines of economics where it made good sense,

simply because several assumptions were built into its conception – the restrictive assumptions were jettisoned, and the complex realistic world of sociology, politics, history, public administration and so on - opened it up to criticism, although still universally respected as a plausible theory, to this day.

### **2.9.2 ACCOUNTABILITY IN GOVERNMENT DEFINED**

Although accountability in general has been defined variously by different authorities, its fundamental features are captured in various perspectives of accountability in government, and consequently Chirwa and Nijzink (2012: 1) perceived it as entailing the fundamental tenets of: *answerability, responsiveness* and *enforceability*.

The choice of definition by the authors is neither thumb-sucked nor arbitrary. The edited book: '*Accountable Government in Africa*' consists of sixteen articles authored by sixteen authors or sets of authors. They (the authors) all agreed amongst themselves, to adopt the definition of accountability, hereunder presented. This researcher's considered opinion therefore was - that it made sense to embrace the definition, in view of the apparent depth of legal and academic acumen residing within the ranks of the sixteen sets of authors.

Chirwa and Nijzink (2012: 5) defined accountability as essentially embodying the three fundamental tenets of answerability, responsiveness and enforceability. They define the three concepts as follows:

*Answerability*: "That the power holder must explain how his or her powers were exercised and justify the manner in which they were exercised".

*Responsiveness:* "Requires public authorities [or public power holders] to act in a manner that responds adequately to the needs and expectations of the public".

*Enforceability:* "Entails the imposition of some form of sanction if the power holder fails to answer for the exercise of his or her power or if he or she is unresponsive in the manner as described above". That is, if he or she is found wanting in answerability and/or responsiveness.

Chirwa and Nijzink describe three kinds of what they call vertical accountability in government as follows:

*Electoral Accountability* where government accounts to the public through elections, where voters express their approval or disapproval of the current holders of power; *Societal Accountability* where government accounts to the general public, which often voice their displeasure with public policy implementation outcomes through civil action, including protests and other forms of mass action; and *Individual or Group Accountability* where government accounts to individuals, often through court actions, or as a result of pressure from interest groups.

Furthermore in public service, there often are associated with accountability (Romzek, 2000: 22), the vexed questions of: Accounting to whom? For what? And how? The answers to the questions present a challenge to the accountee in capitalist democracies, which until recently, were known as western democracies. There are often many legitimate and competing authorities, vying for one's attention, to account to. Choosing the most legitimate source of expectation or authority to account to, is in these circumstances, therefore a challenge.

### **2.9.3 ORIGINS OF HORIZONTAL ACCOUNTABILITY AND CAPITALIST DEMOCRACY**

In respect of the application of accountability in the public sector, some adjustments needed to be effected, to situate accountability within the principal agency theory of economics, as well as align it with the operations of, and the structure of public institutions. What bedevilled matters in the application of the theory to the sector however - was the realization that the ultimate principal consisted in the taxpayer and the general voting public, often referred to collectively as the electorate - and the agent, in this case being the legislative and the executive arms of government, or the political parties in government, which cooperatively have the responsibility to design and implement public policy on behalf of the electorate. In effect, the electorate operates through the political party representatives in parliament, and the parliament in turn delegates the authority to govern to the executive arm of government, often referred to as bureaucracy. The conclusion to be drawn from this turn of events is - that all politicians/members of parliament/legislatures, government officials or institutions, although often masqueraded as principals, are in the final analysis, primarily agents (Nash, 2012: 13; Shapiro, 2005: 267).

An illuminating history of changing accountability relationships, from the pre-Christian era to the present modern capitalist democratic accountability, which traces the origins of such a democracy's accountability structure - is given by Nash (2012: 13 – 14, 20 – 24). It bears testimony to the claim made in the foregoing paragraph, namely, that the electorate is in the final analysis, the primary principal. Nash categorically states that the modern democracy that most developing and developed

countries including South Africa - practice today, are varieties of the capitalist democracy as contained in the United States Constitution of 1787. He further posits (2012: 22) that:

“The United States is often described as the oldest modern democracy in the world”

– although he hastens to add, that the founding fathers of the Constitution of 1787, surprisingly did not describe it as democratic. Instead they made it clear (Nash, 2012: 22), “... that they intended to [through it] prevent democracy”. The constitution was explicitly presented as a measure put in place, to counter the popular or populist democracy, then perceived to be emerging in the United States, such as was practised in the ancient Greek *polis*. The founding fathers expressly stated that the constitution sought to prevent (Nash, 2012: 22) the;

“violence of faction ... [which included action by] ... the majority [of the citizens of the country] from achieving their common purpose”

Schwarzmantel (1995: 208 - 209) posits that the development of modern capitalist democracy in Britain originated from the enactment of the Second Reform Act of 1867. Schwarzmantel went further to state that this brand of democracy appeared to be increasingly dominant in the world to date, having been boosted in the process, by the fall of communism as a credible political system. He also revealed that it sometimes went by the name: *Liberal Democracy*.

In ancient Greece, Nash (2012: 13) reports, he in turn citing Roberts (1982)), that:



“... elected officials were required to report regularly to the *demos*. They were subject to severe and immediate penalties, including removal from office and banishment from the state, if their fellow citizens were not satisfied with what they had done with the powers entrusted to them”.

A re-emergence of a version of the Greek form of democracy came about in South Africa in the 1970's. It took the form of what Nash (2012: 13, 16) described as:

“... those in power being accountable to those they govern ... neither populist nor bureaucratic, but deeply democratic” – emerged in South Africa with the advent of the independent labour unions from 1973.

Back then leaders were required to report to members, the rank and file, after being given (Nash, 2012: 16):

“... a mandate, which provided the basis on which [the] leaders could act on behalf of workers. And it was followed by confirmation or recall of that mandate and [the] creation of a new mandate through discussion of the report”.

Modern Capitalist Democracy is a theoretical basis on its own, and with this assumption, a section will be devoted to it in Chapter 4 of this report.

The lesson of this informed narrative is - that the citizens, in undiluted democracies, or in '*deeply democratic*' social systems, such as was practised by the popular Workers Union Movement of the 1970's to 1980's in South Africa, the electorate, the *demos* as the Greeks called them – were the primary principals, as they should – and the movement thus presented a microcosm of 'governance of the people, by

the people, and for the people' – a popular phrase used widely to define democracy nowadays.

Final accountability was in the union movement, to the members, just as it was to the demos in ancient Greece. In modern day capitalist democracy final accountability was, and still is almost all directed anywhere else, but to the electorate. The political party/parties in government and their elected politicians, or parliament – a body which represents the electorate in capitalist democracies, by the sheer reason of members thereof having been elected through free and fair elections, to govern – almost completely displaces the electorate as the primary principal, in-between elections.

Nash goes on to contend that the current and popular form of democracy practised by many countries, what he (2012: 22) calls " modern democracy", effectively diverts accountability from the people, and instead, supports accountability to the the political parties in government or their elected politicians, "to the political and economic elites" (Nash, 2012: 14).

The principal agency theory posits that such agents as presented in the foregoing paragraph - at times, and like all agents - act in their own interests, as opposed to those of the principal. This human tendency on the part of agents, to accentuate self-interest above that of their principals, emanates from information asymmetries (Shapiro, 2005: 263 – 264; Attila, 2012; 709 – 710; Kiser, 1999: 146) that abound between principals and their agents, with agents more often than not, having more information or knowledge - than the principals on, for instance in the public sector: public policies, how the policies are being implemented, as well as the extent of

knowledge of possible methods of ingenious violations of, or subordination of the principal's interests, to that of their own. In effect modern democracy defers, and directs accountability to the elected politicians or the political parties of their choice for most, if not all of the politicians'/parties' term of office.

It was evidently on the basis of this knowledge of agency problems, and also as part of lessons learnt from the Apartheid regime - that South Africa's Constitution of 1996, saw it fit to provide for the Judicial arm of government and Constitutional Institutions, and other similar institutions, to safeguard the interests of the Constitutional democracy, including in theory, especially that of the populace, as the primary principal. One such institution is the Office of the Auditor General, which was established to specifically audit and report on public financial management, to thus contribute to sound financial management in the public sector.

#### **2.9.4 RATIONAL CHOICE THEORY**

Another of the theoretical bases of this research is the *rational choice theory*, from behavioural psychology - as it applies to the public sector. The theory contends that all human action is fundamentally rational, and that in capitalist democracies like South Africa's (Scott; 2007:1):

“... people are motivated by money and by the possibility of making a profit...  
[or of increasing their wealth]”.

The theory was well known for its predictive characteristic, to the extent that sociologists could not help but seek, to apply it to their own research activities (Ibid).

Scott further argues that:

“They (humans) act within specific, given constraints and on the basis of information that they have about the conditions under which they are acting”

Sociologists later broadened the scope of rationality (Scott, 2007: 2 – 10) to include rational choice being made on the basis of a perceived reward of, not just ‘money’ or ‘making profit [or increasing one’s wealth]’ – but also of ‘approval’ within the ranks of societal structures, amongst others, through being a member of social groupings or collective actions - as well as of the perceived reward of being seen as ‘aligned with popular ethics and norms’.

Although advocates of behaviourism, a branch of psychology, tended to think that human action is shaped by conditioning (reinforcement through rewards and punishment) such as is expounded on in the behaviourism theory of Skinner (Scott, 2007: 3, in turn citing Skinner, 1938, 1953 and 1957)) – Homans also a psychologist, contends (Scott, 2007: 4) that:

“Approval is the most fundamental human goal. Approval is a ‘generalised reinforcer’ that can reinforce a wide variety of specialised activities. Because of its generalised character, Homans saw approval as directly parallel to money.”

Psychologists do not therefore deny that monetary rewards are a reinforcer of human action, but argue that there also exist alongside it, other conditionings which underpin human activity.

The claim - that in a capitalistic democracy, both 'approval' in general, and increasing one's wealth in particular, are at the core of human action – is axiomatic.

As part of their duty to deliver on their responsibilities, politicians, public administrators, and all organizational leaders - necessarily have to execute strategies, in their efforts to achieve organizational goals. Introduction to this aspect of a manager's roles and responsibilities is presented below.

## **2.10 STRATEGIC EXECUTION, MONITORING AND EVALUATION**

In an attempt to define or describe strategic execution - that phase in organizational operations, where activities gravitate to the point where the institution's strategy has to be implemented, to achieve organizational objectives - Bossidy (2002: 22) argues that:

“... looking into, and continuously following very closely on, the whats, the hows and the whys of organizational operations, and tenaciously following through to ensure accountability” – is what strategic execution is all about. He further states (ibid) that good leaders lead execution from the front.

Hrebiniak (2005: 2), writing on the critical importance of strategic execution (implementation of strategy), anecdotally relates a story of an United States of America CEO's (Chief Executive Officer's) response to one of his (Hrebiniak's) questions, namely: 'What challenges are facing your corporation currently?'

The CEO answered that while noting that planning was a huge and arduous task that CEOs often had to engage in, he had nevertheless always felt that it was strategic execution that overwhelmed him the most. It was a responsibility that was

in his (the CEO's) opinion, more difficult to accomplish than was the case with planning. This was actually his (then) current challenge, he confided.

The citations and the anecdote serve as instances to illustrate the apparent difficulty of implementing strategy, as opposed to planning strategy. Seemingly, monitoring and evaluation which taken together, are essentially critical components of strategic execution - are no child's play. The expositions of what the concepts entail presented below, in respect of each concept – indicate somewhat, the extent to which the observation, the conjecture presented above - holds true.

In his Inaugural Lecture to Fort Hare academia, Thakhathi (Fort Hare University, 2013) introduces and defines a concept: *revocrats* - as people or leaders who do not only thoroughly plan their work, but also people or leaders who subsequent to planning, focus more on the actual execution of the plans, with the sole purpose of achieving organisational objectives. They in effect, work for a change that matches, and is in line with a changing environment, taken together with changing needs of the citizenry.

One in fact, executes strategy, through monitoring progress and evaluating performance, two concepts that the paragraphs following expatiate on.

After examining several definitions of monitoring and evaluation presented by different authors, and after noting a thread running through all of them - Ijeoma (2014: 12 ) notes the following about each of the concepts:

*Monitoring:* “ ... is a continuous process, ... is a management function, ... involves data collection and analyses thereof, ... its focus is on assessing how well the project and/or programme is doing”

On the other hand *Evaluation* (Ijeoma, 2014: 13):

“... [is a] periodic process, ... a systematic and/or methodological process, ... its primary focus is on assessing the worthiness of a particular intervention”

The conclusion one draws from the fundamental characteristics as cited above, is that in general, as well as in the context of public policy implementation – monitoring is a continuous process which tracks the progress of a programme or project, over the duration of the task, whereas evaluation is a periodic process undertaken at agreed intervals, to assess the worth, the impact of a programme/project, or intervention. Furthermore monitoring and evaluation are the responsibilities of management or their agents, and any or all stakeholder(s) respectively.

As the reader may have noted through experience or observation, planning is a periodic process extending over a relatively short space of time, often undertaken by organizations at least once in a financial year, to review or draw plans for an ensuing planning horizon.

On the other hand, monitoring and evaluation entail defining and determining concepts such as goals, objectives, indicators, performance standards, input resources, outputs, milestones, targets, outcomes, impacts and so on (since the planning phase often does not do justice to these, that is, it often leaves gaps that

need filling, as is often the case in practical applications), thus refining the definitions as the need arises – whilst simultaneously ensuring that there is continuous performance of activities, that is, that momentum is maintained throughout the planned period.

As the authors cited above indicate - implementing organizational strategy, or in public sector language: implementing public policy, more often than not, turns out to be a formidable challenge, and without doubt, more time consuming than is for instance the case with planning (Hrebiniak, 2005: ; Bossidy et al, 2002: ). The implementation phase of organizational operations therefore invariably needs, effective and focused monitoring and evaluation - often referred to as monitoring and control in the literature on monitoring, evaluation, strategic execution and performance management.

## **2.11 ORGANIZATIONAL LEADERSHIP**

It has already been asserted above, that it is management's responsibility to monitor performance, and of any stakeholder's, to evaluate performance. The quality of management and leadership in organizations is therefore critical to the achievement of the organizations' objectives and ultimately, their goals.

Cooper (2011: xv) states that:

“Leadership is about creating an environment where people consistently perform to the best of their ability. Natural leaders do this intuitively, but, for us mere mortals, we have to learn how to lead.”



Literature abounds on crafting strategy in this world. This is in stark contrast to the paucity of literature on the execution of strategy (Bossidy et al, 2002: 6 - 7). Universities and other places of higher learning are partly to blame for this state of affairs, or so contended the authors. This is understandable for, if one assumes that such institutions of learning had long been aware of the importance of planning, it is not fair to them, to assume that they did not realise that it was equally important that executive management were educated and trained on the whys and the hows of effective strategic execution, or effective public policy implementation.

The authors argue that the institutions, and organizations at large - had all along, always been aware of the fact that strategies needed to be implemented, and successfully. The only challenge had always been that the faculties in the institutions, taken together with the participants, or participating organizations in their programmes – did not see it as, or did not believe that it was executive management's priority to focus on implementation, or even that it was in executive management's brief to focus on implementation – because it was considered less challenging, most suitable for 'grunts' or less intelligent people, or lower management (Hrebiniak, 2005: 7; Bossidy, 2002: 6 – 7).

As the King 111 Code on Corporate Governance (2009: 12) has asserted, good governance is essentially founded on effective leadership, as alluded to earlier on in this discourse.

Therefore at the centre of any execution activity in an organization - is the leadership of the organization. The quality of the leadership inevitably determines the effectiveness of the organization, in realizing its objectives.

## **2.12 CONCLUSION**

A literature review chapter in a research undertaking peruse all relevant literature that provide a firm base, a field of study and a research environment in which the research topic is situated.

This researcher made an attempt above, to explore the field of public administration to discover its most pertinent tenets and issues, taken together with governance, and the cornerstones of good governance. It turns out that there is unlikely to be good governance without borrowing principles and practices from business management, to enhance public management, as opposed to public administration.

There is not much difference between public administration (PA) and corporate governance (CG). Although there is great convergence in the two concepts, one should be able to see one (PA) as more concerned with policy design and implementation issues, while the other (CG) focuses more on how best to advance the implementation thrust, to enhance service delivery.

Public financial management, in its capacity as the enabling resource for all public administration work, is at the core of policy implementation in the public sector. Developments in its evolution point to a situation where the influence of business management is globally - increasingly discernible. For instance, the three phases through which public financial management evolved in the past, namely, the Classical Model, the New Public Financial Management Model, and the Bernard-Simon Model aptly sum up all what had gone before, and what is to be gained from each of the models, which enhances present day public financial management.

In the case of South Africa, it soon becomes evident on skimming through relevant literature, that there is - since the advent of constitutional democracy – a plethora of legislative and regulatory prescripts and conscripts promulgated, sufficient to keep public financial management on course. It therefore boggles one's mind to realise that financial mismanagement and poor audit outcomes extensively prevail to this day.

The qualitative research paradigm as a research approach has evidently reached maturity. It has made a good attempt at emulating the quantitative research paradigm, in the sense that it has the capacity to field all the questions that an advocate of the quantitative approach could direct as an assault, to the paradigm.

Several theoretical bases for the research have been cited, namely, the principal-agency theory, the rational choice theory, capitalist democracy and the concept of accountability – all as applied in a capitalist democratic government, such as is practised in South Africa. The agency theory assists in identifying the primary principal, namely, the populace/electorate in the public sector, while every other party from the lowest employees in government, to the executive management, including political parties in government, and elected politicians in parliament/Legislatures – are all individually and collectively, actually agents. Rational choice theory posits that all human action is based on rational choice, and in capitalist democracies like South Africa's, the desire to make a profit, to increase one's wealth, taken together with the desire for approval, are at the centre of drivers of human action.

The execution, monitoring and evaluation of strategy in general, and the implementation of policy in public administration in particular, attest to the belief that more attention needs to be given to the application of these concepts, if policy implementation is to be achieved with a good measure of success. They taken together - need the full attention of top leadership in organizations.

To end on a high note, the significance of the quality of leadership in an organization, and the correlation which exists between the quality of leadership and the level of performance, cannot be over-emphasised. It certainly occupies centre stage, where it is imperative that organizational objectives are achieved.

## **CHAPTER 3**

### **METHODOLOGY**

#### **3.1 INTRODUCTION**

The principal research method of this study is the documentary research method. Taken together with the critical and the interpretative research paradigms - they constitute the vehicle through which the ends of the research study were achieved.

It is convention for budding social scientists and accomplished social scientists alike, to regard studies in pursuit of social research - which utilize popular methods of collecting data, namely, social surveys, in-depth interviews and participant observations – as characterizing the social research paradigm. This researcher, upon reading widely on social research methods, developed a different view, namely, that the documentary research methods, are of no lesser importance, as alternative principal methods, for purposes of achieving the ends of social research.

Mogalakwe (2006: 221) had this to say about social research:

"Social research is an activity that is undertaken to find an answer or an explanation regarding a particular social phenomenon."

There exists in this researcher's opinion, few perspectives of representation, or presentations of the purpose of social research, to beat Babbie's – in so far as clarity of expression, and unambiguity of meaning are concerned. Babbie (2008: 13) posits that:

"Social science, then, can help us know only what is and why" (2008: 13).

Further, he (2008: 15) states that: "... social scientists study primarily [social

or class] patterns rather than individual ones” – thereby suggesting that they use nomothetic approaches to explanation, rather than idiographic ones. That is, social science “seeks to explain ‘economically’, using only one or just a few explanatory factors” (Babbie, 2008: 22).

Social science therefore, settles for plausible, rather than full-proof explanations of social phenomena. Babbie defines the concepts of nomothetic and idiographic approaches thus:

Idiographic: “An approach to explanation in which we seek to exhaust the idiosyncratic [distinctive] causes of a particular condition or event” (2006: 22).

Nomothetic: “An approach to explanation in which we seek to identify a few causal factors that generally impact a class of conditions or events” (2008:23).

This study assumes Babbie’s perspective of social research. The study in sum, seeks to find plausible answers to the questions of the research study. The questions of the study can best be restated as follows:

1. Is the system of capitalist democracy responsible, at least to some extent, for the observable situation in democracies of the world, where Parliamentary representatives, or a ruling political party or parties - assumed the role of the primary principal (as defined in the principal- agency theory of economics), thus taking the right of the electorate (to be the principal) – and in the process, pushing the electorate out of the way, in-between elections? Further,

could the apparent slack in accountability in government in some countries be attributable, even if in part, to the system?

2. What is the current mandate of the Office of the Auditor General, and to what extent can the limits of the Office's current scope of work be extended, if at all possible - to enhance its effectiveness in achieving its objectives? Could enhanced cooperation with Parliament, for instance make a difference?
3. What legislative innovations or feasible legislative explorations look promising, in providing for an empowered Office of the Auditor General of South Africa – thus strengthening the Office's hand in improving audit outcomes in the South African public sector?

What follows in the ensuing paragraphs is an account of what this method entails, in effect an advocacy of its suitability as an, also effective alternative principal approach to researching in the social sciences.

Mogalakwe categorically states that:

“Unfortunately, documentary research methods have often been incorrectly considered a monopoly of professional historians, librarians and information science specialists...” (2006:222).

This chapter firstly presents what one could consider to be an advocacy of documentary research methods ( as alluded to above), not only as methods which meet the quality standards of the community of social research scientists, but also as equally capable of providing plausible answers to social research questions. The

sister methods of critical and interpretative research also receive attention, albeit briefly.

The methodology of the research is presented in some detail, with a view to persuading the reader to get a preview of not only the research design, but also of the methods preferred in this research study. Documentary methods are predominantly utilized - to achieve the objectives of this particular social research. In effect the approach serves as another instance where the virtues of the method are demonstrated, to thus put it on the spotlight, as also effective in achieving social research objectives, in appropriate situations. A data collection approach was then implemented, whereby documents which constitute the core sample were enumerated. Data reduction and analysis followed, as well as the drawing of conclusions and verification of same.

In conclusion, it was considered only fair to the reader to present what in this researcher's opinion, constituted the limitations of the preferred principal research method, to enable the reader to form her/his own opinion on the research findings' ecological validity, trustworthiness and transferability, all these being qualitative research concepts which are more or less equivalent respectively, to 'validity', 'reliability' and 'generalizability' in the quantitative research paradigm.

## **3.2 DOCUMENTARY RESEARCH METHODS: AN ADVOCACY**

### **3.2.1 DEDUCTIVE ARGUMENTS IN DISCOURSES**

Ahmed asserts that "The raw material of research [any research] is *evidence*" (2010: 1). It is in this light that this researcher briefly hereunder discusses the role of



deductive arguments in providing evidence. He consequently assumes Van der Berg's series of definitions for validity, argument structure, and soundness of a deductive argument, as a vehicle for the provision of evidence in the discourses of this research report – for purposes of substantiating the claims of this research study. Van der Berg (2010: 37) firstly defines a deductive argument more or less thus:

A deductive argument is a collection of statements, one of which is a conclusion or a claim, the rest being statements, named premises, which jointly or severally, establish (es) the truthfulness or acceptability of the claim or conclusion being made. He then goes on to define validity (2010: 85 - 91) thus:

"*Validity* refers to the relationship between the premises and the conclusion of an argument. It is a structural issue... ". In other words, an argument is valid, only if there exist in its structure, premises and a conclusion, which (conclusion) is derived from the premises.

A valid deductive argument is similarly defined thus:

"A *valid deductive argument* is one in which the structure is valid and where the premises offer sufficient support for the conclusion" (2010: 86).

Finally a *valid and sound deductive argument* is defined as an argument with premises which do not only sufficiently support the claim made/conclusion drawn, but which also, are themselves statements of truth (2010: 91).

Valid and sound deductive argumentation would therefore be given major space in the body of the report, and be thus at the core of substantiation of the claims of the research study.

### **3.2.2 DOCUMENTARY RESEARCH METHODS**

Ahmed defines documents broadly, and simply as “written text”, which must be studied as “socially situated products” (2010: 2). Ahmed further states that:

“Documentary research refers to the analysis of documents that contain information about the phenomenon we wish to study” (Ibid).

He further posits that undertaking documentary research inevitably consists in perusing

“... institutional memoranda and reports, census publications, government pronouncements and proceedings, diaries, and innumerable other [privately or publicly owned] written, visual and pictorial sources” (Ibid).

This researcher reckons that it might assist the understanding and the quality evaluation processes of the reader, if the reader does not lose sight of the fundamental differences between documentary research methods and what is often referred to (in this research study), as the ‘big three’ methods of social research, namely, social surveys, in-depth interviews and participant observations. According to Braun and Clarke (2013: 134), qualitative data can broadly be divided into two categories, namely: participant-generated textual data, and pre-existing textual data. The big three methods evidently prefer participant generated data. In contrast,

this research study prefers pre-existing textual data, as the mode to achieve its ends.

Going back to the differences between these two methodological approaches, it is this researcher's opinion that the first fundamental difference consists in the fact that documentary research methods use so-called secondary data - whereas the 'big three' methods use so-called primary data. As indicated above, secondary data is pre-existing data, whereas primary data is participant generated, conventionally under the supervision of the researcher.

The other fundamental distinguishing feature resides in the fact that the documentary research methods' secondary data as a norm, were collected for purposes other than the present research study's. Primarily because of this difference in purposes, coding preferred in documentary research is generally selective coding, a concept which is akin to data reduction (Braun and Clerke, 2013: 206).

Coding here is used as defined in Braun and Clerke (Ibid), thus:

"Coding is a process of identifying aspects of the data that relate to your research question." The two authors (Ibid) continue and define selective coding thus:

"Selective coding involves identifying a corpus of 'instances' of the phenomenon that you are interested in, and then selecting those out ..."

(Ibid)

Data reduction in similar vein, entails reducing masses of information which often characterize documents, "without significant loss of [relevant] information" to manageable proportions, to facilitated comprehension and analysis (Ahmed, 2011: 7).

Secondary data in this light, is generally defined as pre-existing data, pre-dating a present research study - which were generated for purposes other than the achievement of the present study's objectives. This researcher considers any other aspect of documentary research attributes, outside of the above mentioned - as not one of the fundamental distinguishing features in the two data collecting approaches. This researcher therefore considers it reasonable and therefore advisable for advocates of documentary research methods, to focus more on these fundamental differences in their advocacy arguments – particularly with a view to proving that, provided that the chosen secondary data meet a set of quality imperatives, the differences do not matter. Once this position is maintained, the two sets of methods result in findings which meet an arbitrary set of quality standards of social research - and consequently both methods (primary data based and secondary data based), are thus shown to be trustworthy and credible. Hereunder is presented some advocacy.

It is determinedly argued by some writers in the field of social science (Mogalakwe, 2006; Ahmed, 2010), that among others, accomplished writers and classical social theorists, such as, Karl Marx and Emile Durkheim made extensive use of documentary sources in their pioneering social research studies. There is, arguably a place for these two sociologists, in the annals of social research, if the citations of

their writings by eminent sociologists are anything to go by. Mogalakwe submits that Durkheim for instance, "relied on official statistics in his study of suicide" (2006: 224). Marx likewise, made extensive use of State documents, statutes, census reports, newspapers, periodicals and so on, in his social research pursuits (Ibid). There is however no implicit suggestion in this presentation, that the two social scientists, did not utilize in a supportive mode, other research methods, then at their disposal. The point that this researcher is making is, that the documentary research method was for them in these instances, a principal research method.

As part of his argument that documentary research needs to be taken seriously by the community of social scientists, Ahmed concurs with Mogalakwe, that:

"Documentary research has been a staple of social research since its earliest inception ... It has been the principal method, sometimes even the only one – for leading sociologists ..." (Ibid).

Mogalakwe (2006: 223, he in turn citing Scott (1990)), distinguishes between proximate access and mediate access, in so far as what pre-existing documents provide. He describes proximate access as direct access

"... whereby the researcher and his sources are contemporaneous or co-present and the researcher is a direct witness of the occurrences or activities".

Mediate access on the other hand, is described as indirect access, which

“... becomes necessary if past behaviour must be inferred from its material traces, and documents are the most visible signs of what happened at some previous time” (Ibid).

Documentary research methods certainly do not occupy centre stage in many research activities undertaken by members of the modern-day community of social researchers, as the introduction to this chapter has indicated. At best the method is utilized in a supportive role, to the three most used methods of social science, namely, in-depth interviews, social surveys and participant observations. Braun and Clerke (2013: 153) further assert that:

“Secondary sources are ideal for answering representation and construction-type research questions”. That is, in such situations, the documentary research method suffices as the principal method.

### **3.3 PRIMARY VERSUS SECONDARY DATA**

Primary data as has been described above, is participant generated and produced under the auspices of the researcher. These kinds of data are thus collected directly from the targeted members of society, the primary source. The data are therefore from the outset, designed to serve the purposes of the research study being undertaken. The social researcher her/himself decides if the data thus collected are sufficient for his/her needs.

On the other hand, secondary data were also originally collected directly from the targeted members of society, albeit for different purposes, by a pre-dating social researcher, or a purpose driven collector. It is reasonable to assume that the original

data collector was guided by the same or similar principles as a social researcher who chooses to utilize primary data, in the generation of the latter's data. Further, the fact that the present social researcher samples secondary data, suggests that he/she reckons that it contains data that she/he finds appropriate for her/his research study – that is, she/he reckons that the data contribute to the provision of plausible answers to the questions of her/his study. If the data are not sufficient for her/his needs, he/she is free to look for more data/sources of data, primary or secondary - to augment, to add to his/her sample, until saturation point is reached.

The principle of valid and sound argumentation (refer to Van der Berg above), posits that it is not sufficient for one to provide adequate grounds/premises to substantiate claims made, but also equally essential that one establishes that the premises themselves are statements of truth, or relative truth in the qualitative research sense. All what the present researcher needs to do, to situate his study on firm foundations, or to present valid and sound arguments in his discussions – is to check the quality aspects of the pre-dating social research data, or the documentary sources thereon, which now serve as so-called secondary data for the present study. Scott (1990: 1 – 2) provides guidelines as to how one goes about checking on these quality aspects. Once this is done and the sources meet the quality standards, it is illogical for one to raise doubts about the secondary data used in the present study. Given, that the pre-dating data were generated for other purposes, this researcher submits that the present researcher has at her/his disposal, the means to obtain more evidence, if current documentary sources prove inadequate - to meet the need

for sufficiency, as has been contended above. This approach, at least serves to meet the quantity needs.

### **3.4 THE CRITICAL RESEARCH PARADIGM**

While going through a couple of documents on the critical research paradigm, this researcher came across one by Fossey E., Harvey C., Mcdermot F. and Davidson L. (2002), whose representation of the critical research paradigm struck him, as most appealing as a response to the hypothetical question: What is? To permit the reader the opportunity to make sense of the illuminating representation, the rather long citation from this source is cited - to substantiate the point being made. The exposition (Fossey et al, 2002: 720) went thus:

“Critical research derives from socio-political and emancipatory traditions, in which knowledge is not seen as discovered by objective inquiry but as acquired through critical discourse and debate. It focuses on the critique and transformation of current structures, relationships, and conditions that shape and constrain the development of social practices in organizations and communities, through examining them within their historical, social, cultural and political contexts. Consequently, inquiry is directed not towards understanding for its own sake, but towards understanding as a tool to be used in the on-going process of practical transformation of society.”

The interest of this researcher in the contents of the passage, is located in the excerpts: “... in which knowledge ... [is] acquired through critical discourse and debate”; “... critique and transformation of current structure, relationships, and



conditions”; as well as “... through examining them within their historical, social, cultural and political contexts”.

Of critical importance to this research study is the possibility of extracting an informed response to the, again hypothetical question: Is it possible to contribute to knowledge, in a situation where a social researcher opts for documentary research methods, as the principal mode to achieve the ends of her/his study – such as is the case in this one?

Fossey et al’s response to the afore-mentioned question is evidently in the affirmative - this much, the first excerpt above certainly attests to. That is, through engaging in critical analyses and discussions of social phenomena, new knowledge is created, or so posit Fossey et al. The point that this researcher makes in this paragraph is, that from the outset, he was of the view that this research study had the potential to contribute to knowledge. It is however left to the reader to form her/his own opinion, regarding whether this ultimate objective was achieved after all.

The article by Fossey et al does not only introduce the critical research methods of qualitative research to the uninitiated, but goes on to actually apply them to the ensuing philosophical perspectives that the authors subscribe to. “... the critique and transformation of current structures, relations and conditions, ...” - are the substance of the analytic activities of the critical research methods. Indeed this research study examined in similar fashion, the concepts of: capitalist democracy, the principal-agency theory, the political party system provisions of South Africa’s constitutional democracy, the scope of work of the OAGSA - to mention but a few.

In so far as the last excerpt is concerned, the explicit statement, to the effect that the “historical, social, cultural and the political contexts”, constitute what matter in this method – is instructive. In other words in examining the social phenomena enumerated above, the various contexts are at the core of the critical analyses. This exposition aptly captures this study’s methodology. It certainly informed the modus operandi in the analyses and discussions of this report.

### **3.5 METHODOLOGICAL QUALITY CONSIDERATIONS**

A reference has been made a couple of times above, to the effect that documentary research methods are equally capable of achieving the ends of social research, to thus compete favourably with the ‘big three’. Whilst making the claim, this researcher does appreciate the supportive role that other methods played - in improving the effectiveness of a principal research method in the achievement of its purpose, whether in the quantitative or the qualitative paradigm. The situation is no different in this study. Also, there is no doubt that a method receives favourable consideration within the ranks of the community of social researchers - only if it meets their methodological quality standards. Below is presented a proposition by one such researcher, which has received some measure of acclaim, judging by the appraisal that it received in the past, from social scientists (Ahmed, 2010: 9).

Scott (1990; 1 - 2) has provided social researchers with a set of quality control criteria for handling documentary sources. The criteria consist in establishing: authenticity, credibility, representativeness and meaning in the documents. Therefore, any social researcher who wishes to establish whether pre-existing documents/data in his/her possession meet the quality standards, especially of

ecological validity, trustworthiness and transferability (respective equivalents of the concepts of validity, reliability and generalizability of the quantitative research paradigm) - needs only subject the documents/data/evidence (premises in argumentation language) to the quality control criteria - to see if they pass the test for authenticity, credibility, representativeness and meaning. Braun and Clerke (2013: 280, 338) define ecological validity thus:

“Ecological validity ... is concerned with the relationship between the ‘real world’ and the research. ... it [ecological validity] is about whether or not research captures meaning in a way closely related to real life situations”

Mogalakwe (2006: 225) summaries the criteria thus:

“*Authenticity* refers to whether the evidence is genuine and from impeccable sources; *credibility* refers to whether the evidence is free from error or distortion; *representativeness* refers to whether the documents consulted are representative of the totality of the relevant documents; and *meaning* refers to whether the evidence is clear and comprehensible.”

Furthermore, quality enhancing approaches to analyzing documentary research data have been suggested by advocates of the method, such as: data reduction, coding, memoing, data display, the drawing, and the verifying of conclusions from the data (Ahmed, 2010: 7) – However, the reader should be reminded, that from the point in analytic processes, where the phases in documentary research: of the sampling of the documents, and of data reduction are done - this researcher is of the view that

conventional qualitative methods of textual data analysis are applicable. This is so, since all the three popular methods of qualitative research typically depend in the final analysis, on data being presented in written form (Braun and Clerke, 2013:134), in order to facilitate analysis.

The brief account above, it is hoped, suffices for purposes of: not only advocating for the method of this research study - but also of sketching a background to documentary research methods, as well as their significance.

## **3.6 METHODOLOGY**

### **3.6.1 SAMPLING**

A purposive sampling approach was adopted, as is the convention in social research. Documents which looked promising - in so far as providing the quality, as well as the quantity of data that are necessary and at the core of the realization of the research's objectives - were selected. They necessarily had to be supplemented with a broad range of other literature sources, to drive their messages/claims home to the reader. The sample finally consisted of 20 written texts in total.

The core sample of documents thus, consisted in the following documentary sources:

#### **Capitalist Democracy**

1. Nash A. 2012. Post- Apartheid Accountability: The Transformation of a Political Idea.
2. Schwarzmantel J. 1995. Capitalist Democracy Revisited.

3. De Vos P. 2012. Balancing Independence and Accountability: the Role of Chapter 9 Institutions in South Africa's Constitutional Democracy.
4. Mogalakwe M. 2006. The Use of Documentary Research Methods in Social Research.
5. Shapiro S. P. 2005. Agency Theory
6. Cook B. J. 2007. Democracy and Administration.
7. Chirwa D and Nijzink L. 2012. Accountable Government in Africa: An Introduction.

From the outset this researcher considered it appropriate to use documentary research methods, opting in so doing, for the route of mediate access that the pre-existing documents provided, to examine the origins, as well as the nature of the political system of capitalist democracy. The choice of members of the above sample, in effect amounted to choosing what this researcher considered to be credible writers on capitalist democracy. Their informed ideas and the theoretical foundations of the positions that they took on a variety of aspects of this topic, were bound to be instructive, or so this researcher reasoned. The sample had to be initially small, and depending on gaps in relevant information identifiable as the close reading thereof progressed – similar documents were later added to the sample. The first phase of the sampling, reduction and analysis processes, adopted the approaches of historians, since this part of the study (capitalist democracy) delved into past events or meaning constructions. That is, there could not have been a better method to delving into the past, without reference to “its material traces”,

meaning in this case, documents which gave an account of the past (Mogalakwe, 2006: 223).

### **The Scope of Work of the Office of the Auditor General of South Africa**

1. The Constitution of South Africa, 1996.
2. The Public Audit Act, 2004.
3. The Independent Regulatory Board for Auditors, 2012.
4. OAGSA Annual Audit Reports, 2004 – 2014.
5. OAGSA Directives, 2011 and 2014.
6. Eastern Cape Legislature Research Unit Documents, 2012 – 2014.
7. Wehner J. 2002. Best Practices of Public Accounts Committees.

### **Exploring Legislative Innovations: Empowering the OAGSA**

1. The Western Cape High Court Division Judgement on the DA v SABC case, 2014.
2. The Supreme Court of Appeal Judgement on the DA v SABC case, 2015.
3. The Public Audit Act, 2004.
4. The Public Finance Management Act as amended, 1999.
5. The Municipal Finance Management Act, 2003.
6. The Independent Regulatory Board for Auditors, 2012.

The documents were inevitably, subjected to Scott's quality control criteria, to see if they pass the test.

### **3.6.2 AUTHENTICITY**

It is reasonable to deduce that, of the three sub-samples above - the second and the third mentioned need no authentication. They both consist of official documents, with the exception of Wehner's. This therefore leaves this researcher with only members of the first mentioned list and Wehner, to authenticate.

The onus is on the reader, as she/he sees the need - to independently inquire about, with a view to establishing Scott's dimensions of quality criteria for documentary sources, applicable in this research study. What follows hereunder are mere guides to how the reader could possibly go about investigating her/his concerns.

This researcher resolved that compiling a brief profile of each author goes a long way in so far as establishing authenticity was concerned.

The set of authors consisting of Andrew Nash (University of Stellenbosch/Western Cape/Cape Town), Pierre de Vos (University of Cape Town), John Schwarzmantel (1995), Monageng Mogalakwe (University of Botswana), Susan Shapiro (2005), Brian James Cook (Johns Hopkins University), Danwood Chirwa (University of Cape Town) and Lia Nijzink (University of Cape Town) – were all academics with impeccable credentials, as their profiles indicated. Furthermore, at least their academic institutions would attest to the authenticity of their authorships, or so this researcher reasoned.

### **3.6.3 CREDIBILITY**

With regard to this criterion, the existence of errors and deliberate distortions of information in the documents, which had the potential to mislead the reader - needed to be established. Of critical importance was whether the documents were produced independently of this research study, and beforehand - as well as whether the authors were sincere in choosing what points of view/themes to focus on, and the level of accuracy they attained in recording same (Magalakwe, 2006: 226). With regard to honest errors – even unintentional misstatements of fact for instance, do also have the potential to mislead.

The integrity of authors is thus also put under the spotlight, in establishing the credibility of the contents of documents sources under consideration. The academic institutions, at which the authors had had long sojourns, could not be faulted, on no rational grounds - in their provision of testimonies in response to integrity enquiries. This researcher, having established authenticity of same, had no good reason to believe that the authors' integrity could be second-guessed.

### **3.6.4 REPRESENTATIVENESS**

Representativeness refers to whether the evidence/documentary sources are "typical of its kind" ( Mogalakwe, (Scott?) 2006: 227).

Firstly, all the non-governmental documentary sources sampled, were academic discourses, complete with correct citation modes, and references/bibliographies. Secondly the lot which consisted of journal articles, with some in book form, adopted



a scientific approach in presenting their cases, their points of view. They were clearly research based documents.

With regard to the Constitution, the relevant pieces of legislation, and all government issued or adopted documentary sources – the format and the standard was representative of similar State publications.

Lastly, concerning the Western Cape High Court and the Supreme Court of Appeal judgements, taken together with other judgements read, such as the *Oudekraal Estates v City of Cape Town* and the *Glenister v President of the Republic of South Africa & Others* – the pattern of argumentation was similar. This should not be surprising. Judges, being experienced people of the law, had long been subjected to legal processes and procedures of dispensing justice, for so long in their working lives - that if past record was anything to go by, they seemingly would be the last profession to deviate from the tradition. Representativeness was thus assured even in this category of documentary sources.

### **3.6.5 MEANING**

The aspect of the criteria was included in Scott's set of criteria, to ensure that the messages of the texts were not only clear and unambiguous, but also comprehensible, whether written in a simple, or a complicated linguistic style. It also sought to ascertain that there were no contradictions in issues being argued in one source. That is, even if some contradictions between constructions of meaning in one text were initially notable, they later proved to be convergent.

None of the above was notable in all the documents of the sample. The documents journal articles and academic books were written by accomplished academics after all, as revealed earlier in this report. There was very little chance that they would not conform to academic writing conventions. On the other hand, the Constitution and the statutes were written by experienced experts in draftsmanship. Furthermore, the courts, as alluded to earlier on in the report, have the responsibility to interpret the law and fill detected gaps where absolutely necessary, to thus enhance meaning construction. Also, noting that legislation was in this democratic era in South Africa – written for the consumption of John citizen, that is, the general public – legislation, of necessity had to be couched in simple language, and be reasonably comprehensible.

Likewise the annual audit reports from the Office of the Auditor General were written with public readership in mind. After all, the 1996 Constitution provided for this in s 188 (3). The documents therefore, also had to be simple and comprehensive.

Lastly, with regard to the Independent Regulatory Board publication, the language used was evidently clear and unambiguous, to ensure that public auditors, to which it was directed, would have no doubt in regard to what the guides advised.

The sections following hereunder, firstly sought to establish how and in what circumstances the system of capitalist democracy developed. The first question to attempt to answer in the initial discussions was: whether the system expanded or restricted the political system of democracy, as was then known in the civilized world. However, the crucial question which was at the centre of subsequent discussions was: whether there was always an alignment between the interests of a

ruling party, as represented by parliamentary representatives, and those of the electorate or the general public (the primary principal). The principal agency theory then came in handy, to assist in responding to this latter question.

The reader should bear in mind that South Africa's constitutional democracy did not provide for a Constituent Assembly kind of parliamentary structuring. Parliamentarians were in consequence, not direct representatives of the electorate, but that of its proxy, namely, the ruling party/parties.

With regard to the sub-samples of documents dealing with the scope of work of the Office of the Auditor General, as well as on legislative innovations - proximate access as provided by the sampled documents, was thought to be most appropriate - for several reasons. Primary amongst the reasons, was the realization that what the selected documents contained, constituted the official perspective, with one exception. The document authored by Wehner which gave an account of the best practices in Public Accounts Committees was the exception. The rest of the documents in the two categories therefore represented the views of the government of the day. Further, this researcher struck a deal with the Eastern Cape Administration, whereby State officials offered themselves for consultations where necessary, whenever available for such – thus enhancing the chances of verification, especially with regard to authenticity and credibility.

This researcher is mindful of the possibility that a reader could come up and argue that the Independent Regulatory Board for Auditors (IRBA) and the Office of the Auditor General of South Africa (and therefore, also its annual audit reports), are not State organs at all, or in the true sense of the word. A plausible response to the contention would be: that the fact that the government perpetually accepts the two

documents as crucial guides and indicators of good or bad health in public financial management respectively – attests to their complete adoption by the State.

Secondly, the economy of means to an end, never ranks low when humans engage in operations of whatever kind. Documentary research methods certainly economizes, that is, they are cost-effective. Further, Documentary methods also save time, particularly where the correct quantity and quality of relevant documentary sources of data were readily available.

The extent to which the OAGSA has already extended the limits of its scope of work to date is laudable, although the positive impact thereof is evidently infinitesimal. Of particular importance, the opportunities offered by the IRBA guide book, are promising of even better opportunities to further ingeniously extending the limits, as the need arises.

Lastly, engaging in matters of the law was a rather tall order for this researcher, as a layperson in the field. Nonetheless, he did what he could to zoom in and locate opportunities for exploitation, in not only recent case law developments, but also in relevant legislation. The idea behind the efforts was primarily to find ways in which the Office of the Auditor General could be empowered to thus render it more effective in realizing its objectives.

### **3.6.6 DATA REDUCTION AND ANALYSIS**

Needless to say, handling the data inevitably had to be through a thorough reading of the texts, data reduction, and an involved interpretation of the superficial meaning of the texts, and of necessity, also interpreting meaning in context in the

written texts, even in situations which otherwise contain no unambiguity in the literal sense.

#### **3.6.6.1 DATA REDUCTION**

All twenty texts in the core sample were therefore read closely, and important messages picked up meticulously, with a view to bringing out to the open, albeit in summary form - what (in this researcher's opinion) the authors intended to say, which supported the questions of this study.

In this way there was produced, through the process of data reduction as defined above - a summary of each text's important and relevant messages for analysis. This, as stated above, and in this researcher's opinion – is the phase of the analysis process, which denotes where all social researchers are conventionally in, when they begin to analyze their written versions of their participant-generated data - in most cases, through the popular big three research methods. Therefore data analysis approaches within each of the two sets of methods under discussion, inevitably converge from this point. However, advocates of the documentary research methods preferred a select few of these approaches, and highlighted them, as most appropriate (Ahmed, 2011: 5 – 6). They are briefly presented below, since this research study put them to good use.

#### **3.6.6.2 DATA ANALYSIS**

The total package consists of the three processes of: data reduction, already dealt with above, data display, drawing and verification of conclusions. The remaining two are each briefly introduced below.

### **3.6.6.3 DATA DISPLAY**

In this phase of the analysis, data representation is done, through displays of whatever form, graphical, or otherwise - to bring out patterns and themes, and whatever is arresting the attention of the analyst about the data. Textual representations are however, conventionally the most popular for qualitative data.

With regard to the system of capitalist democracy, themes considered most crucial for purposes of responding to the questions of the research study, related to: how the system originated; whether there was any virtues that the authors of the sampled documents acknowledged in the system; whether the authors were of the view that the two concepts of capitalism and democracy as applied - could co-exist without a huge effort on the part of the government of the day, to attain and sustain the correct balance between them; whether there was always alignment between the interests of the ruling party and those of the electorate under the system; and finally, whether there were identifiable weaknesses in the system of capitalist democracy, which adversely impacted on the citizenry.

Concerning the scope of work of the Office of the auditor General, themes and patterns of interest consisted of the following: What is the current scope of work? What patterns were discernable in the relations between the OAGSA and State auditees? What levels and patterns of implementations of the recommendations of the OAGSA were discernible? What audit findings recurred? What innovations did the OAGSA or other relevant authorities introduce to extend the scope, even if marginally - to enhance improvements in public financial management? What root causes were at the core of the poor audit outcomes reported?

Regarding current and feasible legislative innovations, the ingenuity of this researcher was challenged, certainly extended to the limit. In the circumstances, he had no choice but to scrutinize all applicable legislation, to identify potential areas for exploration, including identifying gaps in legislation, which did not assist the efforts of the OAGSA, which are aimed at improving public financial management.

Themes identified for exploration included: What developments were unfolding in case law in South Africa? What similarities were remarkable between the Office of the Auditor General and the Office of the Public Protector? What clauses were potential candidates for innovative work in relevant legislation? How identified gaps in legislation could be closed, to render the legislation impermeable? What cooperative arrangements could be struck between Parliament and the OAGSA in an effort to improve public financial management?

### **3.6.7 DRAWING AND VERIFYING CONCLUSIONS**

The analysis of the patterns and themes extracted from each text, as indicated above - certainly made it possible for some conclusions to be drawn, and whence some plausible answers to the questions of the research study.

Not surprisingly, the three stages of data reduction, data display, drawing and verifying conclusions can happen concurrently. Tentative conclusions do begin to take shape in the early stages, while the themes and patterns displayed in the data display stage, could just as well be already in the analysts' mind as she/he engages in data reduction activities. Coding and memoing on the other hand, have a tendency to compel analysts to record and display information as they plod along unraveling data in all stages of the analysis. Coding has already been defined earlier, whilst memoing as used in this report, entails the writing of notes

“by the researcher to record and develop ideas related to coding and analysis” (Braun and Clerke, 2013: 332).

All of the above, this researcher undertook naturally, minding all the time, the themes and patterns as enumerated above.

This was especially applicable in the close reading of the High Court and the Supreme Court of Appeal judgements, the Constitution, as well as the relevant statutes. The courts are indeed making law in South Africa, through their determined efforts to dispense justice in line with the Constitution and the law – without fear, favour or prejudice.

This researcher went through the judgements over and over again, before he could make sense of the points that the honourable judges were making. All along, note taking, coding and theme formulation had to be made and semantic patterns noted, including decoding the legal jargon used in the delivering of the messages of the judgements. The same was notable in the analysis of the legislative framework, and the annual audit reports of the Office of the Auditor General.

As noted earlier, the text analysis processes of this section are in later phases – in effect, an embodiment of what generally obtains in qualitative text analysis, and not unique to documentary research methods, or so this researcher reckons.

An important question for a reader to ask at these closing stages of this methodological discourse might be: whether there are any limitations that this researcher identified, in his close scrutiny of his method of choice - a choice made for the specific purpose of achieving the ends of the research study. The section below responds to the question.



### **3.7 LIMITATIONS OF DOCUMENTARY RESEARCH METHODS**

As gleaned from research literature, the world of scientific research was for a long time overwhelmed with the quantitative research paradigm, where there was an assumption, – that amongst others, there was ‘the reality’, ‘the truth’ out there - waiting to be discovered. This worldview of life, this “theoretical framework for making sense of the world” - was referred to as positivism (Braun and Clerke, 2013:334).

The community of researchers viewing research from this perspective - believed that the credibility of any research findings was established through examining its quality in respect of the criteria of *validity*, *reliability* and *generalizability* - concepts which played a central role in the paradigm’s then wide acceptance as the paradigm of choice.

There was in consequence, great difficulty in introducing, a then emerging research paradigm to the world of scientific research, namely, the qualitative research paradigm.

The quantitative research paradigm had by then put its roots deep down, thus strongly entrenching its position. Research scientists of the era were also skeptical about the supposed virtues of the emerging paradigm, particularly questioning its foundations, not only because it perceivably did not meet the criteria as listed above, but also questioning its capacity: to meet the critical requirement of objectivity, as well as the capacity to isolate and eliminate reasonably successfully, the so-called ‘nuisance’ variables (variables which would not go away and in consequence, weaken the arguments or conclusions of a research study). Its assumption of the

existence of multiple realities or truths was particularly not sitting well with researchers in the quantitative paradigm.

The point that this researcher is leading to in the above preamble is, that a cursory reading of the trends in the advocacy environment, suggested that the same situation was probably experienced in the advocacy of documentary research methods. Eminent researchers in the social (qualitative) research paradigm went to great lengths to find fault with the foundations of documentary research methods as primary methods of research. Thanks to their efforts, there is a perception nowadays that limitations do exist in this methodological approach to social research. A few of what this researcher considers to be common critiques of documentary research methods - are briefly discussed below, to enable the reader to evaluate on her/his own, the research's findings in the light of the limitations.

Five of the shortcomings of documentary methods, cited amongst others, by Denscombe (1998: 170) - are briefly discussed below. In effect the focus of their criticism is on the defining characteristic of documentary sources, namely, that they constitute secondary data.

### **3.7.1 THE DIFFERENCE IN PURPOSE**

Documentary sources were produced for purposes other than that of the investigation under consideration. This reality is generally regarded by critics, as thus rendering the documents unsuitable for use to advance the ends of the present research study. It is this researcher's opinion however, that although this may be true for many cases, the fact that the present researcher saw something in the documents which appeared to be capable of assisting in the provision of answers to

the questions of the her/his study – suggests that it might be reasonable to let the researcher determine through analysis and argumentation - whether the documentary sources/data are indeed unsuitable.

Take for instance, the case for or against capitalist democracy. This researcher implores the reader to assume for a moment, that the researcher came across a pre-existing document, titled: *Democratic Governments of the World* (supposing there were such a document). The document would certainly have been produced for other purposes. Would it be assisting the cause of her/his research to ignore the source, simply because she/he had had no part to play in its production or the production of the evidence which supported this claim? Or better still, could not this documentary source, taken together with a couple of similar others, present a strong case, whether for or against one political system of government or another – especially if the researcher meticulously selected material from the sampled sources, which is most persuasive to the reader, in support of a claim being made? Viewed in this light, this researcher is of the view that the limitation of the 'difference in purpose' - need not be strong for all cases.

### **3.7.2 THE RESEARCHER'S SUBJECTIVE OR BIASED INTERPRETATIONS**

The criticism around this limitation goes more or less like this: the researcher might intentionally or unintentionally engage in selective and biased interpretations of documentary sources, or even select particular sets of documents. Since this limitation is common for all social research methods – this researcher is of the view that it should not be relevant in this case. Opting for purposive sampling is the convention in qualitative research.

### **3.7.3 AUTHORS THEMSELVES BEING MANIPULATIVE**

For various reasons, authors (of documentary sources) themselves reserve the right to choose to leave some data out of consideration, while for reasons best known to them – they at the same time incorporate other data in their documents. This is a realistic possibility. Some evidence which could have weakened the worth of a potential claim by the present researcher - could have been left out of consideration in a documentary source – thereby resulting in a situation where a claim (by the present researcher) would thus appear to be unassailable.

### **3.7.4 PROPAGANDA BY SOME AUTHORS**

Some authors might consider it appropriate to use their documents to project to the general public readership, a particular political, historical, economic or some other perspective, in pursuit of specific objectives. Being capable of detecting such intentions is ingenious and desirable. This one therefore also remains a limitation worth noting.

### **3.7.5 THE PROCESS AND THE SOCIAL CONTEXTS OF THE CONSTRUCTION OF DOCUMENTARY SOURCES**

It sometimes happens that researchers ignore the processes that the author employed in putting together a document. It could for instance be a report on a piece of scientific research that the author passionately and meticulously undertook, to assist a politician who consulted the author on some aspect of her/his portfolio's mandate. The document could also equally be a conception and composition emanating from some broad but casual reading that the author undertook previously.

One other potential oversight could be: that the socio-political and cultural contexts prevailing at the time of the writing of the documents, were overlooked by the present researcher – as she/he engaged in various meaning constructions. This again is a realistic limitation to the study.

This researcher therefore again leaves it to the reader to gauge on her/his own volition, the extent to which documentary research methods as applied in this study - are in the light of the limitations cited above, trustworthy and credible.

## CHAPTER 4

### ANALYSES AND DISCUSSIONS OF FINDINGS

#### 4.1 INTRODUCTION

The overall purpose of Chapter 4 is to provide plausible answers to the questions of the research project, as cited in chapter one – through analysing and discussing findings emanating from the mode of research as proposed in the methodology chapter. The first question - although it might appear from some perspectives, to prime facie (on the face of it) be unrelated or be faintly related to the role of the Auditor General South Africa - a closer investigation of the nature and extent of the identified root causes of poor audit performance ultimately points to a need for a more focused analysis of the prevailing accountability relations within the political environment in democratic South Africa.

The first question under consideration in this section is:

*To what extent does modern capitalist democracy - such as South Africa's constitutional democracy - impact (if at all), on the status of the electorate as the primary principal ('principal' as used in the classical sense of the Agency Theory of economics)? Does capitalist democracy also impact, if at all, on accountability relationships between the primary principal, namely, the electorate, and those who govern? Could this brand of democracy explain, even if partly – the apparent lack of, or the lukewarm political and bureaucratic will to firmly act against poor audit outcomes in general, and recurring audit findings in particular, in South Africa?*

Capitalist democracy has been briefly introduced in Chapter 2 (Literature Review), although its substance, its fundamental features, as well as its virtues - were not

discussed in depth. The political system is consequently given special focus hereunder. With a view to linking capitalist democracy to a somewhat universal practice where the system is adopted - namely, the electorate's right to have its elected representatives directly accountable to it (vertical accountability to the electorate) - being significantly infringed upon, if not completely taken away, during the elected political representatives' term in government. The origins of democracy itself are reportedly (Nash, 2012: 13) traceable, inevitably to ancient Greece where the foundations of democracy were laid and nurtured.

The role that South Africa's Constitution of 1996 played in the broad range of horizontal accountability arrangements that it provided for, also receives attention in this chapter.

*Vertical accountability* refers to a socio-economic or political arrangement where one party (the principal) appoints or elects another (the agent) to act (in this case, to govern) on its behalf, which (agent) is conventionally expected to report or account to the principal. On the other hand while *horizontal accountability* refers to an arrangement common in present day capitalist democracies, where institutions of government such as: parliament, constitutional institutions, the judiciary, and the executive - are constituted and given the responsibility to ensure, not only that the executive arm of government accounts to one or the other of the state institutions, or is held accountable at all times by them, but also that they all hold one another accountable for the exercise of their respective public powers.

Some aspects of the Constitution's provisions are singled out for scrutiny in ensuing sections of this chapter, with a view to bringing out the offending ones, in respect of

negatively impacting on the accountability relationships cited above - which arguably played against the accentuation of vertical accountability relationships with the primary principal, namely, the electorate.

Just as the Constitution of 1996 had directed, legislation which regulated the operations of the Office of the Auditor General of South Africa, was enacted, namely the Public Audit Act of 2004 as mandated. The Act, apart from what the Constitution already provided – added more provisions to the legislative and regulatory framework of auditing in the public sector, while remaining aligned to the Constitution, as it should. The question at issue in this discourse is: is the electorate still the principal for all practical purposes? If not when and where did it (the electorate) lose its status?

The rest of the chapter presents and critically analyses some pertinent matters relating to the work of the Office of the Auditor General of South Africa (OAGSA), which are at the core of the report's attempts to find answers to the questions of the research study. Matters such as the undermentioned come to mind: the mandate of the OAGSA, what audit findings have recurred over the last couple of years, stretching the limits of the OAGSA's mandate, case law developments, gaps in current legislation and irregular, unauthorised, fruitless and wasteful expenditures, the role and the impact of Parliament/SCOPA in containing poor audit performance; and exploring possible cooperative relations between Parliament and the OAGSA. In these analyses, the primary source of constant reference has inevitably had to be the root causes of poor audit performance in the public sector, as identified by the OAGSA itself.



## 4.2 CAPITALIST DEMOCRACY

Nash (2012: 22) traces the origins of modern capitalist democracy - as is known to date amongst the countries of the world which adopted the political system (capitalist democracy) - to the United States of America. It, reports Nash, all commenced with the 1787 Constitution of that country. Of particular importance in his account of the origins of the system – is his contention that the political system was never meant to strengthen democracy, nor was it described as democratic by the constitutions' founding fathers. It instead, Nash relates, was meant to do the opposite, that is, mediate, prevent, or limit the practice of democracy by the demos (the people) – in effect, thus presenting a mitigated state of democracy, relative to that which was once upon a time, practised in ancient Greece.

Nash presents his evidence, taking his citation from a book: *The Federalist*, authored by Hamilton, Madison and Jay, and interprets the text thus:

“*Federalist* number 9 describes the then (1787) proposed Constitution thus: to serve as a ‘barrier against domestic faction and insurrection’ exemplified by the Greek democracies, whose histories cannot be read without feeling ‘sensations of horror and disgust’ ” (Nash, 2012: 22 – in turn citing Hamilton et al, 2003: 35).

*Federalist* number 10 refers to the intention of the breaking of the ‘violence of faction’, where faction was defined thus:

“ a number of citizens, *whether amounting to a majority or minority of whole* [own emphasis], who are united and actuated by some common impulse of

passion, or of interests of the community' " (Nash, 2012: 22 – again he, in turn citing Hamilton et al, 2003: 43).

The focus of the argument is located in the intention to suppress or mediate what, a possible majority of the populace saw as common cause - if the Constitution's definition of 'faction' as given above, is anything to go by.

The reader would recall a reference from Nash, presented in the introduction to chapter 2 of this research report, where it was stated that the demos of Greece thought nothing of regularly calling its political representatives to assemble before them, to account for their use of power and authority vested in their respective offices. The consequences of an abuse of such powers and authority, included: "severe and immediate penalties", such as removal from office, and even banishment from the city state (Nash, 2012: 11).

Schwarzmantel (1995) concurs in his critique of his former teacher's writings, namely, R. Miliband, in his (Miliband's) book: *Capitalist Democracy in Britain*. He (Schwarzmantel) posits that:

"... the idea of 'capitalist democracy' as deconstructed by Miliband, operates with an idea of 'containment', or the limiting of popular pressure or influence 'from below' ".

Furthermore, Schwarzmantel states that in Britain, capitalist democracy gradually developed from the time of the passing of the Second Reform Act of 1867.

McMenamin (2004: 259) defines capitalism and democracy thus:

"Capitalism is an economic system in which 'the means of production and the capacity to work are owned privately and there are markets for both', ... [whereas modern] democracy is a political system in which the principal

decision makers are 'elected in free, fair and frequent elections in the context of freedom of expression, alternative sources of information, association autonomy and inclusive citizenship' ”.

Schwartzmantel (1995:211) further suggests that classical democracy (the ancient Greece form) presents:

“... a situation of popular power, in which the demos or people collectively, through established mechanisms and procedures, implement their will, or effectively exercise sovereignty.”

Put simply, capitalism ensures that economic (market) forces are permitted to play themselves out to the full for the benefit of the holders of the means of production and those with the capacity to work. On the other hand, modern democracy guarantees free, fair and regular, uncoerced elections, where there is free access to alternative sources of information, a variety of individual freedoms and human rights, including freedom of association and where there is universal suffrage - all this happening in a state where all citizens enjoy equal rights.

Reich (2007: unpagged (on 1<sup>st</sup> page)) states that:

“Three decades ago, a third of the world’s nations held free elections; today nearly two thirds do.”

It is thus estimated that two thirds of the world’s nations adopted capitalist democracy as at the date of Reich’s writing (2007). McMenamin (2004: 259) ascribes this in part, to the fall of European communism and the establishment of capitalist democracy in East-Central Europe. The sphere of influence of capitalist democracy is thus evidently engulfing the world’s nations.

Streeck (2011) asserts that:

“Democratic capitalism as practised nowadays, was fully developed only after the Second World War [from 1945], and only in the ‘Western’ parts of the world, [namely] North America and Western Europe.” – suggesting in other words, that it had all along, only been evolving, or developing.

As if to confirm the fears of the USA founding fathers of the 1787 Constitution and the British authors of the Act of 1867, - and placed in-between the two monumental events, that is, the advent of capitalist democracy in the two continents, namely, North America and the British Isles - the French Revolution of 1789 broke out and the excesses of the populace, the popular majority, played themselves out to the full in no time.

This researcher, hereunder returns to the thesis of the unfolding discussion thus far, namely: that the political system of capitalist democracy was intended to limit democracy, and not to extend it. The reader will learn that some authorities present capitalist democracy’s virtues, as part of their critiquing of the system. For instance, Schwarzmantel indirectly argues (1995: 211 - 215), taking cue from Miliband, that capitalist democracy was, intended to maintain a mutual coexistence between capitalism and democracy, in an attempt to optimise the benefits of both systems, that is, to push public gains up to a point where the benefits of both systems were maximised. This revelation suggests that there were to be trades off between the two systems, some compromises conceded here and there by each, if the optimum point were to be attained and sustained.

In the case of democracy, the trades off amounted to the electorate mitigating its position of being the principal, to the benefit of its parliamentary or elected representatives or the ruling party, as would be argued hereunder.

Proof of this state of affairs is to be found in the observation that in-between elections, there is by convention, only horizontal accountability as described above, and occasional vertical accountability, which (vertical accountability) is practised at the discretion of the elected representatives, and is often undertaken with a view to complying with legislation, which makes it mandatory for public participation to be seen to be in place (Constitution 1996, Section 59 (1) (a) (b), 92)). What little participation is allowed in-between elections, is definitely not vertical accountability as was practised, for instance in ancient Greece.

In effect there is in democratic capitalist governments nowadays, no fear - within the ranks of the elected representatives as they go about governing or engaging in public participation of whatever form and nature (that they choose to effect) - that there would be a public dressing down for abuse of power or maladministration, or removal from office, or banishment from the State's territory. Capitalist democracy ensures that all these things do not happen to the elected representatives.

It was with these developments in mind when Reich (2009: [1]) asserted that:

“Capitalism, long sold as the yin to democracy's yang (capitalism as a sin quo non to democracy), is thriving, while democracy is struggling to keep up.”

That is, instead of the two systems being held in balance, complementing each other all the way to the optimal point - more often than not, democracy suffered neglect.

As has been stated above without expatiation, regarding the adoption of capitalist democracy with the purpose of achieving the ideal of the optimization of the public

benefits from both systems – there are apparently some benefits to be gained from incorporating capitalism into a democratic political system.

Reich (2009: [1 – 2]) argues this point very simply thus:

“Capitalism’s role is to increase the economic pie, nothing more.”

In support of this argument Streeck ( 2011: [1]) states that at the height of its performance just after the Second World War (1945), capitalist democracy (worldwide) provided extraordinary uninterrupted economic growth for two and a half decades. He however indirectly admits in the paragraphs that followed, that this was due largely to capital market forces overpowering democratic forces - up to a point in time where the democratic forces woke up from a deep slumber and fought back, with the result that economic growth began to ebb on average, from that point in time, and has never recovered ever since – due to the enduring conflict that seemingly, forever exists between capitalism and democracy.

Democracy’s concern and responsibility on the other hand, has always been how to fight for the growth and the safeguarding of the common good (Reich, 2009: 1st – 2nd pages), and later, especially after the merger of the two systems - how the economic pie that capitalism grows, could be equally shared amongst all citizens of a country.

Streeck (2011: [2]) wraps up his argument by stating that:

“... at least in the industrialized world, the Left [advocates of democracy] had more reason to fear the Right [advocates of capitalism] overthrowing democracy in order to save capitalism, than the Right had to fear the Left abolishing capitalism for the sake of democracy”.

In other words Streeck contends that there is at any given time, a greater chance in, at least the industrialized countries, that capitalism would overwhelm democracy, than there is a probability of democracy overwhelming capitalism.

Furthermore, Cook (2007: 40, in turn citing Wilson) is hereby also referenced - where he writes on the development of capitalist democracy in the United States of America, the country of origin of modern capitalist democracy as alluded to above - as further evidence in support of this question of this section. Cook (ibid) concurs with the modern capitalist democratic intent and practice of limiting direct control of the elected by the electorate, and declared that:

“... its [capitalist democracy’s] ‘true limitation’ was the ‘limitation of direct control’. The people should not govern; they should elect governors: and these governors should be elected for periods long enough to give time for policies not too heedful of transient breezes of public opinion.”

Evidently the populace was by design and from the beginning within this political system, not to disturb the governance process for the duration of the term of government of the elected representatives.

Vertical accountability was thus dealt a death blow.

The background to capitalist democracy as presented above, is an attempt to provide evidence to the reader, that the thesis of this section holds true, namely, that capitalist democracy was never intended to extend democracy, but to limit it.

The one measure of control over the elected, in their exercise of public power, that remains and universally recognised - is the establishment of horizontal accountability relationships and a further entrenching of same through a system of constitutions,

legislative measures and institutions that all collectively seek to strengthen accountability by Parliament and the Executive arm of government, to one or the other of State organs, such as: to Parliament, to the Constitution and the law, or to Constitutional Institutions – whenever Parliament and the Executive had to account on their use of public power vested in their offices.

#### **4.2.1 ELECTED REPRESENTATIVES**

Firstly, literature perused suggest that elected representatives were in most democracies, preferred since they were, perceived to be not only better informed and experienced, and endowed with the knowledge of what the needs of the populace entailed, but also had the wisdom to discern what was good for their country and its total body of citizens, in the short, as well as in the long run.

Through Federal number 35, Hamilton argues (or so reports Nash, 2012: 23 - 24) that given the chance to choose, working class members of the electorate often preferred non-working class people, "landlords, merchants and men of the learned professions" to represent them in government - because they (according to him) correctly discerned that they (the working class) lacked the capacity to promote their own interests. Nash (2013: 22) further reports that, Madison, one of the authors of the Federalist, argued thus:

"... the effect of representative government ... is to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens whose wisdom may best discern the true interests of their country"

Maskin and Tirole (2004: 1034) further argue that:

"... representatives are usually expected to do better [in making decisions which are in the best interests of the populace and the country]. As specialists



in public decision making, they are more likely than the average citizen to have the experience, judgment, and information to decide wisely.”

Cook (2007:50), cites an American author, one Woodrow Wilson, who wrote extensively on public administration in a modern constitutional democracy. Wilson was during his life time (1856 – 1924) a post graduate student and Professor at Johns Hopkins University, reportedly a prolific writer on public administration. Wilson was once in his lifetime, governor of the State of New Jersey in the US, and later President of the US. Cook (2007: 50) cites Wilson who categorically stated, and articulated the view that there was:

“... ‘a distinction between the rulers and the ruled’ – keeping the people in their place as it were – and distinguished between the average and the best of the citizenry as the vital constituent material of a well-governed democracy”.

Wilson was thus supporting the idea of preferring “the best of the citizenry” to govern, rather than ‘the common citizenry’. In the same paragraphs, Wilson further emphasised the view that the electorate was not to govern, that the elected representatives were to govern, and that the role of the electorate was to be critiques of the exercise of public power by the governors. The reader needs to take note, that this was the view of an evidently influential academic cum politician at the time, who through his views, helped shape the original capitalist democracy in the world, namely, that of the United State of America.

Muskin and Tirole (2004: 1035), cited George Clymer (from Charles Beard, 1913: 193) (Clymer was a delegate to the 1787 Constitutional Convention) thus:

“A representative of the people is appointed to think for, and not with his constituents”.

The two authors were therefore quoting verbatim, a delegate to the 1787 Constitutional Convention, namely, George Clymer. It is history today, that the 1787 United States Convention adopted Clymer’s motion. In line with this adopted motion, Muskin and Tirole further reported their later observation that the usual political science definition of ‘representative democracy’ followed Clymer’s perspective. In essence, this turn of events suggests that, one of the products of the 1787 United States of America’s Constitutional Convention - was that political representatives would no longer take instruction from their constituencies, as was the case in the pre-dating classical democracy.

In all the citations above, the point that is being made is: that the elected public representatives were presumed to be most suitable, better informed, wise, and presumed to know the interests and aspirations of both the electorate and their country – to thus be sufficiently enabled to govern; that the electorate in any case, preferred the elected, to represent them. Most crucial, the representatives were not obliged to consult with their constituents. They instead, thought for them.

Schwarzmantel (1995: 217, in turn citing among others, Michels and Rousseau) belabours the point further, adding another dimension to the argument, namely, that:

“... [however] the very process of representation itself creates an elite often different from the represented in their interests and concerns”.

This suggests that Schwarzmantel was of the view, that the electorate unknowingly produce an elite group out of the very representatives, that they elect to govern on

their behalf, who typically, often were not necessarily all drawn from the ranks of the “landlords, merchants and men of the learned professions” (Nash, 2012: 23-24).

Carried further, this means that the, as yet potential representatives at pre-election times, from whatever class - covertly developed different sets of interests and ambitions from those of the body proletariat, from the outset, which they pursue as soon as they got to govern. Nash cites Hamilton who referenced Brutus (presumed to be a pseudonym for Richard Yates) (Nash, 2012: 24, in turn citing Hamilton et al, 2003:456). Brutus was against the idea of electing representatives from outside the proletariat. He (Brutus) expressed the view (or so said Hamilton), that the elected representatives:

“... should bear the strongest resemblance of those in whose room they substitute” – apparently his (Brutus’s) own way of neutralising the ‘elitization’ of the representatives (refer to Schwarzmental above).

#### **4.2.2 ECONOMIC GROWTH, INCOME INEQUALITY AND POVERTY ERADICATION**

This section seeks to argue: that it is reasonable to understand, and consequently be persuaded to accept the contention, that capitalist democracy was well intentioned, considering that it sought to increase the economic pie; that there were unfortunately unintended consequences which came to bedevil matters with resultant economic inequalities, severely limited vertical accountability, that is, poor, minimal or non-existent accountability to the primary principal, namely, the electorate and associated corruption; that modern capitalist democracy greatly assisted in shielding the elected representatives from the wrath of the populace, in

cases where their ineptitudes, indiscretions and materialistic leanings were glaring and generally despicable.

A discussion of the concepts of economic growth, income inequality and poverty reduction provides an illumination of the virtues, the interdependences amongst the three concepts, and the dynamics of capitalist democracy. Also, it would be unfair to conclude on the basis of the discussions on capitalist democracy, that this researcher finds no virtue whatsoever in capitalist democracy, in support of Reich cited above.

To recap, Reich (2007: [1 – 2]) stated that “Capitalism’s role is to increase the economic pie, nothing more.”

Economic growth, which is a direct product of capitalism as cited above – is desirable and widely recognized as a necessary, although evidently not a sufficient condition for democracy to flourish. After all, who would argue against growing the economy (the pie), that all people want to have an equal share of? Some research studies have indeed been conducted to date, which established a measure of relationships amongst the three concepts, namely, economic growth, income inequality and the eradication of poverty for all citizens of a country. The ensuing paragraphs briefly discuss not only the virtues of capitalist democracy, but also the relations among the three concepts: economic growth, inequality and poverty eradication in South Africa.

Wolfgang (2011: [1]), as cited above, reports on how capitalist democracy was fully established only after the Second World War (after 1945), in “Western parts of the world, North America and Western Europe”, where it originated, and how economic growth flourished during this period, with an uninterrupted high growth rate for twenty five years to about 1970 – although it later turned out, that the growth was

largely, a result of capitalism outweighing democracy on the balancing scale. Remember, that if both systems were to hold firm, the greatest benefits from both systems, namely, capitalism and democracy - are generated at the point of equilibrium, at the optimal point. Away from this point, one of the systems is in a state of being overwhelmed by the other, and thus losing impact. This suggests that attaining, and sustaining the optimal point, the equilibrium - is in the best interests of both capitalists and democrats in this political system. However, the balancing act of attempting to climb to, and maintain the optimal point, is a precarious one, considering the dynamics of the relations amongst economic growth, income inequality and poverty eradication.

Westhuizen (2012: 34) writes that economic growth is conventionally linked to concomitant improvements in the living standards and welfare of a country's population. This view was supported by research studies reported on by the United Kingdom's Department for International Development (DFID, 2008), authored by Borat & Van der Westhuizen. Two other research papers throw more light on the complicated relationships amongst the three concepts of economic growth, income inequality and poverty eradication.

Bhorat and Van der Westhuizen (2007: 31 - 32) presented a research paper on South Africa's economic growth, poverty eradication and inequality. The report covered the period: 1995 to 2005, that is, the first decade of the democratic government in South Africa. Their findings read as follows:

South Africa had a positive consistent economic growth over the period. There was simultaneously a significant reduction in the poverty levels in the country, in absolute and in relative terms - or so the researchers reported. However, along with these developments, there was accompanying, a rise in income inequality levels. Furthermore, the economic growth induced the inequality, they concluded. To further complicate the situation, the inequality itself was also increasing, this finding amid media reports that South Africa had a

“... stubbornly high Gini Coefficient” (ibid) over the period under investigation.

However, despite the relatively “fairly healthy” economic growth, the country was experiencing only modest poverty reduction gains, the authors argued. The website: [www.encyclo.co.uk/define/Ginicoefficient](http://www.encyclo.co.uk/define/Ginicoefficient), defines the Gini Coefficient thus:

“A numerical measure of income inequality ranging from 0 (absolute equality) to 1(absolute inequality)”

The researchers concluded that the major constraint to a concomitant or proportional reduction in poverty levels consequent upon the relatively high growth - had to be “the very high levels of initial inequality in the society” (Bhorat and Van der Westhuizen, 2007: 31 - 32). Another of their interesting findings was that the income inequalities manifested themselves in line with the structuring of the different race groups in the country, emanating from the previous regime’s racist and oppressive governing policies.

Although the Department for International Development of the United Kingdom (DFID, 2008: 2 – 3) concurred with the aforementioned findings, and emphasized that extensive research studies had confirmed that economic growth effectively

reduces poverty levels within the ranks of a country's citizens – they however contended that positive economic growth did not necessarily cause inequality, nor did inequality necessarily slow down the eradication of poverty. They posit that:

“... whether higher inequality lessens the reduction in poverty generated by growth – is less clear” (ibid).

This finding by the DFID was clearly suggesting that more convincing research on this matter, still needed to be done.

On the contrary, the DFID argued - initial levels of inequality determine the rate at which the economy would grow, they (the DFID) – thus concurring with Borat and Van der Westhuizen. The DFID findings were based on extensive across-country studies, focusing on developing countries in the 1980's and 1990's.

A recent paper by Van der Westhuizen (2012: 33) further confirmed that a South African economic growth, estimated at an average 3.4% per annum over the same ten years as cited above - was responsible for a rise in the living standards and the welfare of the country's population, but that South Africa was an example of the countries of the world, where economic growth did not translate to concomitant or proportional reductions in poverty levels - but to only modest gains in this respect, for the majority of the population.

In summary, much as one would read a fairly satisfying prevalence of economic growth under the capitalist democracy from 1995 to 2005 in South Africa, from the research findings described above, the benefits to the majority of the population - did not amount to much, as could be noted from the above expositions.

The findings cited in the preceding paragraph, suggest that the initial inequality levels (originating from the previous repressive government) took the blame for the

modest reductions in poverty levels in South Africa. A further revelation that Westhuizen presents is, that contrary to Borat and Westhuizen's earlier findings in 2008, he (this time researching alone in 2012) found that the inequalities were this time around, within-races in nature, as opposed to inequalities having been initially reported (by Borat and Westhuizen, 2008) to be between-races in South Africa – all this happening in the years of the democratic rule in South Africa. This in effect, means that whereas initially (the so-called) white people and (the so-called) black people in South Africa were wide apart in so far as economic equality was concerned, the latest position was that, within the black communities themselves, there were the elite and the poor. Probably the same obtained within the white communities, that is, there were poor whites, as well as affluent whites within this population category.

In these instances it becomes evident that - although capitalism is a necessary condition for democracy to flourish, it certainly is not a sufficient condition, to advance the ideals of democracy - such as, to have the pie shared equally amongst the citizens of a country. Something more needed to be done, in addition to pursuing the strategic thrust of economic growth, if the fruits of democracy are to be shared equally by all and sundry.

The deliberations of the preceding sections constitute an attempt by this researcher, to illuminate his view that there were virtues that the advocates of capitalist democracy discerned in the political system, which made them take the resolve that it would be in the interests of forward looking countries to adopt the system.



### **4.3 THE PRINCIPAL AGENCY THEORY**

The principal agency theory (P-A theory) originates from economics. It only took off as a theory worth taking note of, in the 1960s and early 1970s (Eisenhardt, 1989: 58). Eisenhardt (1989: 58 – 60) further states that there arose, as the theory developed, two varieties, namely, the positivist agency theory paradigm and the principal agency research paradigm. The former is:

“... directed at the ubiquitous [everywhere present] agency relationship, in which one party (the principal) delegates work to another (the agent), who performs that work [for the principal]” (Ibid) - whereas the latter refers to a situation where:

“... researchers concerned themselves with [discovering] a general theory of the principal-agent relationship, a theory that can be applied to employer-employee, lawyer-client, buyer-supplier, and other relationships” (Eisenhardt, 1989: 60).

It also focuses on the actual contract of engagement, particularly seeking to find the optimal contract arrangement, that is, the contract where the interests of both the principal and the agent are optimised.

Furthermore, the principal-agency research variety in due course tended to be abstract and mathematical, unlike the positivist variety – and thus removed from involved popular critique by scholars in the field (ibid).

Adsera et al, (2003: 445) come into the discussion of the positivist agency theory, and presented a perspective alluded to earlier on, under the Literature Review chapter of this report. They posit that the positivist agency theory of economics, this time applying it to the public sector, suggests that, although elected political

representatives or their political parties, will often wish to act, and indeed often do act in the interests of the principal (the electorate) in capitalist democracies - they tended simultaneously to be inclined to grab some opportunities which present themselves (or which the agents themselves created), to act in their own interests. This tendency, the proponents of this theory named: the problem of '*moral hazards*' (a concept which is borrowed from the insurance industry). It resides in the proletariat exercising their right to elect people who appear for all practical purposes to be best placed to act in the interests of the principal, only for one to see them changing down the line, to instead, surreptitiously act in their own interests, which (interests) often differ from those of the represented principal.

Another problem of the P-A theory emanates from a situation where a principal appoints an agent who is not best suited for the position, because the principal did not have enough information about the agent prior to or during the consummation of the appointment contract. This problem is generally known as *adverse selection* (again a concept borrowed from the insurance industry).

The citations above all suggest that elected politicians, the majority of whom are wise, well informed, experienced and professioned - do at times find occasion to act in their own interests, which (interests) often are at variance with those of the electorate.

Some illuminating critiques of the principal agency theory (p-a theory) were produced over the years, by such writers as Perrow (1986), Mitnik (1992), Eisenhardt (1989) and Shapiro (2005). Shapiro enriches the debate and argued, viewing the theory from a sociological perspective - that actors of the theory - are

not just principals or agents, as economists often conveniently assume. Many situations are easily identifiable in real life, particularly in government - where many actors are both principal and agent at the same time (2005: 267). Such actors therefore wear two caps at the same time. While they are watching over their shoulders to check if their principal's interests are not downplayed or jettisoned by their agents, they are simultaneously open to opportunities arising in the course of their agency operations - to put to good use for personal benefits.

Attila (2012: 710) posits that at the core of the two P-A theory problems cited above, namely: the problems of moral hazards and adverse selection - are information asymmetries. By *information asymmetries* (own emphasis) is meant the existence of situations where the principal (in this case, the electorate) lacks knowledge, either of the intricacies of the work that the agent has to perform for her/him, or of what the agent knows, or does not know. This root cause of the problems, namely, information asymmetries - serves in part, to illustrate that principals are not always in the driver's seat. They can, and are often manipulated or outmanoeuvred by their agents.

To further drive the point home to the reader, Shapiro argues that:

“When agency relationships are at their most asymmetric, the basic logic of classic agency theory breaks down” (2005: 277).

In such a situation, the principal (in the case, the electorate) knows very little about anything. This suggests that the agent is in such circumstances firmly, but surreptitiously in the driver's seat, She/he at opportune moments, shirks her/his responsibilities towards the electorate, and the electorate's interests – and instead occupies her/his mind with figuring out how far to go in working for own benefit (to

the disadvantage of the principal) – thus exemplifying the problem of moral hazards at play.

#### **4.3.1 SOME CRITIQUE OF THE P-A THEORY**

Three sociologically-inclined writers on the P-A theory, namely, Shapiro, Perrow and Mitnik - proffered interesting critiques of the classical P-A theory of economics, some of which have already been cited above. Nevertheless, nowhere did each say that the theory was to be dismissed outright as devoid of truth, but did raise pertinent issues which when considered – one realizes that the critiques do cast doubt on some aspects of the economic perspective of the theory, particularly the underlying assumptions.

Firstly, the sociologists believed that the assumptions of the economic perspective of the theory were unrealistic, and consequently needed to be minimized, to bring the theory closer to reality (Shapiro, 2005). This is understandable, especially when one considers the fact that the economist's original exposition of the theory, had more of a mathematical bent than otherwise. That is, the theory initially had to be made amenable to mathematical rigour. Furthermore, as cited above, actors in the theory often were both agent to one, and principal to another, all at the same time. This was particularly the case in the public sector.

Also the assumption that the principal occupies "the driver's seat" was not true in all agency relationships. For instance, in situations where there were great information asymmetries loaded against the principal, there was bound to develop opportunities where the agent rather than the principal, was actually in the driver's seat.

Perrow (1986) also questioned the persistent focus by economists, onto the agency side of the theory, where it was claimed that self-interest and opportunism were bound to come from. His contention was that there existed principals who directly or indirectly, caused agents to develop self-interest and opportunism, such as the principal type who shirks responsibility or cheats, or who uses accompanying privileges or discretion for their own ends. Perrow further argued that not all agents were of the cheating type however, that there still existed people out there who were other-regarding and even altruistic.

Mitnik (1992) raised the issue that the economic perspective of the theory largely ignored context, particularly the social context. Agency relationships occur in diverse and broader social contexts, which can for instance, exacerbate or correct information imbalances - and thus respectively promote or restrain self-interest and opportunism. He simultaneously argued that perfect agency was nevertheless unachievable or rare, even with all that the economists suggested as counteraction. At best, one can more often than not – manage to only minimize the recalcitrant imperfection.

On the other hand, Eisenhardt (1989) stated that there were two distinguishable varieties of the P-A theory, namely, the positivist agency stream and the principal agency research stream. The principal agency research variety was rather too mathematical and therefore abstract, so much that there consequently, presently exists minimal critical literature on its theoretical foundations. This variety was therefore largely unavailable to the rank and file members of the community of social researchers.

Lastly another interesting critique was provided in Shapiro's paper (2005), where she questioned the social reality of dyadic (one to one) agency relationships, particularly the type where there was an assumption of the existence of one principal for each agent. There exist many situations, she contended, where an agent would serve many principals, some of whom could have conflicting interests.

#### **4.4 RATIONAL CHOICE THEORY**

Rational choice theory has been introduced in Chapter 2. It established that more often than not - people make rational choices whenever they act, or fail to act, or delay acting. At the centre of the rationalizing, is either the desire to improve one's economic circumstance or wealth, and/or the desire to enhance general approval from targeted sectors of the public. It originates from economics and behavioural psychology.

According to this theory, agents (of the p-a theory) will at opportune moments, rationalize that it would work in their best personal interests to act in certain ways, rather than in others – in order to benefit in the one or the other of the two fundamental motivations for human action, cited above.

Rational Choice theory was also not without critiques. Once again sociologists were hard at work to demonstrate that there exist situations where individuals and social groups alike, acted in somewhat irrational ways - if by rationality is meant the thoughtful self-interested act of weighing gains against losses in available options, and making choices amongst alternatives, and then resolving to act.

Scott (2000) argues that the situations where gains and loss deliberations played no part, are exemplified by people for instance choosing to belong to groups, such as labour unions where there are no “close shop” agreements, that is, where non-members would also benefit from agreed wage increments negotiated by a union. There is clearly no monetary gain in belonging to such a group.

He also cited situations where people follow societal norms or moral principles, in resolving to act in one way or another. People do also engage in group behaviour with obvious negative consequences for the individual. In both these cases calculation of losses and benefits did not readily appear to have played a role.

On the other hand, Hooker (2011) expresses the view that, although economists did not imply directly or indirectly, that rationality translated to ethicality in rational action – self-serving rational action does prove to sometimes be promoting the welfare of others in the short and in the long run. – and this researcher concurs.

By and large, it nevertheless cannot be argued convincingly, that in this increasingly capitalist/neoliberal world – the incentive of reward and approval does not make sense, in explaining rational choices that individuals make throughout their earthly lives.

## **4.5 SOUTH AFRICA’S CONSTITUTIONAL DEMOCRACY AND THE PARTY SYSTEM OF GOVERNMENT**

### **4.5.1 CONSTITUTIONAL DEMOCRACY**

South Africa’s constitutional democracy is a parliamentary democracy, with a president at the helm, who is perceived in some quarters (Makhanya, City Press, 20

December, 2015: 14), to be overly powerful, and who is elected by parliament to be head of government. Writing on the *State of the South African Presidency*, Butler (2013:4) does not disagree with Makhanya's perception that South Africa has an overly powerful sitting president - but does nevertheless submit that all capitalist democracies characteristically have powerful presidents or executive heads of State. Therefore until an investigation is conducted to firmly establish the claim, this author is not convinced that South Africa only amongst democracies of the world - has an overly powerful president.

South Africa's constitutional democracy is a capitalist democracy for all practical purposes, if for instance, the government policies, commonly known as Growth, Employment and Redistribution Plan (GEAR) and Accelerated and Shared Growth Initiative for South Africa (ASGISA) were anything to go by.

Further evidence is to be found in the fact that, there was built into the system of government, mechanisms and measures, checks and balances - to keep the executive arm of government and parliament, in check and accountable. The mechanisms however largely entrenches horizontal accountability. The measures consisted in making the executive to account to Parliament, and both Parliament and the executive to be accountable to, and subject to the rule of law and the Constitution.

Furthermore there are also several Constitutional Institutions, which all account to parliament - and which are intended to serve to ensure that the same executive arm is held accountable.



#### **4.5.2 THE PARTY SYSTEM OF GOVERNMENT**

The South African Constitution provides for a situation in South Africa (as in all similar democracies), where the constitutional democracy that the country has adopted, provided for a party system, where the ruling party governs on behalf of the electorate (the principal).

Section 19 (a), (b) and (c) of the 1996 Constitution guarantees to a citizen, the right to form, belong, recruit members, and campaign for a political party of one's choice.

The consequence of this choice is that if one chooses a political party and votes it in, to govern - she/he has to live with that choice for the duration of the party's term in government. In particular he/she has to accept that the party's policies will prevail over the period. Taken to its conclusion, the logic of the argument translate to: that choosing to vote any political party into power amounts to accepting a governing policy package, as well as a leadership (of the party), to govern on the voter's behalf. Furthermore the system of capitalist democracy will ensure that the electorate (the collective of voters) does not govern, but that the party politicians do.

It should therefore make perfect sense, to expect a ruling party to govern, on behalf of the electorate. However, a crucial consequence of this state of affairs, is that accountability by the legislative and the executive arms of government would in large measure - be to the party, rather than to the electorate. As if to entrench this position, South Africa's constitutional democracy did not provide for a Constituent Assembly or Parliament.

All members of parliament are conventionally selected and deployed by their respective political parties, in accordance with party lists that are drawn up by all

participating political parties during general election periods. Therefore, parliamentarians are for all practical purposes, party appointees, including the sitting president. Consequently the parliamentary representatives thus have no option but to first and foremost, be accountable to their respective political parties. This should be no surprise, since it is thus legislated in South Africa, that the electorate vote - not for individuals during general elections - but for political parties of their choice, thereby handing the right to govern, to the contesting parties. Carried to its logical conclusion, it is therefore within the political parties' rights, to choose its own people, to be the electorate's (or is it the political party's?) parliamentary representatives.

Going back to Shapiro's contention (2005: 267) from a sociological perspective, that there is prevailing, widespread existence of doubling up as 'both principal and agent at the same time' within the ranks of actors in the p-a theory. Situations which exemplify this revelation, abounds in the public sector. The reader is asked for instance to consider the case of South Africa.

The electorate elects a political party to govern on their behalf. The party in turn selects parliamentarians to represent the interests of the electorate (or is it the party's?) in parliament. The President is elected by parliament. She/he in turn elects the Cabinet, which through this arrangement, is obliged to be accountable to the sitting president. All these are examples of 'doubling up as both principal and agent' situations. Only the electorate can in the circumstances be viewed as undoubtedly, and unconflictingly - the principal. This researcher names the electorate - the primary principal. These 'doubling ups' relations certainly confuse the roles, and conflict the players.

The critical questions to respond to at this point are: Did capitalist democracy impact on accountability relations in government? Did it play a role in promoting the tendency on the part of the representatives, to 'surreptitiously act in their own interests' – as predicted by the positivist agency theory? It would appear that the most plausible answers to the questions in the circumstances are: a full yes. Butler (2011: 1) attests to this view when he states that:

"A State that is not accountable to citizens can also become a vehicle for the advance of individual and sectional interests at the expense of wider social objectives and the emergence of corruption".

The introduction of the political party system of government, and the granting to a majority party, of the authority to govern, and all the doubling up of roles as described above indeed impacted on accountability relations in government. Capitalist democracy made possible a situation where a majority party had lawfully delegated to itself, the right to govern in the stead of the electorate – thus creating a principal-agency relationship. To further complicate the situation, there are added to the system by the 1996 Constitution, the multiple layers of 'doubling up' p-a theory actors as depicted above.

Firstly, as contended above, South Africa's 1996 Constitution made provision for a political party system of government, an act which served to further complicate the principal-agency relationship (refer to argument above) – since a political party is in the final analysis, certainly not the same as a collection of elected representatives - even if the representatives are viewed as subgroups, each representing its own political party.

Of critical importance in this argument however, is the observation that a political party's interests do differ in some fundamental respects from those of the electorate, on behalf of which the parties govern. As provided for in the relevant legislative framework, a party selects its parliamentary representatives. However, each such party has its own culture, traditions, policies, aspirations and ambitions – not necessarily identical to those of the collection of representatives, or individuals who make up each group or subgroup in parliament. Nor are the political party interests, aspirations and ambitions necessarily aligned to those of the primary principal. In this way, a new agent is created (the political party), which therefore differs in some significant ways from the group of representatives, or the electorate. The parliamentarians in particular have of necessity to account to their respective parties. It should in the circumstances therefore, not be surprising to discern a trend amongst elected representatives, to develop a tendency to account more to their parties, than to the electorate. The foregoing deliberations taken all together, afford this researcher at this point of the discourse, to respond to the last sub-question of the first question of this study – as stated below.

Secondly, the capitalist component of the system has more often than not, overwhelmed democracy, to such an extent that the individual interest almost consistently trumped democracy's concern for the common good (Reich, 2009: 4<sup>th</sup> page).

Lastly, and as alluded to above - the view of the role of a political representative which prevailed from the onset of capitalist democracy was - that the representative "thinks for, and not with his constituents". That is, she/he was under no obligation

to consult with the electorate as she/he carried on with her/his governing responsibilities.

The last sub-question of this section (all sub-questions forming part of the first question) of this study is: where does the lukewarm interest in committing to, or the insignificant desire to commit to consequence management in the public sector originate?

The p-a theory and the rational choice theory discussed in Chapter 2 above, and in this Chapter - act together to account for the turn of events.

The political system of choice, namely, capitalist democracy (named constitutional democracy in South Africa) - locks the electorate out of government, and gives the authority to govern to political parties instead.

The doubling up of roles thus commences. The parties in government need to ensure that both their respective interests as political parties, and those of the electorate receive priority. Each party naturally desires to be in government for as long as the electorate would permit – for a very long time, if they were to have their way. The party in government, or the various parties in government soon develop ways in which to endear themselves to the electorate, as well as of ensuring that their covert (relative to the electorate) interests are also advanced. It often turns out that the respective interests of the parties gravitate more or less to those of the most powerful players in each party.

The p-a theory categorically posits that where information asymmetries are at their worst, the political parties, rather than the electorate come to be in the driver's seat. This development is in stark contrast to the fundamental tenet of the p-a theory,

namely, that the principal is, or at least ought to be - in the driver's seat in principal agency relationships.

Once safely, but surreptitiously perched on this advantaged point, rational choice theory of human action comes in to provide a plausible answer, The theory the fundamental drivers (of the rational choice), namely, the desire to improve one's economic circumstance, and/or the desire for approval or recognition by targeted sectors of the public, as explaining the rest of the tendencies on the part of representatives. In essence, individual interests come into the fray, and further complicate the already complicated principal agency relationships – there are therefore the following interests: the electorate's, the political party's, and divergent individual interests to contend with.

The South African population is characterised by a large proportion thereof being excessively disadvantaged - educationally and economically. The probability of the existence of extreme information asymmetries therefore is huge. Opportunities for exploitation therefore inevitably abound.

Another of the downsides to the extreme information asymmetries is that, in these circumstances, anyone who wakes up the electorate from its deep slumber - should naturally earn the wrath of the political parties, as well as their backers within the electorate.

Furthermore, few people voluntarily desire to bring to an end - opportunities for own economic advancement and for earning approval or recognition. The neo-liberalist leanings of capitalism ensure that this human tendency endures.

#### **4.6 THE ROLE AND THE RESPONSIBILITIES OF THE OFFICE OF THE AUDITOR GENERAL OF SOUTH AFRICA (OAGSA)**

The second research question of this study reads as follows:

*To what extent can the OAGSA, assist and support the Legislative and the executive arms of government in the exercise of their powers to deal with audit underperformance in general, and the perennial challenge of recurring audit findings in particular, as identified by the same OAGSA? That is, 'assist and support' within its (OAGSA's) current legislative and regulatory framework?*

The focus of the initial discussion will be more or less in the form of an argument to the effect that: the OAGSA did not only manage to creatively carve a space (within its legislative framework), within which it did more than the legislative provisions themselves, would appear to be permitting at first reading, but also did more than could be expected of an external auditor, who is expected simply, "... to audit and report..." (1996 Constitution, s 188 (1); PAA, s 4 (1)).

The reader might remember one context within which public auditors operate, namely, one of the principles of auditing - that 'one may not audit an activity, which she/he has been instrumental in setting up, or developing (Code of Professional Conduct for Registered Auditors, 2009: s 190, s 191). This requirement serves only one purpose, namely, to enhance independence and objectivity. A public auditor therefore, is under an obligation to avoid at all costs, being perceived as too close to being 'hands on' in the operations of an organization, that she/he may have to audit, sooner or later. Also, the societal impact of a few notable instances of public financial mismanagement, also feature in the discussions of this section.

Lastly, the critical question regarding whether there is room for more cooperation between Parliament/provincial legislatures (SCOPAs/PACs) in an attempt to improve audit outcomes, becomes the major focus of the rest of the section. The oversight roleplayers in the continuum of structures which exist primarily to ensure improvements in public financial management and probity in South Africa, taken together with their impacts consists in: the Office of the Auditor General of South Africa (OAGSA), Standing Committees on Public Accounts (SCOPAs) (alias Public Accounts Committees (PACs)), the various State Treasuries, Municipal Public Accounts Committees (MPAC), Executive Leadership of auditees, and Audit Committees. The ensuing discussions allude to some of these structures as well.

According to information in their annual audit reports, the Office of the Auditor General nowadays visits auditees every quarter of a financial year, on invitation, thereby affording the auditees opportunities for consultations and guidance on matters relating to improving audit outcomes. The two pieces of legislation which directly regulate the work of the Office of the Auditor General of South Africa, are: the Constitution (1996: Section 188 - 189), and the Public Audit Act of 2004, both as amended. There are also several other statutes, albeit not so directly applying.

The analysis and discussions of this section therefore entail focusing on such aspects of the work of the OAGSA, as: the nature of the mandate seen in the light of relevant literature on auditing in government institutions; the substance of the recurring audit findings; the nature and the extent of the financial loss to the public, in absolute and in relative terms as revealed by the OAGSA, consequent upon recurring poor audit performance; the nature and the impact of



parliamentary/legislative efforts on the improvement of audit outcomes thus far. The explorations all are circumvented by the current (2015) legislative framework.

## **4.7 THE MANDATE OF THE OAGSA AND GUIDELINES TO AUDITING IN GOVERNMENT**

### **4.7.1 THE MANDATE**

Section 188 of the 1966 Constitution, read together with Sections 3 to 5 of the Public Audit Act (PAA) of 2004, describe and delineate respectively, the nature and the scope of work of the Office of the Auditor General of South Africa (OAGSA or the Office).

A closer reading of the two legal documents reveals that the substance of the mandate is contained in the phrase: "to audit and report on ..." (Constitution, Section 188 (1); PAA, Section 4 (1)).

### **4.7.2 THE INDEPENDENT REGULATORY BOARD FOR AUDITORS' GUIDE BOOK**

However, a guide book compiled jointly by the Independent Regulatory Board for Auditors (IRBA) and the Committee for Audit Standards (CFAS) (in which the OAGSA is represented) – actually saw and read more into the audit framework for the mandate of the OAGSA, as provided for in the enabling legislation. The guide book thus effectively extended the limits of the current legislative provisions, which delineate the scope of work of the OAGSA.

In an attempt to assist registered auditors' understanding of the roles and responsibilities, and the scope of work of the Office of the Auditor General of South Africa in the public sector - a more focussed presentation of the mandate of the

OAGSA in the public sector - is given in the IRBA guide book (IRBA, 2012). The publication is named: *Guidance for Auditing in the Public Sector*.

In presenting what could be described as an attempt to put meat in the skeleton or framework as provided for by the referenced legal documents, the IRBA publication expands on the substance of the mandate as alluded to above, thus: (IRBA, 2012: 9):

“Auditing in the public sector is not an end in itself but rather an indispensable part of a regulatory system that aims to reveal deviations from accepted standards and violations of the principles of legality, efficiency, effectiveness and economy of financial management early enough to make it possible to take corrective action in individual cases, to make those accountable accept responsibility, and to obtain compensation, or to take steps to prevent – or at least render more difficult – such breaches.”

As alluded to in the introductory chapter of this research, there is in the above citation (to recap), reference to accountability, making people who are responsible to accept their responsibility, taking corrective action, and obtaining compensation. This illumination of government auditing however, respects the exclusive right of Parliament, to decide which institutions of government it would, if need be, delegate the responsibility to see that all the above enumerated thrusts are implemented.

Furthermore, there is also reference to the work of the OAGSA being only a means to an end, a statement which implies that the Office achieves the end, presumably through cooperating with other government roleplayers, who are also mandated to achieve amongst others, the same end – which in this case, is sound public financial management. This, taken to its logical conclusion, suggests that the ultimate goal of

the Office of the Auditor General of South Africa, is to bring about (working in close cooperation with other relevant organs of State), a full attainment of sound public financial management.

On reading the IRBA further (2012: 67 - 77), one notes that there are *fundamental requirements* (own emphasis) that the Office of the Auditor General has to meet, if it is to successfully deliver on its mandate. With a few exceptions, this researcher assumes that some of the messages of the fundamental requirements are sufficiently clear, to thus need no elaboration. Also, since other requirements do not form part of the focus of this research, they will likewise not form part of the discussions below. Those that do, this researcher presents them below.

#### **4.7.2.1 FUNDAMENTAL REQUIREMENT 1**

*"Responsiveness to changing environments and stakeholder expectations without compromising independence"* (IRBA, 2012: 67)

The focus of the South African population has since independence, shifted from fighting for a democratic rule in South Africa, to presently mobilizing, not only for the socio-economic development of the poor masses of the population, but also for a proportional share of the fruits of democracy by the poor majority. The increasing incidence of service delivery protests by communities, as well as labour union strikes all over South Africa in recent years, attests to this turn of events. In other words, South African poor communities are not satisfied with the current progress made in the advancement of their cause. The Auditor General needs to therefore be well aware of these developments, while engaging in the process of executing its mandate.

While at this point this researcher contends that: although progress has been made since the dawn of democracy, in advancing the cause of the poor masses in South Africa, even more (progress) could have been made – if irregular, unauthorised, fruitless and wasteful expenditure (the expenditures as defined by the OAGSA ), was eliminated, or at least minimized in public financial management.

#### **4.7.2.2 FUNDAMENTAL REQUIREMENT 3**

*"Credible source of independence and objective insight and guidance to facilitate foresight and continuous improvements in government"*(IRBA, 2012: 68)

There is general consensus amongst South Africans that for all practical purposes, the OAGSA largely meets this requirement. Proof of this is to be found, not only in the paucity of media reports on the ineptitudes/indiscretions of the OAGSA, but also in the paucity of legal cases where the Office was taken to court for lack of independence, of objectivity, of professionalism, or for not working to the best of its ability to improve audit performance, to more or less accurately project the future - and ultimately to improve public financial management.

#### **4.7.2.3 FUNDAMENTAL REQUIREMENT 4**

*"Empowering the public to hold government accountable and responsive, through objective information, simplicity and clarity of the message, and convenient access to audit reports and messages in relevant languages"*(IRBA, 2012: 69)

Taken to the limits of its intended meaning, the requirement seeks to emphasise the need for the Office of the Auditor General, to engage in educational campaigns, to inform and conscientize the general public, about the state of audit outcomes, and thus public financial management in the South African public sector, to enable them to deal with the empowering knowledge as they see fit.

The 1996 Constitution makes provision for this publicity in s 188 (3). The critical clause reads thus (referring to the annual reports from the OAGSA):

“... all reports must be made public”

The Public Audit Act (2004; s 5 (2) (c)) further provides that the Auditor General may:

“... do any other thing necessary to fulfil the role of Auditor General effectively”.

It is therefore reasonable to understand the innovations provided in the IRBA guide book, in the light of the latter clause.

One may wonder at this point, whether the Office of the Auditor General of South Africa has sufficiently disseminated the information on the results of its audits to the general public, or whether it has ensured that the audit messages have filtered down to the lowest levels of societal structure.

The following sections will focus on Fundamental Requirements 5 and 6.

#### **4.7.2.4 FUNDAMENTAL REQUIREMENT 5**

*"Enabling the legislature, one of its commissions, or those charged with governance to discharge their different responsibilities in responding to audit findings and recommendations and taking appropriate corrective action" (IRBA, 2012: 70)*

To this researcher, the requirement suggests that, it is envisaged that the OAGSA will at all times cooperate with the legislative function or “those charged with governance”, by not only supporting them through providing them with, and analysing and interpreting audit reports, whilst simultaneously presenting detected root causes for underperformance - but also through assisting them (parliament and the executive) in the discharge of their responsibility to improve public financial

management. In particular this researcher reckons that this translates to the OAGSA being at hand at all times, to assist the legislature and the executive when called upon to do so, or as current legislation would permit – to rein in audit underperformance and recurring audit findings. Implicit in the wording of this requirement, is also the assigning of the responsibility to “take appropriate corrective action”, to the legislature, and (assisted by) the executive arm of government.

#### **4.7.2.5 THE SIGNIFICANCE OF:“... PARLIAMENT... A PARTNER IN ENCOURAGING CORRECTIVE ACTION” AND “TO ACTIVELY ASSIST THE RECIPIENTS [AUDITEES]”**

Two extracts from requirement 5 (IRBA, 2012: 70), evidently presented as illuminations, read as follows:

*“... Parliament provides an important forum for the use and discussion of SAIs’[supreme audit institutions, alias Auditor Generals] findings and is also a partner in encouraging corrective action”.*

*“SAIs should assist in ensuring that a cycle of accountability with systematic follow up of appropriate parliamentary recommendations”.*

The ensuing analysis focuses on the terms: ‘partner’, ‘encouraging’ and ‘assist’.

The word ‘partner’ is generally assumed to refer to ‘a significant other’ in a relationship, whether the two or more parties are of equal or unequal status in the relationship. The fundamental requirement is that they, more often than not, cooperate with each other/one another.

‘Encouraging’, from ‘encourage’ has a variety of meanings, all depending on context.

One sense which is the focus of this analysis - is taken from the Oxford Dictionary.

Encourage (verb transitive): meaning 'to stimulate the development of ...';

'Stimulate' (also verb transitive): meaning 'to act as stimulus (noun), origin (of stimulus) from Latin, meaning: 'goad, spur, incentive';

'Goad': meaning 'a spiked stick used for driving cattle, provoke to action or reaction'.

Therefore, besides the pleasant sense in which the word 'encourage' (verb transitive) is often used, meaning: 'to give support, confidence or hope to ...', there exists another, which is not so pleasant, if the term 'goad' and 'spur' are anything to go by. Some kind of enforcement is implied in the 'unpleasant' sense.

Further let the reader consider the phrase "to assist". The Oxford Dictionary elucidates as follows:

According to the Oxford Dictionary, the verb 'assist' bears the meaning:

'to help by doing a share of work or by providing money or information'.

This researcher contends that, in assigning meaning to a word, one considers the context in which she/he wants to use it in, or in which it is imperative to use it.

Hereunder an account is cited, taken from the Eastern Cape Research Unit document referred to earlier on in this discourse - to illustrate the significance of context in interpreting meaning of a word, a phrase or a group of words.

Several members of the national SCOPA (PAC) visited two provinces in Canada (EC LRU, 2014: 8 – 9), to learn how Public Accounts Committees operate over there, to learn about best practices as it were. Canada is a first world country. For instance, in two consecutive corruption perception indices (Transparency International, 2014 – 2015) ratings perused - Canada ranks much higher than South Africa, in terms of

levels of corruption. Furthermore, and in their own words, the authors of the Eastern Cape research document (ECLRU, 2014: 8) admit, that:

*“While there are few reports of financial irregularities and negative audit opinions (own emphasis) by the Auditors General in both [Canadian] provinces, more emphasis is placed on value for money when reporting for oversight.”*

Canada is not in the same category as South Africa, in so far as audit performance is concerned, as is notable from the above extract. In other words, Canada has no compelling reason to want to significantly improve audit outcomes amongst its auditees, and in particular, to arrest recurring audit findings within the ranks of their auditees. The auditees in Canada are evidently well performing. There is therefore probably not much that South Africa or the Eastern Cape Province stand to gain from visiting that country, at least in the sphere of accelerating improvements in audit performance, and especially arresting recurring audit findings – both reportedly priorities of the South African Auditor General currently. The South African delegation would certainly learn something if Canada had, only in the reasonably near past - attained the status that it was at, during the time of the visit.

This researcher implores the reader to assume for a moment, that the Independent Regulatory Board for Auditors advises both the OAGSA and its Canadian counterpart, each to be “a partner in encouraging corrective action”, and also to “... *assist in ensuring that a cycle of accountability with systematic follow up of appropriate parliamentary recommendations*” ( IRBA, 2012: 70). It is further suggested that the reader assumes that the two supreme audit institutions in the two countries, are advised to “assist” the legislative function.



If they had to choose between the two meanings of 'encourage' illuminated above, one pleasant and the other unpleasant – which one would be most appropriate for Canada? And which one for South Africa? It is reasonable to deduce that Canada would most likely have chosen the pleasant meaning of 'encourage', to effect further improvements in its institutions' audit performance. Canada did not have much, if any, at stake, or to lose in so choosing. It makes sense to conclude therefore, that, for South Africa, a more appropriate choice would be the unpleasant meaning of 'encourage', if its audit performance were to be enhanced within a reasonably short time - considering the current state of audit performance in the country. There is, as the reader will remember, an implication of enforcement in the unpleasant meaning. Although 'assist' is evidently self-explanatory, it is worth emphasising that the active involvement of the OAGSA in assisting, and becoming a cooperative partner to Parliament/legislatures in turning around the situation of poor audit performance - is imperative. In particular it is intended in the above mentioned requirement. The audit reports from the OAGSA, generated over the years demonstrate convincingly, that the OAGSA has done enough 'pleasant encouragement' or guidance provision, to possibly have exhausted this avenue, as of to date.

#### **4.7.2.6 FUNDAMENTAL REQUIREMENT 6**

*Following up on audit findings and implementation of recommendations*

*"SAIs should report on the follow-up measures taken with respect to their recommendations" (IRBA, 2012: 71)*

Requirement 6 is also deserving of further analysis, to determine the most appropriate meaning, interpreted in context - in respect of the predicative phrase: "following up on ...".

The Free Dictionary defines to 'follow up' variously thus:

"To increase the effectiveness or enhance the success of ... by further action; to pursue or investigate (... evidence) closely; to continue (action) after beginning especially to increase its effect". The Thesaurus on the other hand, defines the meaning of the predicative thus: "to increase the effectiveness or success of ... by further action".

Running through the definitions, one picks up the following common perspective in three of the four definitions, namely: to increase the effectiveness or success of ... by further action. It is therefore reasonable to conclude that the OAGSA is having as a fundamental requirement, the responsibility to be a catalyst in increasing the effectiveness of the Parliamentary efforts to improve public financial management. For this objective to be achieved, the OAGSA would evidently be well advised to hold the auditees accountable in one way or another, as part of its provision of assistance to Parliament or the various legislatures in the country. However, the Office of the Auditor General working alone, cannot achieve the aforementioned objective. The cooperation of parliament is indispensable in the achievement of the objective. After all, Parliament has the power to enforce corrective action - and not the OAGSA.

#### **4.7.3 ASSISTANCE AND INCENTIVES FROM THE OAGSA**

This researcher has also come to know from the OAGSA reports, as well as from information booklets issued by the same Office – that the OAGSA had established good working relations with all auditees over the last couple of years. Regular interactions between the two parties have become common knowledge in the corridors of government. The reader should take note however, that the OAGSA's

professional conduct and integrity in these interactions, evidently remained intact notwithstanding.

Regular visits to auditees, often done quarterly whenever practicable - were undertaken, to allow an opportunity to auditees to raise issues relating to the implementation of audit intervention plans. Also, national and provincial awards, namely, the Vuna Awards, intended to appreciate excellence in public financial management - were introduced to the local sphere of government in South Africa as far back as 2003. They were particularly intended to celebrate the exercise of innovation and excellence in fulfilling the service delivery mandate. Worth noting however, is the realization that the awards did not originate from the OAGSA.

This researcher is however, not aware of similar awards being introduced to the national and the provincial spheres of government, to date. Neither is he aware of an impact evaluation study being undertaken on the Vuna Awards, over the 12 years of their existence. Silence on these matters in the OAGSA reports, proffers sufficient evidence that the Office did not give a thought to this avenue for innovation.

Nevertheless, a celebration of excellence in whatever form cannot fail to motivate, when properly conceived, planned and executed. Granted, that one could find fault with the purpose, the process, the rewards, the funding sources and so on, of excellence awards – one would still have to agree that if all the aforementioned anomalies were to be corrected – any form of celebration of excellence would under normal circumstances - achieve its intended purpose.

Leaders of State institutions would be motivated to work harder, with a view to joining the exclusive club of high achievers. After all, being a member of the celebrated class - certainly would take care of both the human desire of gaining approval from selected sectors of society, as well as that of improving one's economic circumstance.

#### **4.7.4 SPECIFIC DIRECTIVES AND DETERMINATIONS FROM THE OAGSA**

Section 13 (3) (a) and (b) provides for the Auditor General to, from time to time make different determinations or issue directives on matters relating to audit standards setting.

In line with this provision, a booklet named: "*Directive Issued in Terms of the Public Audit Act ...*" in the Government Gazette of the 28 November 2011, determines, or directs the scope of work of the Auditor General thus:

The OAGSA, has to render her/his government audit work, in such a manner that the final report on a government institution, would

"... reflect views on:

- financial information, through the auditor's opinion on the financial statement
- performance against predetermined objectives, reflected as findings under the *Predetermined objectives* heading in the *Report on other legal and regulatory requirements* section in the auditor's report,
- compliance with applicable laws and regulations relating to financial matters, financial management and other related matters, reflected as findings under the *Compliance with laws and regulations* heading in

the *Report on other legal and regulatory requirements* section in the auditor's report,

- internal control, as indicated by the deficiencies in internal control that resulted in:
  - qualifications of the opinion on the financial statements
  - findings on the report on predetermined objectives
  - findings on compliance with laws and regulations"

(OAGSA Directive, 2011: 1).

The first bullet relates to the auditing of financial statements. Of essence in this aspect of the work of the OAGSA, is the determination of the extent to which the financial activities, the financial position as of a specific date, and the record of cash flows of the institution, over the period under review to the date - are fairly presented, and whether the financial statements comply with applicable Accounting Standards.

Although the OAGSA is not currently mandated to conduct performance audits, in line with the Government Gazette directives as alluded to above – the second bullet suggests that the Office is nevertheless, mandated to audit reported performance information to determine the extent to which it is reliable and useful. The AGSA Directive (2014: 3) suggests that, of critical importance to the determination of performance against pre-determined objectives - is the primary requirement to determine firstly, the extent to which the annually reported performance information is reliable and useful, before a conclusion could be drawn, on the extent or measure of achievement against pre-determined objectives.

Compliance with the legislative and regulatory framework is rather broad, and specifically directed at the legislative and regulatory framework governing the recording, reporting and auditing of financial information. The third bullet deals with this aspect of work of the AGSA.

The last point (bullet) on the scope of work of the AGSA throws more light on the significance of institutional internal controls in the improvement of audit performance. Section 10 of the AG Directive for 2014, requires that, a report on internal controls should reflect on three critical determinants of internal controls, namely: *leadership; financial and performance management; and governance* (own emphasis). The Addendum (OAGSA Directive, 2011: 11) to the Directive, further states that attributes and behaviours of leadership, such as setting the tone on: the culture of

“... honesty, ethical business practices, good governance, oversight and monitoring, and establishing IT governance framework”, et cetera – serve as criteria.

With respect to financial and performance management, critical activities, such as implementing: proper record keeping, controls of daily and monthly financial activities and records, reviews and monitoring of compliance with legislation, controls over IT systems, receive priority - as primary determinants of proper financial and performance management.

Critical activities in *governance* (own emphasis) consist in ensuring that there are “appropriate risk management activities” (ibid) in place, and that there is an adequately resourced and functional Internal Audit Unit (OAGSA Directive, 2011: 11). This researcher adds: and also a functional audit committee.

## **4.8 THE SUBSTANCE OF THE RECURRING AUDIT FINDINGS**

### **4.8.1 PUBLIC FINANCE MANAGEMENT ACT (PFMA) REPORTS**

This researcher considers it most appropriate to approach the identification of the substance of recurring audit findings, through tracing the nature of the root causes (as identified by the OAGSA over the years) for poor audit performance, over the last ten years of democratic rule in South Africa.

In the OAGSA's general national PFMA (Public Finance Management Act) report for the 2004/5 financial year (OAGSA, 2005: 2), there are the statements under the Section: *Internal Controls* (own emphasis), that:

"Managers do not manage and need to be held responsible for underperformance...". The report further states that

"... although controls appear to have been designed in national government, they still have to be effectively implemented ... full implementation is essential".

Similarly the national general 2005/6 PFMA report, informs that accounting officers/authorities are to blame for poor internal controls.

Thus in the first two years of the ten years under review, poor implementation of internal controls were at the core of poor audit performance in PFMA reports compiled by the Office of the Auditor General of South Africa. And, as reported under the section of this report, which deals with public financial management – accounting officers/authorities are accountable for this aspect of work, since managing internal controls is their responsibility (PFMA, 1999: s... ).

Taking the reader a few years down the timeline, the PFMA report for the 2007/8 financial year (OAGSA, 2008: 1) reads thus:

“The critical message we want to highlight to the legislatures and the executive, is that it is possible to obtain an unqualified audit report if the internal controls are in place”.

The impression one gets on reading this extract, is that the challenge of poor internal controls prevailed, three years down the line.

Another three years down, in 2010/11, the root causes cited collectively once again, pointed to weak management. They were presented as consisting in: poor leadership tone; poor systems and processes of internal control; poor oversight and monitoring; and no effective governance measures (OAGSA, 2011; 49 – 50).

It would appear that later on, the OAGSA was realising that the recurrence of poor internal controls manifested itself in the failure by management, to implement recommendations for corrective action, issued annually from the Office of the Auditor General. The 2012/13 and the 2013/14 PFMA national audit reports respectively lament:

“The slow response by management in addressing the root causes of poor audit outcomes ...” and “The slow response of accounting officers and senior managers in addressing weaknesses in internal controls ...” (OAGSA, 2013: 56; (OAGSA, 2014: 32).

The above mentioned consideration, namely, poor internal controls - the reports present as a root cause, among a couple of others. Along with this root cause, another made a perennial appearance in the later years of the ten year period (2010/11: 79; 2011/12: 63; 2012/13: 25; 2013/14: 32), namely, that consequences did not often follow indiscretions, ineptitudes and transgressions in public financial management – with all these committed under executive management’s watch.



Also making regular appearances from earlier on in the reports, for instance, the 2004/5 OAGSA report (2004/5: 6), was the factor (root cause) often cited, of instability in the filling of critical top management posts, particularly the Accounting Officer and the Chief Financial Officer positions. There were either high turnovers, or long periods of no permanent appointments in the positions, or so said the reports.

#### **4.8.2 MUNICIPAL FINANCE MANAGEMENT ACT (MFMA) REPORTS**

The national general MFMA report for 2004/5 states from the outset in its foreword, that the local sphere of government in South Africa presents the greatest challenge in respect of audit outcomes (2004/5:1). Furthermore the foreword mentioned that there was the initial formidable challenge of even extracting reports (financial or non-financial) to audit, from local government auditees. The challenge was particularly compounded by a general capacity challenge in the sphere of government, the OAGSA's foreword also reported. For instance, 131 (46%) of the 284 municipalities then (2004/5) in existence, had submitted their statements for the 2004/5 financial year by the 31 March 2006 - that is, nine months after the 2004/5 financial year had ended (OAGSA, 2004/5: 2). Only 41% of municipal entities managed to submit in that year.

It is also interesting to note that from the outset, National Treasury (2004/5: 4) resolved to classify municipalities into three categories, using their budgets and capacities as criteria. There were consequently: high capacity, medium capacity and low capacity municipalities. Considering that the Public Audit Act of 2004 had just taken effect, this researcher reckons, that to focus much on the findings of the early years' MFMA audit reports from the OAGSA, in the ten year period under review (2004/5 to 2013/14) - may not be in the best interests of this research project. The

lack of capacity to even put the annual financial and non-financial reports together, coupled with general incapacity challenges referred to above, constitute the basis for this view. This researcher therefore resolves to rather commence his further investigation of recurring MFMA audit findings from the 2007/8 financial year. The reader should note however, that one finding has already been identified in local government (MFMA) audits, namely: general lack of capacity, which initially manifested itself in an inability to even compile acceptable annual financial and non-financial reports for auditing purposes, which inevitably precipitated into late or non-submission of the annual reports.

The 2007/8 MFMA report indicates that there was significant improvement on the submission challenge, since 86% of the municipalities and 84% of their municipal entities submitted their statements and reports ultimately in this year – a great improvement from the 46% and 41 % for municipalities and their entities respectively, as noted in the 2004/5 MFMA report.

Furthermore, an interesting statement is given in the report (2007/8: 6), namely, that:

“The financial statements of municipalities situated in the provinces of Eastern Cape, Free State, Limpopo, North West and Northern Cape have the greatest number of disclaimer of opinions, while the majority (six out of nine) of those that received adverse opinions were from the Eastern Cape”.

The Eastern Cape is the focus province of this research study, to assist the memory of the reader.

Despite the initiation of “Project Consolidate” by the Department of Provincial and local Government in the 2004/5 financial year, to attend to the capacity challenge in municipalities - the 2007/8 report mentioned three outstanding causes of poor performance in the country, namely: general lack of capacity; poor governance; and leadership involvement or to be exact, lack thereof, especially with regard to attending to recommendations from the Office of the Auditor General. Three years of effort (2004/5 – 2007/8) on the part of government to capacitate municipalities, did not achieve much, it would appear.

The MFMA report for 2010/11, three years later, presents the root causes for poor audit performance as: leadership of municipalities which lacks minimum competencies and skills; lack of consequences for poor performance; and councilors and mayors who do not take ownership of the role of monitoring the implementation of internal controls (2010/11: 13).

Lastly the latest MFMA report (2013/14) presents the same root causes as found in the 2010/11 report, namely, incompetence on the part of key executive management; lack of consequences for transgressions and poor performance; and failure by executive management, to attend to internal controls (2013-14: 13), particularly recommendations from the Office of the Auditor General.

Perusing the two sectors of government as discussed above, and taking a closer view of the root causes as presented in both the PFMA and the MFMA reports cited in this section – this researcher considers it most appropriate to integrate all the root causes and come up with three overall causes as follows:

- Lack of sufficient political will on the part of politicians and hence executive management, to improve audit outcomes.
- Incompetence, or lack of sufficient will on the part of executive management to implement internal controls, whether these be due to instability in key executive positions, or to the appointment of underqualified people to man these positions,
- Lack of consequences for poor performance or transgressions relating to public financial management

These are the same three root causes that this researcher presented in Chapter I of this report. Herein therefore embedded, is the basis for recurring audit findings, that is, the basis is embodied in the fundamental root causes as summarized above.

#### **4.8.3 IRREGULAR, UNAUTHORIZED, FRUITLESS AND WASTEFUL EXPENDITURE**

The researcher in this study, thought it appropriate to summarize for the reader, the extent of irregular, unauthorized, and fruitless and wasteful expenditure, as reported on, in the PFMA and the MFMA reports of the Office of the Auditor General of South Africa (OAGSA). The motive behind the presentation, is the desire to inform the reader on the magnitude of public finances, that could have gone to providing for more of the sought after public goods and services delivery benefits, that the majority of poor communities in South Africa engage in endless protest marches for, around the country - in quest for social justice, in these matters of their social lives. The focus of the statistical presentation would be the financial years, commencing from the 2008/9 year, to the 2013/14 year, a total of six financial years - as presented in the national PFMA and the MFMA annual audit reports.

**TABLE 1: STATISTICS FROM NATIONAL GENERAL PFMA REPORTS**

<b>Financial Years</b>	<b>Irregular Expenditure</b>	<b>Unauthorized Expenditure</b>	<b>Fruitful and Wasteful Expenditure</b>	<b>TOTAL</b>
2008/9	1.3 bn	3.8 bn	407 m	5.507 bn
2009/10	11 bn	6.6 bn	437 m	18.037 bn
2010/11	22.1 bn	2.9 bn	1.6 bn	26.6 bn
2011/12	27.4 bn	2.7 bn	1.8 bn	31.9 bn
2012/13	26.4 bn	2.3 bn	2.1 bn	30.8 bn
2013/14	62.8 bn	2.6 bn	1.2 bn	66.6 bn
<b>GRAND TOTAL</b>	<b>151 bn</b>	<b>20.9 bn</b>	<b>7.5 bn</b>	<b>179.444 bn</b>

**TABLE 2: STATISTICS FROM NATIONAL GENERAL MFMA REPORTS**

<b>Financial Years</b>	<b>Irregular Expenditure</b>	<b>Unauthorized Expenditure</b>	<b>Fruitful and Wasteful Expenditure</b>	<b>TOTAL</b>
2008/9	2.43 bn	2.44 bn	117.5 m	4.9875 bn
2009/10	4.14 bn	5.00 bn	189.0 m	9.329 bn
2010/11	10.00 bn	4.30 bn	260.0 m	14.56 bn
2011/12	9.82 bn	9.79 bn	568.0 m	20.178
2012/13	2.91 bn	9.20 bn	815.0 m	12.925
2013/14	11.74 bn	11.40 bn	0.69 m	23.14 bn
<b>GRAND TOTAL</b>	<b>41.04 bn</b>	<b>42.13 bn</b>	<b>1.95 bn</b>	<b>85.12 bn</b>

With a view to placing in context, the expenditure categories and amounts analysed in the foregoing tables, to assist the reader's understanding of the negative impact thereof – this researcher provides a perspective, a hypothetical situation from the Department of Human Settlements in South Africa below. The expenditures from

both the PFMA and the MFMA tabled information, come to a grand total of R265.21 billion, over the six year period.

Housing is one of the basic needs of the poor communities in South Africa. One needs only look at the mushrooming of shacks (wood and corrugated iron structures serving as dwellings for poor people) all over South Africa, which have since become the eyesore in the breadth and length of the country's main cities' landscapes. Focussing on the provision of indigent (for the destitute) housing units therefore, assist in alleviating a most challenging need of the poorest section of the South African population.

Minister of Human Settlement in South Africa, namely, Lindiwe Sisulu, briefed the media (7 May 2015) shortly after the delivery of the 2015/16 national Department of Human Settlement budget in Parliament. Amongst other allocations or budget votes, she indicated that an amount of R30.9 billion (1 billion = R1000 million) has been allocated to building indigent housing units, that is, houses for the very poor in South Africa. This amount obviously included infrastructure in the designated residential areas.

The researcher is of the considered view, that if it is assumed for a moment, that whatever has been expended - which is categorised as fruitless and wasteful expenditure - were to be channelled to this Department, to build indigent housing units, the magnitude of the impact of only this category of erratic expenditure, would begin to make sense. That is, the point that is made here would be vastly illuminated. The magnitude of the erratic expenditure over the period, would thus hopefully be seen in context. Irregular and unauthorised expenditure are left out, because the Auditor General has often informed that these categories of

expenditure, may not necessarily be indicative of corrupt behavioural trends, or may not always constitute expenditure resulting in some form of ill-gotten personal gain. Furthermore, the category identified and considered most appropriate to focus on is self-explanatory, namely: fruitless and wasteful expenditure. It therefore constitutes totally unnecessary expenditure. There can therefore be no doubt about its fruitlessness or wastefulness.

In the same media briefing, the Minister informed that the quantum (allocated amount per housing unit) for an indigent housing unit was R160 573.00 in 2014. She further revealed that this was a quantum leap from the 2009 allocated amount of R77 868.00, about which (leap) she was not happy. She, in the circumstances revealed her Department's resolution to strategically fix the quantum of R160 573 for an unspecified future period.

The statistics translate to a situation where, if her Department were to be granted the amount that was classified as fruitless and wasteful expenditure over the six years portrayed in the table above, namely, R10.14 billion - 10.14 billion/160 573 houses would have been built in the 2013/14 financial year. This translates to 63 149 indigent houses. In fact, definitely more houses than the 63 149 units would have been built considering that in previous years, the cost per indigent house was much less. For instance it would have provided shelter to 10.14 billion/77868 indigent families in 2009, that is 130 220 houses for indigent families. Further, considering only irregular expenditure, and assuming that only 10% of the irregular expenditure over the six years under consideration was fraudulent - produces the unbelievable number of an additional 192.04 billion/160573 indigent housing units, to have been built in 2015. The figure works out to 1, 195 967 housing units in



2015, and 2,473 070 houses in 2009. The previous Human Settlement Minister, Tokyo Sexwale, reported at a New Age Breakfast meeting in 2013, that the housing backlog in South Africa stood at 2.1 million (News24, 2013: 7 June). The provision of houses to this extent, would certainly have come very close to wiping out the backlog, as has been estimated.

#### **4.9 THE MANDATE OF THE PARLIAMENT, RE: PUBLIC FINANCIAL MANAGEMENT**

Section 55 (2), (a) of the 1996 Constitution, provides that parliament holds the executive arm of government accountable for its exercise of public power, through ensuring that it reports annually to the legislative body. Likewise, the Office of the Auditor General is mandated by section 55 (2) of the Constitution cited above, read together with section 10 (1) and (2) of the Public Audit Act 2004 - to report annually to parliament on the results and the issues relating to its mandate, namely, to audit government institutions and report thereon.

A committee of parliament, and nine similar committees for the nine provincial legislatures, each named, the Standing Committee for Public Accounts, and each commonly referred to as SCOPA, alias the PAC (Public Accounts Committee) - represent parliament and the nine provincial legislatures of the country - in its role to have oversight of the public financial management of government institutions (Eastern Cape Legislature Research Unit, 2014: 2). The executive arm of government, through the national Treasury and its subsidiaries, namely, the nine provincial Treasuries - has ultimate responsibility to oversee public financial operations of all government (Constitution, 1996: s 216; PFMA, 1999: s 6). The function/responsibility is in turn lawfully and appropriately delegated to the

accounting officers and authorities of all government institutions (Public Finance Management Act, 1999: s 38 – s 40; Municipal Finance Management Act (MFMA), 2003: s 58, s 60), in their capacities as parties who are directly involved in day to day operations of government institutions. The various SCOPAs or PACs have in effect, oversight of all the role players as cited above.

#### **4.10 THE ROLE OF STANDING COMMITTEES ON PUBLIC ACCOUNTS/ PUBLIC ACCOUNTS COMMITTEES (SCOPAS/PACS)**

The question from a discerning mind would at this point be, with so many role players, all looking after the public funds, namely, the nine provincial Treasuries, and the national Treasury, the accounting officer/authority for each State entity, in some way also the Auditor General, and Parliament/legislatures through SCOPAs, and a recent creation, namely, Municipal Public Accounts Committees (MPACs) – how come there is still audit underperformance to the extent as revealed in the foregoing sections, including the illumination, which is presented in the problem statement of this research project?

What have the SCOPAs/PACs/MPACs been doing all along? How have the bodies been carrying out their mandate over the years? Responding to the questions, constitute the focus of the next couple of paragraphs.

Needless to say, a response to the first question of the foregoing paragraph is embodied in the root causes as cited earlier on in this discourse. The root causes provide a plausible explanation of the poor audit outcomes in the country.

Establishing Standing Committees on Public Accounts is one of several tools that parliament, legislatures and municipal councils use in South Africa, to oversee the financial operations of government (Legislature Research Unit, Document 1, Eastern Cape, 2014: 2). It is a concept which was copied by Commonwealth nations (of which South Africa is a member) from Britain, where there was such a committee from around 1861, as part of Britain's parliamentary structuring, (EC Legislature Research Unit, 2014: 2 - 3). The Eastern Cape Research Unit further however reports, that an earlier committee of this nature already existed in Denmark, about a decade before the British one (Ibid).

The rest of the expositions of this section is devoted to answering the question: Why do these committees exist, and how do they operate?

Tracing the origins of Public Account Committees (PACs), Wehner (2002: 3) concurs with the Eastern Cape Legislature's Research Unit's version of the origins of this committee. He posits that

"The Gladstonian reforms in Britain gave rise to the creation of a PAC in 1861" (Ibid).

He further categorically states (2002:4) that

"... it is the primary duty of the Public Accounts Committee (PAC, [otherwise called SCOPAs for State departments, and MPACs for municipalities in South Africa (PACs in general)] to examine the reports of the Auditor General... it [the PAC] is asked to investigate whether spending did comply with the legislature's intentions and expected standards, and also whether value for money was obtained".

This Wehner's paper, namely: "*Best Practices of Public Account Committees*", emanates from a comparative study of legislatures across the world, in search of best practices for PACs. An illuminating extract from the paper (Wehner, 2002: 4) sums up the nature of the relationship between PACs and offices of the Auditor General in the participant countries, thus:

"While the PAC depends on high quality audit reporting to be effective, the auditor general in turn requires an effective PAC to ensure that departments [all auditees] take audit outcomes seriously."

The "to be effective" qualification in respect of PACs, taking cue from Wehner's immediately preceding citation (to the one above), obviously refers to the investigations to establish whether spending did comply with the legislature's intentions and expected standards, and also whether value for money was achieved. The citations actually, not only summarise the primary role of PACs, that is, in this researcher's view, but also demonstrate the interdependencies between the two institutions.

Having noted that the above extracts aptly, albeit implicitly present the overall objective of PACs, the reader's curiosity could at this point, naturally be diverting her/his attention, towards finding out what exactly do PACs do, in their attempts to achieve their objective, with high effectiveness.

It is common knowledge in South Africa that accounting officers together with other members from their executive management ranks, are summoned annually, to appear before Standing Committees on Public Accounts (SCOPAs), and grilled on aspects of audit reports relating to their institutions, which are deemed to have been unsatisfactorily performed. Such interactions are also often open for coverage by the

media. The hearings are followed by the drafting of a PAC/SCOPA report and resolutions, for submission to both the legislature and the executive arm of government, as well as to the auditee (Wehner, 2002: 14 -15).

The essence of the effort to improve public financial management inevitably lies in the manner in which the PAC/SCOPA goes about following up on the implementation of its resolutions, as directives from SCOPA/PAC are often referred to. Wehner's paper reports that responses (to the PAC/SCOPA resolutions) from the government or the auditees, were not

“... always a satisfactory mechanism for ensuring that the committee's recommendations are acted upon” (2002: 15).

Coming back to the South African situation, the Eastern Cape Legislature's Research Unit (ECLRU) document (2014: 4 - 12) gives an account of the various ways in which SCOPA (alias the PAC) strives, to render itself effective, in the execution of its mandate. SCOPA Eastern Cape's modus operandi is no different from that of Wehner's comparative study – and this is to be expected since South Africa participated in the survey. However, SCOPA Eastern Cape (EC Legislature Research Unit, 2014: 7) went further. It “more recently” (2013) enlisted the services of the Eastern Cape Treasury to monitor

“... the implementation of audit improvement plans of all departments and public entities and report to the Public Accounts Committee quarterly”.

The well documented PAC work processes are crucially, and disappointingly - silent on what enforcement mechanisms are put in place, to ensure that failure to implement its resolutions attracts consequences. The Wehner paper and the EC Legislature documents alike, display this shortcoming. On the other hand, the extent

of detail given in the presentation of PAC work procedures and processes, gives the impression to a discerning reader, that more emphasis is placed on religiously following the procedures and processes, rather than on ensuring the effectiveness of the procedures and processes themselves - in achieving the overall objective of the PAC, namely, improving public financial management, and particularly accountability therefor.

Taking cue from the Wehner paper (2002: 5), the PAC is the highest ranking committee of the legislative function, to which all institutions of government are accountable for their use of public funds in their care, in its capacity as a committee of the legislature. The PACs, to reiterate, have oversight of the implementation of the national/provincial/municipal budgets, as their primary function. Wehner posits that

“The PAC has traditionally occupied a heightened status over other committees in the legislature” (2002: 3).

This is not surprising since public finances facilitate the delivery of all public goods and services. Such an important committee of Parliament as the PAC, should ideally have ensured that it had delegated to itself, (should have at its disposal) - mechanisms for enforcement of its resolutions. Without the pillar of enforcement in the three pillars, cited in the definition of accountability in Chapter 2 of this report – public institutional accountability is not complete, is lopsided and thus compromised. To gauge the extent of the impact of the PAC’s efforts, to bring about a turnaround in public financial management, one needs only look at the rate of improvements in audit outcomes. The various SCOPAs (PACs) and MPACs have had infinitesimal impact indeed, over the years, to date.

#### **4.10.1 REFLECTIONS ON THE ENFORCEABILITY OF PAC RESOLUTIONS**

A closer reading of the documents which expatiate on the role of PACs as covered by the investigations/documents cited above - reveals that PACs largely operate from their offices literally - their work is in the main, office-based - as is the case needless to say, for all members of legislatures. De Vos (2012: 172) states, in turn citing a report of an Ad Hoc Committee of Parliament (2007: 37) while remarking on the procedures followed by parliament, when state organs table their annual reports in Parliament, that:

“The Speaker refers these reports to the relevant portfolio committee [after parliament has dealt with them].... Usually these referrals are made without instructions to report back or to take specific action unless there is a legal requirement or a special request to do so.... It is unclear whether it is parliament or Chapter 9 institutions which should follow up on recommendations/resolutions made [by Constitutional Institutions, other state organs and SCOPA itself]...”

This researcher reckons that this is where the gap lies, where action which should ideally be taken, to ensure that the Auditor General’s recommendations, as well as SCOPA’s own resolutions get implemented - is amiss. As soon as their reports are dealt with by the PAC, and the public interrogations are done – state institutions evidently relaxed, in the knowledge, gained from experience, that nothing much would be visited upon them – probably until close to the next PAC confrontation, a year later, when they would begin to panic again. Otherwise how would one explain the high level of recurrence in audit findings over at least the last ten years surveyed in this research study? No wonder SCOPA in the Eastern Cape resolved in 2013, to

solicit the assistance of the Provincial Treasury, to monitor the implementation of audit improvement plans by auditees, and report to SCOPA thereon quarterly (SCOPA, 2014: 7).

As it appears to be at present, the only sanction or consequence that poor audit performers suffer, is the public spat, the widely media-covered interrogations, after which the cases are seemingly put to rest. This is a gap which urgently needs parliament's attention, this researcher reckons - as part of their (parliament's) consequence management strategies. The soliciting of Provincial Treasury's assistance referred to above, is therefore a step (albeit small, for lack of detail) in the right direction. The Treasury however, does not have the power to enforce implementation.

#### **4.11 CURRENT LEGISLATION AND RECENT DEVELOPMENTS IN CASE LAW**

The third research question to respond to in the discussions of this section reads as follows (refer to chapter 1):

*If need be, how could current legislation be reviewed, to empower the OAGSA to be more effective in realizing its objectives? That is, what legislative amendments could be effected, if need be, to not only empower the OAGSA, but to also enhance the cooperative efforts of Parliament and the OAGSA, in their efforts - which seek to ensure that there is an accelerated improvement in audit outcomes, and thus improved financial administration in the Public Sector in South Africa?*

Two court judgements which directly relate to the operations of the Office of the Public Protector, but are according to this researcher, equally applicable to a highly cooperative operation between the Office of the Auditor General's work and the



Standing Committee on Public Accounts/Public Accounts Committee of parliament (SCOPA/PAC) - are cited in the ensuing discussions. Firstly a Western Cape High Court Division Case No.: 12497/2014 (Democratic Alliance vs the South African Broadcasting Corporation Ltd and Others) is cited. The court judgement dwelt on a matter relating to the appointment of one Mr George Hlaudi Motsoeneng, to a position of Chief Operations Officer (COO) in the Corporation. Secondly, a Supreme Court of Appeal (SCA) Case No. 393/2015 is presented – which in fact constituted an appeal to the afore-mentioned High Court judgement. The High Court case is presented first, in the ensuing section. It was presided over by one judge Schippers. It is hoped that through the presentation of the two court cases below, the reader would be persuaded to see sense in the argument that recommendations of the Auditor General of South Africa, coupled with a highly cooperative working arrangement with a willing parliament – brings about a power package, which is legally enforceable. The OAGSA cannot, unlike the Office of the Public Protector, order state organs or officials to effect its recommendations. After all, the end products of the OAGSA are recommendations, and nothing else. The Public Protector on the other hand - has the power to “take remedial action” – or so ruled the SCA cited above.

The substance of the ensuing discussions consists in firstly analysing Judge Schippers’ rationale in arriving at his ruling, followed by a discussion on the implications of the judgement, for the Office of the Auditor General of South Africa. A similar pattern is followed in the Supreme Court of Appeal case, although somewhat in summarised form. The point that this researcher seeks to establish by presenting both these cases is - that case law is developing in South Africa, and in

the process, inevitably providing some solutions to the quest to improve public financial management - that the OAGSA and the legislative function of government could explore.

After what this researcher considers to have been a close scrutiny by himself, of the discussions and findings in the Judge Schippers case, he presents hereunder some layman's analysis of the arguments as presented by the learned judge.

The analysis targets only the part of the judgement which focuses on whether the remedial actions proposed by the Office of the Public Protector, and directed at the executive leadership of the SABC and its Board - were binding and enforceable to, or on the institution and all cited respondents. Hereunder follows a brief analysis of judge Schippers' findings.

#### **4.11.1 THE HIGH COURT JUDGEMENT**

##### **4.11.1.1 THE RELEVANT FINDING/JUDGEMENT**

Findings by, and remedial action emanating from the Office of the Public Protector (OPP), are not binding and enforceable on the affected persons and organs of State – although this should not be construed as suggesting that the decisions of the Office of the Public Protector could be arbitrarily rejected, that is, on no rational grounds ((Schippers, 2014: 44, s 74; 40, para 66).

##### **4.11.1.2 ANALYSIS OF THE JUDGEMENT'S RATIONALE**

The first argument presented in the Judgement – namely, that the OPP has no adjudicatory role, and that the manner of investigation applied by the OPP, which

differs from that of courts of law, and therefore not able to lead to decisions or proposed remedies, that are legally binding and enforceable – is understandable, from a layperson’s perspective. This researcher concurs, firstly in the light of the fact that courts have an adjudicatory role, and that they indeed apply a different approach in dealing with a case brought before them. The courts summon witnesses to present oral evidence, and subject them to cross examination by the defence counsel or the court prosecutor. The courts are crucially, and unlike the Office of the Public Protector (OPP), also not involved in the investigations of the cases that are brought before them. On the other hand, investigations such as those carried out by the OPP, adopt a different approach, such as largely perusing relevant documents. In effect, the OPP gathers the evidence necessary to make their case themselves, and on the basis of the evidence, pass judgement on its admissibility, appropriateness and sufficiency. In this manner they render themselves largely investigators, and therefore not suitable to adjudicate in the same cases that they investigate.

The judge’s claims relating to scant use or no use of oral evidence by the OPP, as alluded to above, namely, that the OPP’s reference sources consists in large measure, in the enabling legislative and regulatory framework only, namely legislation, policies and codes of operations - also make sense, since as argued above, presentation of oral evidence provides an opportunity for probing or cross examination by defence counsel or prosecution, whilst failure to, for instance consider case law developments could result in some form of injustice creeping into court rulings, through overlooking latest case law developments.

A further argument in support of this view, is presented by De Vos (2012: 173) where he states that “The nature of the work of Chapter 9 institutions requires them to work with the legislature and to some degree, with the executive”. This arrangement he concludes, further compromises the institutions’ independence. Courts have no such Constitutional arrangements, apart from instances where they (the courts themselves) voluntarily opted to issue advisory orders or injunctions in the past (chiefly to the government), thus seeking the legislative or the executive function’s cooperation in pre-empting a probable ruling against them. For instance, the Constitutional Court occasionally did this in the course of its dealings with unconstitutional acts or omissions by the legislature (Corder, 2012: 85) in the earlier year of democratic rule. De Vos further categorically states that it is much more difficult to remove judges from their offices, than is the case with for instance, heads of Constitutional Institutions, such as the Office of the Public Protector, and the Office of the Auditor General. In conclusion, De Vos (2012: 173) states categorically, that Constitutional Institutions, taking everything into consideration, “... do not and cannot be expected to enjoy the same independence as the judiciary [courts of law]”.

It would in the circumstances therefore, be unreasonable to expect the proposed remedial actions from the Office of the Public Protector to be unconditionally binding and enforceable –which property is a preserve of the decisions of courts of law and similar institutions, as has been said above.

What motivated the legislature to elevate the CCMA, the Competition Commission and the Competition Tribunal, to the level of the courts of the land - in that their

decisions/awards are declared legally binding and enforceable? A closer examination of the respective enabling legislations reveals that all three institutions have an adjudicatory role, and that they follow more or less the approach of the courts in hearing cases and resolving them - unlike the OPP which, as has been argued above, primarily has an investigatory role. This alone probably qualified these institutions as ad hoc courts of law.

In support of judge Schippers' argument that the remedial action of the OPP cannot be arbitrarily dismissed, or ignored without providing cogent reasons, the honourable judge cites as follows: Constitution 1996, s 181(3), entrenches the legal requirement that Constitutional Institutions be supported by all organs of state to ensure that they do not only maintain their dignity, but are also effective in the execution of their respective mandates, which (mandates) ultimately seek to strengthen the country's constitutional democracy.

This, in effect, logically suggests in particular, that no organ of state can ignore recommendations of, or interventions proposed by the Office of the Auditor General. Furthermore, Judge Schippers ruled (2014: 40, para 66), that if a state organ or official fails to carry out, or rejects remedial action of the Office of the Public Protector, it/she/he must "have cogent reasons for doing so". That is, the failure to act must be based on rational grounds, and such, is to be furnished to the affected Constitutional Institution, in this case, the Office of the Public Protector (OPP).

In an effort to further strengthen the basis of his ruling, in respect of the need to provide rational grounds for a failure or a rejection, on the part of state organs or officials - Judge Schippers cited a foreign ombudsman case.

Judge Schippers (Schippers, 2014: 40, para 66) cites a case emanating from the United Kingdom (R (on the application of Bradley and Others) v Secretary of State for Work and Pensions 2008 3 ER 1116 CA), hereafter referred to as the Bradley case - where the presiding judge, Sir John Chadwick, found that an ombudsman's recommendations, although not binding and enforceable - could only be rejected on the basis of a rational argument submitted in response to the ombudsman's report, that is, on rational grounds. The respondent in the case was a government institution, namely, the Secretary for Work and Pensions in the United Kingdom. Whilst being mindful of the somewhat different context in light of the foreign nature of the case cited - this finding, Judge Schippers still saw as a universal requirement for government authorities or agents who exercise public power. To illuminate the point that he was making, judge Schippers (Schippers, 2014: 42, para 71) summed up the findings of another court case, a South African Constitutional Court case, namely, a CC judgement (Pharmaceutical Manufacturers...: In re Ex parte President of SA..., 2000 (2) SA 674 (CC)), as follows:

“Rationality is a minimum threshold requirement applicable to the exercise of public power by members of the executive and other functionaries”

In the United Kingdom case cited above, Sir John Chadwick further ruled that a submission from a respondent to the case, should seek to prove, taking the purpose of the enabling legislation into consideration - that the ombudsman's decision is irrational and therefore of no consequence.

It is reasonable for a discerning reader to at this point, pose the rhetoric question: if this were to be true of ordinary state agents and authorities, such as the offices of ombudsmen in Sir John Chadwick's case, how much more true should it be, for Constitutional Institutions? Here is a case well made (in a layperson's mind) by Judge Schippers, that the respondents in the SABC case glaringly ignored the remedial action proposed by the OPP (Schippers, 2014: 46, para 78 and 79). They went so far in rejecting the remedy, as to do the opposite of what the OPP proposed, that is, appointing Mr Motsoeneng permanently to the position of COO.

The second point raised by the honourable judge in substantiation of his finding, contends that if the Constitution intended the decisions, proposed recommendations or remedies of the OPP, to be binding and enforceable, it would have said so. True.

However, its (the Constitution's) primary responsibility was to draft a document which provided values, principles, provisions and guidelines for general application, for the interpreters of the same Constitution, as well as, for those of the supporting legislation, which often had to be subsequently enacted. This much is deducible from the Preamble to, and Section 1 (2) of the Constitution.

Worth noting however, is the realization that the Constitution equally did not say, or is silent on whether the decisions/awards/rulings of the Commission for Conciliation, Mediation and Arbitration (CCMA), the Competition Commission or the Competitions Tribunal, were to be binding and enforceable either – and yet subsequent legislation made the decisions/awards of these state institutions binding and enforceable.

The point that this researcher makes is, that there are gaps that the Constitution leaves open in its precepts or provisions. It is not clear whether it leaves the gaps intentionally or unintentionally. What is evident however, is the observation that courts of law do a full concretisation (interpretation for practical application) of the general values and principles contained in the Constitution and relevant legislation. Wherever the Constitution has left such a gap, the legislature or the judiciary has a duty to fill it. This much is substantiated in the ensuing paragraphs.

The Legislature does not only have the authority to make law to achieve a specific purpose, on a matter alluded to or not, in the Constitution - in its attempt to interpret to the spirit and the letter, the provisions of the Constitution. The legislature also has the power, as much as the judiciary does, to fill gaps or to take from where the Constitution has left off, to concretise the provisions of the Constitution and all legislation. Botha (2012: 159) defines concretisation as

“... the process through which the interpreter moves from the abstract to the practical reality to apply [a] particular legislation”.

Writing on the law making function of the courts, Botha (2012:162) further states that:

“Because of the limitations inherent in language, statutory interpretation necessarily involves a type of delegation by the legislature to the judiciary about the final specific application of a general rule. Although the legislature has the main legislative powers, those powers are not exclusive, since the



courts are partners in the law-making process (Zimnat Insurance Co Ltd v Chawanda 1991 (2) SA 825 (ZSC))”.

Botha (2012: 188) also claims, he in turn citing from Case Law, (Nortje v Attorney General of the Cape 1995 (2) SA 460 (C)) - that the supreme Constitution is:

“open-ended, ..., not a finely tuned statute designed ad hoc to deal with one particular subject, ... is sui generis, ... [that is], is short on specifics and long on generalisation”.

It is in the circumstances, logical to deduce that: a realization that the Constitution did not say, or is silent on whether, a particular state institution’s decisions/recommendations/proposed remedies were not binding and enforceable in general - does not necessarily imply that the public institutions’ decisions are consequently not binding or not even conditionally binding and enforceable.

Interestingly Lawson Naidoo and Richaed Calland, in their article which appeared in the City Press (City Press: Careers and Voices, 5 October 2014: 1), argue for the contrary, basing their argument on the same omission, namely, that:

“If the architects of the Constitution had intended the Public Protector’s findings to be “advisory” recommendations, then they would have said so, since, in most cases, the remedial action will be implemented by the government, not by Madonsela’s office ...”.

Naidoo and Calland further argued in the same paragraph, that ‘take’ in ... has the power ... “to take appropriate remedial action” of Section 182(1)(c) of the

Constitution which expands on the powers of the Public Protector, taken in context - "must ... mean or be analogous in its meaning to 'order' ".

This argument advanced by Naidoo and Calland in the immediately preceding extract, makes sense, from a layperson's perspective. The phrase 'take remedial action' is definitely stronger in denoting active involvement of the OPP, than for instance, the phrase 'recommend the taking of remedial action', to the executive of government. Furthermore, if for some reason, such as a legal provision - whatever remedial action is proposed, cannot be taken by the OPP itself, as is often the case - then ordering party X to 'take remedial action' is in that case, reasonable and appropriate. Therefore the Constitutional omission can also be used to advance an opposing point of view.

Lastly a case from basic mathematics is cited below, to demonstrate that there exists established positions in life, which means nothing, or anything – just as Naidoo et al have demonstrated that: 'that the Constitution did not expressly say something' - means nothing or anything.

Consider an instance from two fundamental mathematical principles, namely: the principle that  $a \times b = c$ , if and only if  $a = c/b$  ( $c/b$  means  $c$  divided by  $b$ ), where  $a$ ,  $b$ ,  $c$  are 'real numbers' (simply, numbers to the uninitiated) - and the second principle that  $a \times 0 = 0$  holds for all 'a', where 'a' represents any number. Further, let the assumption hold that division by 0 is permissible.

Applying the two principles, it should be true: that  $1 \times 0 = 0$  implies that  $1 = 0/0$ . This is indeed a true statement (considering the two principles cited above, and the

assumption), on the basis of which one could deduce that  $0/0$  has meaning, (namely, that  $0/0 = 1$ ). But this is true of  $2 \times 0$  as well, that is:  $2 \times 0 = 0$ , implies that  $0/0 = 2$ ;  $3 \times 0 = 0$ , also implies that  $0/0 = 3$ ;  $4 \times 0 = 0$ , implies that  $0/0 = 4$ . And so on. This would thus be the case for all numbers.

The implication of these expositions, is that  $0/0$  is equal to any number conceivable.

Mathematicians of old realised that  $0/0$  evidently equalled every number conceivable, and therefore truly meaningless, and on the basis of this, they resolved to say that it would not be defined, that it would for this reason, not be permissible to divide by 0. Again, the message of the analogy is, that: the silence of the Constitution on this matter, or any matter - means nothing, or everything.

The law-making capacity of the legislature and the courts as discussed above, ensures that the two institutions have the power to respectively legislate such that, or to establish whether - the decisions/remedies of a state institution are binding as they stand – or with qualifications. Furthermore as is often said in the principles of statutory interpretation in a constitutional democracy – due regard is always to be had to the Bill of Rights, the purpose of a statute, and the broader context, in the process of interpreting statutes. Botha (2012: 101) contends that:

“... all courts, tribunals or forums must review the aim and purpose of legislation in the light of the Bill of Rights, ... plain meaning and the so-called clear, unambiguous texts are no longer sufficient”.

In other words the principle that what the law means is to be construed, only from the language and the grammar of the text where no ambiguity exists, no longer

applies. That is, the literal meaning or the textual approach to statutory interpretation - no longer suffices, even in cases where the text is unambiguous.

Another implication of this statement is: a construction which figures that the Constitution did not pronounce on one position, does not necessarily mean that there is nowhere within the text of the Constitution, where the same position is indirectly maintained, or that there is no possibility that the position could be established through a logical argument, presented by the courts or counsel. This much Chief Justice Langa emphasised (Corder, 2012: 101) in writing the judgement on the *Glenister v President of the Republic of South Africa & Others* (paras 29 – 32 of the judgement).

In reference to “the doctrine of the separation of powers in the Constitution” (Corder, 2012: 101), Chief Justice Langa argued (referring to the doctrine) that

“... although not expressly mentioned in the text, it was ‘axiomatic’ [self-evidently true], that it [the doctrine] was part of the Constitutional design”

In the circumstances it is therefore logical to conclude, that separate clauses in a piece of legislation could if necessary, be read together – while due regard is being had to the principles of statutory interpretation as cited above - to make sense of what the clause(s) collectively could be saying. Or better still, words could be added to the text of a statute, to make the intended meaning clearer, in reference to a specific case at hand, or as part of the application of the principle of concretisation. Therefore the possibility exists that the binding nature or otherwise of the decisions

of the OPP could still be established from the text of the Constitution, taken in context – despite the Constitution’s silence on the matter.

The points raised in the foregoing paragraphs, are hopefully, sufficiently persuasive, in convincing one to consider accepting this researcher’s finding, namely, that Judge Schippers probably erred in this instance, that is, in his interpretation of the silence of the Constitution with regard to the binding nature or otherwise of the recommendations of the OPP. The contentions raised above, to a great extent, establish that the silence of the Constitution on the matter at hand could mean nothing, or anything. The second ground is therefore flawed, a layperson would probably safely conclude.

In making his findings, the honourable judge is apparently aware of the uniqueness of Constitutional Institutions. The substantiation of this point was made earlier on in this section. There are instances in Judge Schippers’ findings, which suggest that he was well aware of the uniqueness of these institutions, one of which, (in addition to citing Constitution, 1996: s 181 (3)) - is embodied in his remark that the office of the Public Protector is also:

“... not an organ of state within a sphere of government as contemplated for instance in the Constitution (s 41 (1)), hence the Intergovernmental Relations Act 13 of 2005 does not apply to the Public Protector” (Schippers, 2014: 44, para 72 - he in turn citing: Intergovernmental Relations Framework Act, s 2 (2) (e)).

Lastly, the argument that an appeal to reason or a rational argument rather than coercion, produces better results, especially where the OPP utilises its powers of persuasion, and supported by evidence gathered - does make sense. There is however, evidently an assumption being made in this claim, namely, that there existed people within the ranks of the leadership of the SABC, who upon being presented with the OPP's Report, were prepared to apply their rational minds to the case at hand, people who were prepared to apply rationality to the evidence presented in the OPP's Report, to make sense of what the OPP was saying – or people who felt legally bound to do so.

The second judgement, as alluded to above, appealed the decision of the High Court. The Supreme Court of Appeal hereunder analyses the grounds for the High Court judgement, with a view to clearing the way for its own findings. The appellants appealed the part of the judgement which ruled that Mr Motsoeneng remained subject to an immediate suspension and a disciplinary hearing.

#### **4.11.2 THE SUPREME COURT OF APPEAL JUDGEMENT**

Realising that the part of the Schippers' judgement, which does not form part of the argument presented above, and which ruled that Mr Motsoeneng be suspended with immediate effect while a disciplinary hearing to deal with his case, was still firmly in place – and that this, could possibly cost Mr Motsoeneng his job - Mr Motsoeneng together with the other fellow respondents, appealed Judge Schippers' finding. Delivering their judgement on the 8 October 2015, the panel of four judges who heard the appeal, pronounced on their findings.

#### **4.11.2.1 THE RATIONALE OF THE SUPREME COURT OF APPEAL JUDGEMENT**

Firstly, it would appear from evidence presented in support of its findings, that the Supreme Court of Appeal was of the view that, the two High Court findings that: remedial action emanating from the OPP was not binding and enforceable, and the other, which ruled that remedial action from the same OPP could not be ignored or rejected, on no rational grounds – were contradictory. The view was therefore that Judge Schippers contradicted himself. The position taken by the Appeal Court was evidently, that if the decisions of the OPP were not binding and enforceable, then they were mere recommendations, and therefore advisory in nature.

Secondly, the Appeal Court contended that, if the Interim 1993 Constitution of South Africa were to still be in force and effect, to date, Judge Schippers' ruling that the Office of the Public Protector was no different in design and purpose, to that of the Ombudsman - would undoubtedly hold. The design and purpose of the OPP in the Interim Constitution was fashioned on that of an immediately pre-dating Ombudsman Act 118 of 1979 (now repealed), from where the clearly advisory role of the Office of the Public Protector at the time, could be correctly construed.

In fact, the Interim Constitution did not have the clause that is currently an integral part of the 1996 Constitution, relating to the powers and functions of the OPP, namely, that the Public Protector is empowered to:

“ ..take appropriate remedial action” (Constitution 1996, s182 (1) (c)).

Furthermore the Bradley case (of Judge Schippers' argument), which was presided over by one Sir John Chadwick, simply presented a case of an ombudsman kind of office, thus presenting a situation in which the investigating body, as has been argued previously (Judge Schippers' ruling) - only had reporting and advisory powers. The Appeal Court contended that: in fact, Sir John Chadwick's argument that the decisions of the parliamentary commission (which was the investigating body in the case), could be rejected or disputed, only on the basis of rationality, that is, on rational grounds – was referring to an institution/body of State or of parliament, which only had the power to report and advise.

Thirdly, the Appeal Court's judgement stated, that comparing South Africa's courts of law to the Office of the Public Protector was inappropriate, or uncalled for. This view of the Appeal Court in effect, suggests that there should have been no comparison of the two institutions in the first place. That they are two distinct institutions - is therefore unassailable. Taking cue from ensuing discussions in substantiation of this point, it would appear that the Appeal Court was of the considered view, that it was not necessary for the Office of the Public Protector to be like a court, or to closely resemble one in design – for its decisions to be in full force and effect. The Appeal Court consequently viewed the phrase "binding and enforceable", as consequently "terminologically inapt" (2014: Para 45).

Fourthly, the Supreme Court of Appeal ruled that: the decisions of administrative bodies of the State, including Constitutional Institutions - stand in fact, and in law. That is, the decisions exist in fact and are legally, in full force and effect - for so long as they have not been successfully challenged in court. The Court cited a South



African Supreme Court of Appeal judgement passed way back in 2004, in support of its finding above. The case in point is (hereafter referred to as the Oudekraal case): Oudekraal Estates (Pty) Ltd v City of Cape Town & Others [2004] ZASCA 48; 2004 (6) SA 222 (SCA) para 26.

The substance of the judgement in the Oudekraal case was, that the decisions of an administrative body/unit or functionary of government, were in full force and effect legally, until such time that a court of law reviews the decisions. The Ouderkraal judge's rationale (in 2004), was that - for purposes of promoting the smooth running of the institutions of government, the State machinery needed to be allowed to operate without hindrance, for so long as no one has successfully brought up a legitimate case against decisions of the affected State body/institution. The reader should note however, that Constitutional Institutions are by definition, no ordinary State institutions as envisaged in the Oudekraal judgement.

The argument advanced by the Appeal Court (in October 2015) in support of its ruling was - that although the finding of the Oudekraal case applied to administrative bodies or functionaries of State, it equally extended and applied to the decisions of the Office of Public Protector, or of Constitutional Institutions in general. To better understand the essence of this point, the reader needs only ask herself/himself, the rhetoric question: if this were to be true of an ordinary administrative function, or entity or functionary of government - how much more true should it be for a Constitutional Institution in South Africa, considering that such institutions were primarily established to support this country's constitutional democracy, or to ensure accountable government? The Appeal Court consequently ruled that it was

indisputable that the Oudekraal case ruling was indeed, at least as applicable to the Office of the Public Protector, as it was to an arbitrary administrative body of the State.

#### **4.11.2.2 SPECIFIC SIGNIFICANCE OF THE COURT OF APPEAL JUDGEMENT**

Taking the Supreme Court of Appeal judgement as immediately binding and enforceable, it would appear that the defence counsel had a point in his submission to the Western Cape Division of the High Court, presented below. The defence counsel's submission (Schippers, 2014: 31, para 49) read thus:

" ... on a proper construction of s 182 (1) (c) of the Constitution and s 6 of the Public Protector Act, the findings and the remedial action of the Public Protector in paragraph 11 and 12 of the Report [OPP report], are binding and enforceable, unless properly and successfully challenged in review proceedings. Any other construction would render the institution of the Public Protector toothless"

Indeed there already exist a few cases, enumerated below, which served as evidence, that the defence counsel was correct in submitting as he did.

The remedial actions emanating from the OPP are generally taken seriously - albeit often reluctantly by the South African executive arm of government - 'reluctantly' if one considers the length of time that it takes them to implement the remedial actions sometimes. There are however two exceptions to this established pattern. The two exceptions demonstrated a pattern which could possibly lead to Chapter 9 (Constitutional) institutions being seen as no more than just advisory bodies within

the constitutional democratic system, a system that the 1966 Constitution sought to build and strengthen in South Africa, through creating these institutions.

A few of the cases where there was general implementation of the OPP's remedial action are cited below, as well as others, where the recommendations of the Office of the Public Protector were in large measure, ignored.

The remedial actions proposed by the OPP - relating to indiscretions, maladministration, and transgressions: by the head of the Office of the National Police Commissioner, namely, General Cele; by the then Communications Minister Ms Pule; and by the then president of the African National Congress Youth League, Mr Malema – were generally implemented by the executive arm of the South African government. However, the Nkandla debacle, which was extensively covered by the media to date, as well as the SABC case, which is the subject of the High Court and the Supreme Court of Appeal judgements – unfortunately, largely ignored the OPP's decisions. This much, both judgements exposed in their findings, at least in the 'DA v SABC and Others' case.

Most striking, as Judge Schippers found (2014: 46, para 78), was his realization that:

“There are no grounds, let alone rational grounds, for the Board's [SABC Board's] decision to reject the Public Protector's findings and remedial action.”

The point that this researcher is making with regard to the High Court judgement is - that due regard was not had to a particular dimension of the broader context of the case, namely, the pattern discernible in the Nkandla and the SABC cases, which,

if not arrested, could result in violations of the provisions of section 181 (3) of the Constitution – and disturbingly from the executive arm of the government of South Africa. If any court of law were to rule that the decisions or remedial actions from the OPP were only advisory in nature, an affected organ of state would have grounds for claiming that it had the option to ignore the remedial action, if it considered this the easier way out. This would have dire consequences for not only the Office of the Public Protector, but also for all other Constitutional Institutions. The Constitutional Institutions would indeed be thus rendered 'toothless'.

#### **4.11.3 RELEVANCE OF THE TWO JUDGEMENTS TO THE OFFICE OF THE AUDITOR GENERAL**

Over and above the fact that the Office of the Auditor General of South Africa and the Office of the Public Protector being both Constitutional Institutions, De Vos (2012: 169) further makes a case implicitly, or even unintentionally for the existence of equality or equivalence between the Offices of the Public Protector and the Auditor General of South Africa - in respect of standards set, for suitability for office, nomination, acceptance into, and removal from office of the heads of the two institutions, by Parliament.

De Vos further (2012: 169) cites as cases in point, the provisions in the Constitution, for the nomination for office, and the removal from office, of the Public Protector (PP) and the Auditor General of South Africa (OAGSA). With regard to nominations for office, for the Public Protector and the Auditor General, each nomination has to be adopted by at least 60% of the members of the National Assembly, and with regard to a resolution to remove each of the two incumbents from office, the

resolution must be adopted by at least 67% (two third majority) of the members of the National Assembly. The stringent or strict majorities are applicable, only to the two Constitutional institutions, out of six such Constitutional Institutions in South Africa. Members of the rest of the Constitutional Institutions could be nominated, as well as removed from office with a simple majority ((50 +1) %).

Furthermore, the Code of Professional Conduct for Public Auditors expressly puts a premium on the qualities of independence, objectivity and professional integrity, among others, on the part of public auditors (including the Office of the Auditor General (OAGSA)) - whether they be working in the private or in the public sector (IRBA, 2009: 26 – 28, s 110, 120, 130 and 140).

Both incumbents particularly have to meet stringent requirements, to qualify for their respective offices, as well as to enjoy a high level of independence, from the legislative and the executive arms of government - in order for them, to effectively discharge their duties and responsibilities, without fear, favour or prejudice, as constitutionally provided for. Furthermore the two Constitutional Institutions are the only two that the Constitution considered worthy of having strict conditions on the terms of office for their heads, particularly with respect to the non-renewability of the incumbents' respective contracts.

It would in the circumstances, be reasonable to rank the Office of the Auditor General at the same or equivalent level as, or alongside the Office of the Public Protector, in respect of the degree of independence, objectivity and integrity, that is required of both offices. However one cannot leave a discussion of the nature, the

powers and functions of the OPP, without emphasising certain distinguishing features of this office.

Notwithstanding the above mentioned similarities between the OAGSA and the OPP, the Office of the Public Protector is however, still considered unique amongst Constitutional Institutions, in that it is the only institution empowered to amongst others, 'take remedial action' against the executive arm of government. The Appeal Court judgement cited above, attests to this view, where it observed that:

"Before us, all counsel accepted that the powers conferred on the Public Protector in terms of s 181 (1) (c) of the Constitution far exceeded those of similar institutions in comparable jurisdiction" (Para 42).

It would therefore appear that the two offices, namely, the OPP and the OAGSA unfortunately for this researcher's case – evidently do not exactly match in respect of powers conferred on them, if the citation above is anything to go by.

It would nevertheless be argued in the two paragraphs below, that the Appeal Court decision, through citing the Oudekraal case - comes in handy, in assisting to drive the point home to the reader, that the decisions or recommendations of the Office of the Auditor General of South Africa (OAGSA), taken together with the resolutions of SCOPA/PAC - could safely be viewed as together being in full force and effect, for those to whom the recommendations/resolutions are directed – especially if the two sets of statements from the two offices match each other in the letter and the spirit. This point makes sense, considering that the legislative function is empowered to

'take remedial action' in all proven allegations of maladministration, indiscretion or abuse of public power.

A close examination of the resolutions of SCOPAs/PACs, reveals that they are in essence, a representation of all that which the OAGSA has recommended to public auditees in the first place. In this light, the PACs could be therefore well advised without fear of confusing roles, to marginally delegate part of its powers to either 'take remedial action' to this highly placed Constitutional Institution, namely, the Office of the Auditor General - or alternatively, to work highly cooperatively with the OAGSA.

The OAGSA dispenses a report annually to each auditee, in which it does not only provide a basis for its audit opinion, wherein it catalogues what the auditee did not do right to deserve any better opinion, and in which it simultaneously makes some explicit recommendations, one of which is often the crafting of an intervention plan by the auditee, for immediate implementation by the auditee. Although they do not strictly take the form of directives, as it now turns out to be the case with the remedial action of the Public Protector (refer to the Supreme Court of Appeal judgement above) – the recommendations of the OAGSA, as well as the findings that some aspects of their work were not performed satisfactorily by the auditee, as presented in the basis for the audit opinion, especially when attested to by SCOPAs/PACs – are not administrative decisions per se, but could well be, if or when SCOPA resolves that they are (the Oudekraal case finding).

As this researcher has alluded to above, the only difference between the decisions by the OAGSA and those of the OPP, is that unlike the OPP, the OAGSA has no

powers “to take remedial action”, that is, to implement or to direct that its recommendations be implemented. The OAGSA has powers only to, at best recommend appropriate remedial action, or consequence management action in all cases, to Parliament or provincial legislatures – bodies which in this case, are fully empowered to “take remedial action”. The exercise of a minimal power sharing option by the Auditor General, if it were to be delegated by the Parliament to the Office - is particularly most appropriate in arresting recurring audit findings in the audit performance of State organs, if Parliament will not do this itself.

#### **4.11.4 LIMITATIONS IN CURRENT LEGISLATIVE FRAMEWORK**

The order in which the analyses below are presented is as follows: presidential powers and discretions; perceived gaps in current legislation, and opportunities for exploration provided by South Africa’s legislative framework as well as the IRBA guide book - for the OAGSA.

##### **4.11.4.1 PRESIDENTIAL DISCRETION**

Section 84 (2), (e) provides that the President is responsible for making appointments, as the Constitution or national legislation may prescribe. The section in effect, provides that, where the Constitution does not specifically give authority to the president to make an appointment of a head of, or a member of constitutional institution’s, or a government institution’s executive committee - it permits that appropriate legislation may be enacted, to confer such an authority to the president, if the legislative function so wishes. The section thus paves the way for a sitting president to appoint, or for national legislation to confer to the president, the power to appoint several heads of constitutional and similar institutions. The Constitution



for instance provides (1996, s 174 (3) (4: (a) (b) (c)) that the president appoints the leadership and all members of the judiciary. The Judicial Service Commission's mandate in fact consists in essence, in engaging in a rigorous, and often public, and sometimes, acrimonious selection process, only to come up with a list of nominees, to recommend to the president (1996, Constitution: s 174 (a)), which nominations are still subject to, part or complete rejection by the president (1996, Constitution: s 174 (b) and (c)). The president also appoints (1996, Constitution: s 179 (a)) the National Director of Public Prosecutions. Furthermore, since the Constitution is silent on who appoints the members of, the Board of the South African Broadcasting Corporation (SABC), the South African Broadcasting Act of 1999 (as amended) for instance, took care of this responsibility. The aforementioned sections of the Constitution are presented as some of the weak points of the critical document - but only in the sense that it perceivably and unwittingly gives much discretionary powers to a sitting president, to thus weaken accountability relations, as one would expect in principal/agent relationships.

However, interestingly and as alluded to above, the Constitution defers the conferment of the authority to appoint, amongst other State organs' membership, the leadership of all Constitutional Institutions, including the chairpersons and members of the Board of the National Broadcasting Authority (SABC) – to national legislation, sometimes through not pronouncing on these matters. For omissions such as the aforesaid deferment, one can fault the Constitution, for its allowance of a loop hole - where Parliament would provide for such authority to appoint, as it sees fit - to a sitting president. Furthermore and in respect of Constitutional

Institutions, Section 181 (f) (5) provides that all the Institutions report or account to Parliament annually.

Also, it is worth noting that the Constitution did not directly or indirectly provide that the judiciary accounts to either the executive or to the legislature (1996, Constitution: s 180 (c)). It thus evidently, through its silence on the matter - again deferred to national legislation, the responsibility to fill this gap. It therefore remains open to Parliament, if it so wishes, to also enact legislation which will render the judiciary, accountable to Parliament, thus further weakening accountability relations in government. This constitutes another of the weak points of the Constitution. The silence on all these matters, is considered weak only in the sense that the Constitution drafters did not see the need to ensure that all institutions - which are intended to support democracy, and thus to be watchdogs over government activity on behalf of the electorate - have their independence from both the two arms of government, namely, the executive and the legislature, firmly and completely entrenched in the supreme law (the Constitution) itself.

There is however no reason for one to believe, that the drafters of the 1996 Constitution did not act in good faith when they allowed for these loop holes, these gaps in the Constitution, to exist. They probably used the values, the personality and the character of the first President of democratic South Africa, namely, President Rholihlahla Nelson Mandela, as the standard. Nash (2012: 17 0 18) cites an instance in support of this view, taken from Mandela's book: *The Long Walk to Freedom*, where Mandela was giving an account of how liberation struggle leaders outside prison perceived his audacity, to agree to be part of the initial exploratory phase of

the negotiations with the enemy (the Apartheid government) while still a prisoner, and on their behalf - without a mandate from them.

When Mandela explained why he opted to do all this, they believed him. Nash (ibid) suggested that, the leadership together with the rank and file of the oppressed people of South Africa, believed Mandela when he explained himself, because of who he was, that is, because of the principles and values that he preached and lived. There is also a reference to this character of Mandela by Suttner (2015: 145) to the same perception. He writes as follows:

“He [Mandela] embodied in his own life, both as a freedom fighter and as President, the values that he espoused...”. “Mandela sought nothing for himself”.

It is in closing, hoped that through the rather sketchy account of the origins of capitalist democracy, its impact on the principal-agency theory’s ideal of accountability relationships, presented in this section, and alluded to in passing elsewhere in the same report – one gets to understand the background to South Africa’s constitutional democracy. The narrative also explains how the principal-agency theory’s tenets, were in the circumstances, enjoying another instance of confirmation - particularly through the government’s lukewarm approach to consistently enforcing sanctions for the indiscretions, ineptitudes and transgressions of State organs or officials.

The preceding paragraphs also sum up the clauses in the Constitution of 1996, which played a critical role in providing for, and sustaining the preferred and current arrangements of horizontal accountability, to the disadvantage of vertical

accountability. The presidential discretion as also catalogued above, inevitably negatively impact on accountability relations in government.

It is, in the circumstances, reasonable for one to put the blame for lack of accountability in government at the door of a ruling political party, at least in South Africa. To recap, an earlier definition of accountability to a principal, presented in Chapter 1, gave one of the tenets of accountability as: *enforcement* through sanctions, where failure to satisfactorily exercise public power was detectable. Where under-performance, negligence, corruption and general malfeasance did not attract concomitant sanctions, there is bound to be minimal or no accountability. Presented in the foregoing sections is in sum, this researcher's attempt to explain the lack of political will, or sufficient political will within the ranks of politicians and administrators alike, to rein in the scourge of recurring audit findings.

Two sections from the Public Audit Act of 2004 are discussed below, with a view to exploring the possibility of extending the scope of work of the OAGSA. The national legislation seemingly provides through these sections, for some space, for the OAGSA to exercise some measure of discretion - in identifying ways in which to render itself effective in the execution of its mandate. The ensuing sections in this light, explore avenues through which the limits of current legislation could be further extended, as the court judgements have also done - to enhance the OAGSA's effectiveness in realising its broad objectives, as defined above. Alternatively the explorations could be viewed as a means to identify gaps in the legislation, which needs closing, to render the same legislation impermeable.

#### **4.11.4.2 PUBLIC AUDIT ACT (PPA) 2004,**

The contents of the sections as mentioned in the subtitle above, read as follows (PAA, 2004: s 5 (2), (c)):

“In addition, the Auditor-General may – do any other thing necessary to fulfil the role of the Auditor-General effectively.”

Furthermore Section 5 (3) (PAA, 2004: s 5 (3)) provides that:

“The Auditor-General may in the public interest, report on any matter within the functions of the Auditor-General and submit such a report to the relevant legislature and to any other organ of state with a direct interest in the matter”

As a preamble to the discussions of this section, and as a reminder to the reader, it is considered worth elaboration, albeit briefly, that the IRBA (2012: 67 – 77) somewhat broadened the scope of work of the Auditor General, evidently in line with s 5 (2), (c) of the PPA, cited above. The IRBA through its guide book seen in totality, also illuminated the objective behind the creation of such a Constitutional institution as the Office of the Auditor General, within the public sector.

The Chief Executive Officer for the Independent Regulatory Board for Auditors (IRBA) (IRBA, 2012: 2) informs in his *'Message'* to public auditors, to which the IRBA publication: *Guidance for auditing in the Public Sector*, is directed – that:

“The mandate of the IRBA is to protect the public interest through issuing high quality auditing standards and guidance to auditors.”

The reader thus gets it from the horse's mouth, that the provision and the monitoring of the application of the exacting standards of the auditing profession, as well as guidance thereon – is the responsibility of the IRBA. All public auditors therefore look up to the IRBA for standards and guidance, in the execution of their professional practice. It also becomes clear from the '*Preface*' page of the publication (2012: 4), that the Office of the Auditor General of South Africa cooperated with the Committee for Audit Standards (CFAS) in the compilation of the standards and the guidance, which had to be approved by the IRBA, as provided for in the Audit Profession Act (2005: s 4 (1) (1) and (e)). The IRBA publication is often referred to, simply as 'The Guides' (Ibid). The Guides are therefore, evidently the fundamental source of all the principles and the practices of the audit profession in South Africa.

The various fundamental requirements as discussed earlier on in this discourse bear testimony to this claim.

Evidently (IRBA, 2012: 9, 67 - 77), the Office of the Auditor General of South Africa is effective in the execution of its mandate, only if there is not only independent, objective and accurate reporting on the state of financial and non-financial performance in state organs in South Africa, but also significant improvements in audit outcomes in the public sector.

With the background and context thus provided on the significance of the IRBA, in the preceding paragraphs - the two extracts from the Public Audit Act 2004 (PAA) receive attention henceforth, namely, PAA s 5 (2), (c) and PAA s 5 (3), as cited above.

Section 5 (2) (c) is self-explanatory. It gives discretion to the OAGSA to determine as it sees fit, whatever else to do, to render itself effective in the execution of its mandate. The assurance for effectiveness encompasses not only the provision of accurate and objective information on the state of financial and non-financial performance in the public sector, but also observable significant improvements in audit outcomes in public sector institutions - taking cue from the IRBA. Needless to say, whilst in the process of executing its mandate, or perhaps even while in the process of extending the limits of its scope of work - the OAGSA needs to remain within the confines of the law, that is, that it does not overreach itself. It would in this light, serve the purpose of the OAGSA's existence well, this researcher submits - if the Office were to adopt a more assertive stance, and thus become proactive – in demanding, in the light of the Supreme Court of Appeal judgement discussed earlier on in this report, to inform its auditees, that its opinions, findings and recommendations - when backed by SCOPA's resolutions - are actually in full force and effect, until otherwise proven in court review proceedings. The Auditor General therefore reserves the right to recommend remedial action, failing which, to cooperate with Parliament (SCOPA), with regard to what appropriate sanctions are most suitable to recommend, to enhance consequence management.

The Public Audit Act 2004 s 5 (3), provides the right to the OAGSA to report perceived fraudulent or criminal acts or omissions to the relevant authorities for further investigations. In fact the Audit Profession Act 2005, s 45, directs that public auditors report any acts or omissions in an organization's records of operations to the IRBA - which acts or omissions in their opinion, constitute reportable

irregularities. This researcher is as yet, not convinced that several cases involving fraudulent or criminal activities, and brought to the courts of the land, relating to public financial mismanagement - emanated from whistle blowing or reports on suspected criminal or fraudulent activities, by the OAGSA. The two sections of the PAA cited above, do provide an option to the OAGSA, not only to recommend appropriate sanctions in consultation with SCOPAs/PACs, but also to report directly to appropriate authorities, any suspected fraudulent or criminal activity, picked up in the course of executing its mandate.

#### **4.11.4.3 MUNICIPAL FINANCE MANAGEMENT ACT (MFMA)**

Much has been written on the two Acts of Parliament in Chapter 2 (Literature Review). They were notable gaps identified in their provisions, which often caught the attention of the media, which (gaps) sometimes served as sources of, or as cover for ineptitudes and transgressions, in respect of the Supply Chain Management's legislative and regulatory framework, on the part of State organs or officials.

The PFMA itself has no provision in its contents, for deviations from the procurement framework. The Act instead, defers (PFMA, 1999: s 76 (4) (c)) to the National Treasury, the responsibility to prescribe on procurement rules' waivers or deviations.

The National Treasury in compliance, provides for procurement deviations, through one section of its National Treasury Regulations (NTR, 2005: s 16A6.4). The section provides thus:



“If in a specific case, it is impractical to invite competitive bids, the accounting officer or accounting authority may procure the required goods or services by other means, provided that the reasons for deviating from inviting competitive bids must be [sic] recorded and approved by the accounting officer or accounting authority”.

The accounting officer or authority is thus given the discretion to decide if “it is impractical to invite competitive bids”. If the outcome of his/her determination is in the affirmative, he/she then flouts the requirement to call for competitive bids, and instead resolves to select one or more supplier(s)/service provider(s) using her/his preferred selection criteria - to provide the required goods or services. Alternatively the accounting officer could choose to utilize one of the other means cited in the National Treasury Regulations. It is evidently assumed that the incumbent will apply her/his mind to the matter, with a view to not only ensure that the required goods or services will be provided with precision, but also to ensure that the value for money principle will hold. The reasons provided for the deviation should ideally be sound, and certainly not a consequence of poor planning on the part of the State organ. An element of unfairness could however also creep in, in situations where a specific set of supposedly prompt and responsive supplier(s) repeatedly get(s) to be preferred for engagement as supplier(s), through the application of this discretion. Uncompetitive pricing could also become a prohibitive factor where this option is preferred, to thus further complicate the situation.

The question in a discerning reader’s mind could at this point, probably be: what measures are put in place to control the discretion thus given to these senior

officials/authorities, to ensure that their determinations are beyond reproach, above board? It becomes of interest also, to know if the measures (if any), are applied before or after the effect - that is, before the actual placing of the orders emanating from this procurement option, or after.

There is also a provision in the PFMA (1999: s 16 (1); s 25 (1)) for a National Treasury Minister or a Member of the Executive Council (MEC) for Finance in a province, to use funds in cases which he/she deems to be emergency situations of "exceptional nature". Since the voting public often gets to know through the media when this discretion has been exercised, and this coupled with the fact that the Minister or MEC reports to Parliament or his/her provincial legislature on such matters – it is reasonable to assume that there exists some measure of control in the Minister/MEC's exercise of the public discretionary power.

#### **4.11.4.4 THE MUNICIPAL FINANCE MANAGEMENT ACT**

The Municipal Finance Management Act (MFMA) likewise leaves similar gaps in its provisions, as cited in the case of the PFMA above.

For instance, Chapter 2 of this report cites section 32 (2) (3), as well as section 112 (a) and (b) of the MFMA, as cases in point. Section 32 (2) (3) permits councillors to write off unauthorised expenditure, that they deem to be worthy of being written off.

On the other hand, section 112 (1) (a) and (b) provides for a municipality to decide on the processes to adopt for the procurement of goods and services that it needs from time to time. Although the provisions list the normal processes that one finds in

supply chain management policies, such as tenders, quotations and auctions - as the minimum processes to be included in the supply chain management policies of municipalities - it still leaves room for authorities to choose to deviate from normal competitive bidding processes, in specific circumstances.

Herein is located once again, one of the gaps that the statutes allow, that discerning observers may have seen to be often exploited, for selfish individual ends. The loop hole, as has been the case with the PFMA - need not be done away with, since it serves a noble cause, namely, to cater for cases of emergency, that is, cases where the express need for specific goods or services was unforeseen.

There exists another of the loop holes, contained in National Treasury Regulations (NTR) ((NTR, 2005: s 16A6.5 and 16A6.6). The Regulations in effect, make provision for a deviation from normal competitive bidding processes where necessary by a state institution, to opt instead, to be part of a relevant Treasury appointed or selected transversal service provider/supplier for identical or similar goods or services, if the service provider is in agreement with this arrangement. Alternatively section 16A6.6 of the NTR goes further, to provide for an interested end-user State organ or institution, to feel free to choose a supplier/service provider who has already been appointed through competitive bidding processes by one or the other of the State organs, to supply the same or similar goods or services – to be thus the end-user’s supplier of the required goods or services, again provided that the service provider agrees to be part of this arrangement.

There has recently (Daily Dispatch, 2015: 15<sup>th</sup> June) been an interesting case in one of the district municipalities of the Eastern Cape, namely, the Amathole District

Municipality. It relates to the application of one of the above mentioned regulations of the NTR. The municipality chose to deviate from normal procurement procedures and processes as legally provided, and opted instead to use the services of a supplier/service provider - who was already engaged (presumably through competitive bidding) by one provincial department in the Northern Cape – to secure its supplies through this service provider, since the delivery of the goods or services was reportedly a matter of extreme urgency. Furthermore, the process would doubtlessly save the municipality, in terms of the costs, or so it was reported in the media.

It unfortunately turned out not long after the conclusion of the Amathole District contract, that the identical or similar work that the Northern Cape department awarded to this preferred service provider, was significantly small, relative to the value in monetary terms, of what the Amathole District Municipality had contracted for with the supplier (Ibid). Furthermore the Northern Cape project was awarded only a few months (certainly less than three), before the Amathole District one, that is, before the service provider had had sufficient time to prove itself capable of performing acceptably.

It turned out shortly after the Amathole appointment of the service provider, that competitive bidding processes used in the Northern Cape award, were flawed. The appointed service provider had neither a valid tax clearance certificate, nor the building industry's required accreditation documentation. Both the State organs involved, had no option but to pull out of the contracts. The contracted work force was thus left with no jobs. The total sand castle that was thus built fell down flat,

imploded. The lesson of the account is: that unless the initially contracted supplier had been selected through a transparent, fair, cost-effective and competitive process, with the supplier having further been given sufficient time to prove itself capable of performing acceptably - unintended consequences emanating from the choice of procurement process, cannot be ruled out. A loop hole therefore exists even in this case, namely, sections 16A6.5 and 16A6.6 of the National Treasury Regulations.

#### **4.11.5 THE IMPLICATIONS OF THE IRBA GUIDE BOOK FOR PUBLIC AUDITORS**

A closer examination of some of the contents of a set of guidelines in a book, authored by the Independent Regulatory Board for Auditors (IRBA), in cooperation with the Office of the Auditor General of South Africa, titled: *Auditing in the Public Sector* refers . The guide is instructive in the manner in which it albeit implicitly, suggests possible areas for exploration, in attempts to stretch the limits of the scope of work of the OAGSA. There exists an important statement in the book. It reads as follows (a recap):

“SAIs [supreme audit institutions, a common name for the different auditor generals of the democratic countries of the world] should assist in ensuring a cycle of accountability, with systematic follow-up of appropriate parliamentary recommendations” (IRBA, 2012: 70).

The extract forms part of Fundamental Requirement 5, (one of 13 Fundamental Requirements that the IRBA prescribes for the OAGSA), as cited earlier on in this report. To further support this view Fundamental Requirement 6 (IRBA, 2012: 71)

directs that one of the fundamental requirements for the operations of the OAGSA consists in:

“Following up on audit findings and implementation of recommendations.”

In the light of the fact that current legislation does not give power to the OAGSA, to determine and implement sanctions against transgressions and indiscretions by State institutions or functionaries, this researcher is of the view that ‘following up’ as proposed above, beckons a closer examination. With a view to taking the analysis of Fundamental Requirement 6 further, particularly the “follow up” predicative – one other relevant question to ask would be: what is the least that the OAGSA could do to assist the legitimate consequence management power holder, namely Parliament, to carry out the responsibility of enforcing its (Parliament’s) own resolutions in State organs? Some plausible answers to the questions are explored below. The analyses of the meanings attaching to ‘assist’ and ‘follow-up’, done in one of the previous sections of this report, suffice for purposes of suggesting to the OAGSA, how the Office could assist Parliament to exercise its power.

#### **4.11.5.1 FUNDAMENTAL REQUIREMENT 4**

Fundamental Requirement 4 of the IRBA Guides (2012: 69) for public auditors, which is in line with s 188 (3) of the 1966 Constitution, reads as follows:

“Empowering the public to hold government accountable and responsive, through objective information, simplicity and clarity of the message, and convenient access to audit reports and messages in relevant languages”

The requirement evidently uses a provision in the Constitution, namely, s 188 (3), as a basis for this requirement, which provides amongst others, that "All reports must be made public".

When this fundamental requirement was first mentioned in this report as part of the section which analysed the mandate of the OAGSA, there was reference to the perception that the Office of the Auditor General of South Africa, is through this fundamental requirement, duly authorised to work towards maximum publicity of its findings, particularly within the ranks of the voting public.

On reading the requirement, one might wonder whether the OAGSA has done enough to date, to reach out to the majority of the voting public, to share fully with them, the nature and the extent of audit underperformance as reflected in the OAGSA 's annual reports. Also, one wonders whether the Office is of the view that reporting to the executive and the legislative arms of government only, suffices. For instance, the requirement makes mention of the option to use relevant languages, to enhance understanding of the information thus disseminated, particularly within the ranks of those whose literacy levels are low. It is evidently, certainly the general public that the Constitution envisaged in s 188 (3).

This researcher has not seen much or any of this option being utilised by the Office of the Auditor General in South Africa, to date. Road shows that people have seen were largely directed at State institutions or officials.

Another effective media that could be used to maximise the information dissemination, is the convening of community mass meetings over weekends, where

both workers and the unemployed are called together, to thus constitute the audience at the events. Political parties, church denominations, civic bodies have long perceived that this method works, that it maximises information dissemination. Otherwise how would one explain the extensive utilization of the 'mass community meeting' approach? If these societal or community structures perceived this method as capable of reaching out to many people, what convincing argument could there be, advanced in support of the OAGSA's failure to utilise the option, to date?

The idea behind this method of outreach should ideally have only one purpose, namely: to share accurate and objective public audit information with the voting public. However, the OAGSA would particularly be well advised, to avoid sensationalism and bias in its reporting, to avoid being perceived as pursuing a specific political agenda, which might be construed as intentionally, or unintentionally promoting a particular ideology over others, or promoting an ideology which is aligned with a specific political formation. Only the above cited objective should ideally be the reason for the road shows or public meetings, this researcher cautions.

The preceding two court judgements, taken together with the mandate of the PAC/SCOPA, and some relevant national legislation - are the subject of the analyses and the discussions below.

#### **4.12 INTERNAL CONTROLS AS A ROOT CAUSE OF POOR AUDIT OUTCOMES**

An earlier analysis in this report, of the root causes for poor audit outcomes in South Africa, portrayed a situation where weak internal controls consistently featured as a



root cause throughout the ten years that were reviewed in this report (2004/5 to 2013/14) – and for all the three spheres of government, namely, the national, provincial and local spheres of government. Two directives issued by the Office of the Auditor General of South Africa in 2011 and 2014, in compliance with the Public Audit Act (2004: s 2 (b) and s 13 (3) (b)), both enumerate and describe three criteria that the OAGSA uses as measure, in assessing the strength of internal controls in a state institution. They are: leadership, financial and performance management, and governance.

Under leadership the OAGSA's Directive (2014: 11) cites the following in a way that suggests that the bulleted responsibilities below, constitute the essence of the leadership function in an organizational setting:

- Provide effective leadership based on a culture of honesty, ethical business practices and good governance, protecting and enhancing the best interests of the auditee.
- Exercise oversight responsibility regarding financial and performance reporting and compliance and related internal controls.
- Implement effective human resource management to ensure that adequate and sufficiently skilled resources are in place and that performance is monitored.
- Establish and communicate policies and procedures to enable and support understanding and execution of internal control objectives, processes and responsibilities.

- Develop and monitor the implementation of action plans to address internal control deficiencies.
- Establish an IT governance framework that supports and enables the business, delivers value and improves performance (OAGSA Directive, 2014: )

When one closely examines what the OAGSA perceives to be constituting “Financial and Performance Management”, and “Governance”, it becomes clear that they are in large measure, each an extension of one or the other of the leadership functions as presented above.

It is therefore assumed hereunder, that by focusing on only the concept of leadership, one somewhat captures the essence of the other measures of internal control effectiveness, namely, financial and performance management and governance. In other words, the two are (in this report), considered to be only facets of the broader concept of leadership. The leadership concept only and in its broad sense - is therefore briefly discussed in the subsection below.

#### **4.12.1 LEADERSHIP**

Leadership, viewed in its broadest sense, reveals much that is lacking in State organs. Several writers on leadership define the concept variously, although all gravitate to the same fundamental tenets. An accomplished execution practitioner Bossidy (2002: 57 – 84), cites several behaviours that he attributes to the executing type of leader. Amongst them this researcher mentions: knowing one’s co-workers and subordinates; insisting on realism; setting clear goals and priorities; following through; expanding people’s capabilities, and knowing oneself. Most illuminating, he cites as part of ‘knowing oneself’, the attribute: *emotional fortitude*. Although he

does not explicitly define 'emotional fortitude' one can easily read from context, that it means having the capacity to be forthright, candid, robust in interactions with one's subordinates – without being arrogant, rude or personal. To him, if one does not display these attributes, he is most probably not there yet, not the type of leader who is capable of executing strategies - for results.

Cooper (2011: xv) states that:

“Leadership is about creating an environment where people consistently perform to the best of their ability. Natural leaders do this intuitively, but for the rest of us mere mortals, we have to learn how to lead”

The key phrase in the citation is 'creating an environment'. In other words, if one's people are consistently performing to the best of their ability, then according to Cooper, that person has successfully created the kind of environment that the people needed, which motivated them to work hard, and in the interests of their organization. The person who created this environ is, accordingly a leader, or so says Cooper.

Introducing a Biblical basis for the concept of leadership, Tibane cites King Somon (Proverbs 11: 14) as follows:

“There is an evil I have seen under the sun, as an error proceeding from the ruler”

This, says Tibane, suggests that even in Biblical times, leadership errors, ineptitudes, and indiscretions, existed. That is, some of society's problems originated from erratic

behaviour within the ranks of rulers. The erratic behaviours, unacceptable acts or omissions, were regarded as 'evils' by King Solomon.

Another illuminating citation from Tibane (2014: 12) reads as follow:

"Ninety five per cent of the decisions that top leaders make can be made by a reasonably intelligent high school graduate."

According to this view, there is not much to brag about when one is appointed a leader, since many non-leading people can also make most of the decisions that the leader made.

Tibane however turns around and hastily states categorically, to drive his point home to the reader, that:

"Top leaders don't get paid [huge salaries and bonuses] for the ninety five per cent of the decisions [that they make], but rather they get paid [these huge amounts] for the other five per cent of the decisions – decisions which their followers can't make" (2014: 12).

He goes further to say that "These are decisions that become defining moments for the organizations... " (Ibid).

In a sense Tibane suggests that leaders are people with vision. They see far where their followers cannot. If a leader's people also had this capacity to see far, they would have been in a position to make the five percent decisions. But they as a norm cannot, or so posits Tibane. In effect Tibane, like Bossidy, identifies leaders through their behaviours.

Thakhathi (2013), writing in his Inaugural Address to Fort Hare University academia, introduced a concept of 'revocracy'. He informs that the roots for the term are taken from the Latin word: 'revolvere', which means 'to make a complete turn', and also from the Greek word 'kratos', meaning 'power'. His exposition, taken in totality, suggests that revocrats are people/leaders who always seek to bring about a complete change for the better in what they do, in line with ever present changing conditions in their operating environment. Revocrats thus operate in stark contrast to the modus operandi of bureaucrats, who pride themselves in being experts in keeping the traditions of an organization, that is, in maintaining the status quo.

Writing a report on a research that they undertook, which sought to establish whether the extent of leadership alignment at different levels mattered in influencing performance in an organization, O'Reilly, Caldwell and Chatman (2005: 19 – 25) concluded that it did. The researchers went past the well-researched and thus established theory that leadership behaviour impacts on performance in an organization - and focused instead, on when and how leadership exerts its influence.

Their finding reads more or less as follows: a single leader at the top is unlikely to matter much in impacting positively on performance, until there is alignment with her/his thoughts and visions, created at the lower levels of leadership. Only when this alignment is established throughout the levels of leadership in an organization - is there significant leadership impact on performance.

Therefore, strategic communication and engaging in efforts to establish buy-in amongst all levels of leadership, on the part of top leadership, is another of the defining characteristics of leaders.

Suttner (2015:136) contends that trust as embedded in one's ethical make up, also plays a critical role in relations between the leader and the led. People follow and believe in their leader, only if they trust her/him or her/his decisions. This is yet another of the defining attributes of a leader, namely: trust, honesty, and integrity.

In another supportive documentary source, titled: *The Promise and Perils of Constitutionalism*, Justice Cameron (2014: 276) sums up the South African situation as follows:

"Fragmentation and lack of leadership in important national institutions, like the SABC and the National Prosecuting Authority (NPA), seem to have reached dismaying proportions"

He further states that:

"What we need to survive these tough times are honest leaders and an actively engaged public, together with practical sense and street wisdom"  
(Ibid).

The crucial question to ask in this subsection is: when and how does the development of management and leadership capabilities, significantly impact on performance in an organization. The foregoing paragraphs went far in providing a plausible response to the question, albeit neither explicitly, nor exhaustively. The preceding section gives an account of what attributes are desirable in a leader, or what personal attributes constitute a leader profile.

Seen in this light, all organizational leadership attributes – in this case, public institutional leadership –where the traits are not naturally occurring – could be

cultivated through education and training programmes on leadership principles and practices, and secondly through consistent consequence management applications, thus simultaneously raising accountability levels within the leaders' ranks.

An account of the concept of accountability in government has been given sufficient coverage in the preceding chapters of this report. It inevitably comes back again, to play a crucial role in the development of leadership capabilities in state organs. Any capacity building exercise which does not simultaneously seek to raise the levels of accountability within the ranks of management and leadership, would not achieve much in for instance, turning audit underperformance around.

In respect of consequence management, this researcher categorically states that, officials in government institutions know fully well, that their lives depend on the government jobs that they hold – particularly in largely rural provinces such as the Eastern Cape, where a tiny private sector is no match for huge government institutions - with regard to offering an adequate supply of well rewarding employment opportunities. Consequently, anything that threatens the officials' job security, they understandably take seriously. In the circumstances, the critical tenet of enforcement of consequences in the three-tenet concept of accountability as discussed previously - is bound to produce a good measure of conformity with guidelines and regulations, or towing the line within the ranks of State officials.

Furthermore any need within state organs, for training and development, is incidentally well documented in the OAGSA reports. It makes sense therefore, to look to this office for direction with regard to what training programmes should be

provided by State institutions, in their attempts to capacitate their officials, in identified areas of their work environments.

The OAGSA for instance, tabulates the aspects of each of the three measures of internal controls cited above, that matter as indicators of acceptable performance. What remains in this researcher's opinion, is for the Office of the Auditor General to advise State organs - in a manner that is more indicative of a directive than otherwise - to send their affected officials for training by specific dates, and report thereon subsequently.

As the foregoing paragraphs, as well as the preceding chapters have indicated, there is a critical need for an accelerated leadership development intervention in State institutions, as well as a simultaneous entrenching of the centrality of accountability in the leadership function. That is, if the perennially poor audit findings in State institutions serve as good indicators of the challenges to be overcome by the State.

Nevertheless, the Labour Relations Act (LRA, Code of Good Practice, 1995: s 8 (2) (a)) as amended, does not approve of situations where management charges their subordinates with incapacity, before they have put them through a process of capacitation. Further the LRA directs that, if incapacity persists notwithstanding – the finding of alternative deployments for the affected employee should be considered. This prohibition by the LRA, necessitates that State functionaries cannot be subjected to disciplinary action, unless they have firstly be put through an education and training programme, which addresses their respective incapacities.



In these circumstances, it is reasonable to conclude, that unless South Africa takes a firm resolution to appoint into her leadership positions – people who are well endowed with, or well-grounded in the leadership behaviours as cited in this section – nothing much would come out of all efforts to improve audit performance. One need only look at the identified - and perennial root causes for poor audit outcomes, to make sense of the appropriateness of this conclusion.

#### **4.13 CONCLUSION**

Chapter 4 set out, primarily to seek plausible answers to the questions of the research. It commenced with a close look at the underlying policy of modern capitalist democracy, its origins and how it impacted on accountability by the executive arm of government, and accountability relations in governments all over the world, and in particular within South Africa's constitutional democracy.

Literature perused reveals that modern capitalist democracy did not enhance democracy as it was known prior to the advent of the system after all, but served only to effectively limit it, to contain it. The system created a situation where political parties were elected in periodic general elections, to represent the electorate in government, and thus rule on its behalf. Of special significance is the realisation that in a ruling party context, accountability tended to be more to the party, at least in South Africa if not everywhere where the system applied, than it was to the primary principal, the electorate, that is, the voting public. This situation is however a logical consequence of the party political system, since it is in line with South Africa's legislation which provides that the electorate vote for political parties, rather than for individuals of their choice, to represent them in Parliament.

A theory of economics, namely, the principal agency theory, established firmly in the 20<sup>th</sup> century (although its origins dates back to the eighteenth century) – that in a principal agency relationship, there always exists a possibility that the agent will, at times act in its own interest in managing the affairs of the principal - rather than act in the interest of the principal, a situation conventionally referred to as the 'danger of moral hazard'. It consists in appointing an agent who qualifies in all respects, to be a most suitable candidate for an envisaged agency position, only for the agent to disappoint somewhere down the time line, and to, at opportune moments – disregard the interests of the principal, and instead act in the agency's own. Of significance in accountability relations which are skewed more towards the party, rather than towards the electorate is this: if for some reason, the ruling party itself disregard one or the other of the interests of the electorate, parliamentary representatives, and those tasked with the executive function, will do likewise, taking cue from the caretaker-principal, namely, the party or parties in government. In effect voting a political party to govern, effectively amounts to handing over the right to govern to the party, and thus locking the electorate out of government, whereupon the voting public become spectators for the greater part of the term of government.

A section was also devoted to limitations in the 1996 Constitution, which resulted in not only a perception of a powerful president, but also left gaps in its provisions, that were open to abuse by opportunistic organs of State or officials, for their own ends.

The deliberations of the chapter next sought to analyse the scope of work of the Office of the Auditor General of South Africa; particularly with a view to explore the various ways in which the OAGSA stretched the limits of the current legislative mandate, as well as to examine where current legislation could be amended, to render the OAGSA more effective in achieving its objectives. Of significance in this regard, were developments in case law which provided opportunities for exploration by the OAGSA.

The 1996 Constitution and the Public Audit Act, taken together, constitute the enabling legislation with regard to the work of the OAGSA. What however caught the attention of this researcher was a booklet authored by the Independent Regulatory Board for Auditors (IRBA), together with the Committee for Audit Standards (CFAS), titled: *Auditing in the Public Sector*. The booklet's guidelines without doubt, significantly stretched the limits of the scope of work of the OAGSA.

A closer examination of the OAGSA's audit reports reveals that there has always been recurring audit findings in State institutions, to this day. The recurring findings are chiefly a result of poor consequent management by the executive and especially by the legislative function, as well as poor quality leadership in State organs, the OAGSA reports indicated. The two institutions, when acting with enhanced cooperation - have the power to discipline its cadres, and to enforce sanctions for transgressions in managing public finances.

The operations of the PACs (alias SCOPAs), were such that the emphasis in carrying out their work, was not on enforcing its resolutions, but rather on meticulously

following procedures and processes in executing their mandates. This was generally obtaining in many capitalist democracies of the world.

The two judgements dealt with in the discussions, directly relate to the Office of the Public Protector, but are equally applicable (with minor modifications) to the Office of the Auditor General of South Africa, this researcher reckons. They, taken together, opened the way towards, and in fact one (SCA) finally ruled - that the decisions of a state organ and Constitutional Institutions, are in full force and effect, for so long as no court of law has reviewed the decisions.

Limitations in the two statutes which directly regulate public financial management, namely, the Public Finance Management Act, and the Municipal Finance Management Act were also identified.

Lastly, one of the enduring root causes for poor audit outcomes in South Africa, namely, poor internal controls, is discussed. A specific emphasis is laid on the central role that leadership plays in enhancing performance in all organisations, and particularly within the ranks of public institutions.

## **CHAPTER 5**

### **SUMMARY, CONCLUSIONS AND RECOMMENDATIONS**

#### **5.1 INTRODUCTION**

This researcher felt it befitting the occasion, to use a citation from Hosten (2006: 156), to signify the beginning of the end of this arduous task. Hosten cites Aristotle, an ancient Greek philosopher, thus:

“Now a whole is that which has a beginning, middle, and [an] end”.

This concluding chapter commences with a brief summary of the sub-findings and the main findings of the research, as distilled from the analyses and the discussions of the preceding chapter. The conclusions of the study of necessity derives from the findings, and this researcher cherishes the hope that the conclusions provide plausible answers to the questions of the research - and thus, also to the thesis of the study.

Recommendations for implementation are simultaneously presented alongside the conclusions, since this approach is considered most appropriate for the illustration of the possibilities for application of same.

A summary of contributions to knowledge, and motivation for critical recommendations, follow thereafter. To wrap up the report, a few potential opportunities for further research - are suggested to the reader, for exploration.

## 5.2 A SUMMARY OF FINDINGS

The discussions of the preceding chapter illustrated in diverse ways, that the system of capitalist democracy was from inception, never intended to promote or to enhance democracy, but to limit it instead. The electorate was not to govern, but the political party (the majority party or a coalition of parties) in government had delegated to itself through general elections, the authority to govern. Its policies which were thus evidently considered (by the electorate) to be most aligned to the interests and the aspirations of the proletariat – would in the circumstances, of necessity prevail.

There was certainly belief within the ranks of the electorate, that the parties in government would make it their duty to work in the interests of their respective backers (the electorate formations), throughout their term in government. However, because political parties are bodies which have a profile of their own, and particularly which over time typically develop interests and aspirations which present them as unique entities themselves, different in some ways, even from the people who voted them in, to govern – the two principal agency theory problems of adverse selection and moral hazards naturally come to play themselves out in this public political and administration arena – to in the process, bring out into the open, the vices and the virtues of the system. The system thus created an agent at the top level of government, and simultaneously built into its mechanisms, some kind of: 'a lock-out-for-the-duration-of-the-term-in-government' consequence for the electorate. This creation constitutes the substance of the claim of the 'limitation of democracy' as alluded to above.

This revelation in itself – does not explain observable instances of maladministration, presenting themselves in various forms in government, such as: transgressions of the law, indiscretions, ineptitudes, malfeasance, corruption, and so on – which are notable in some governments which have adopted the system. Only when the principal agency theory, rational choice theory and the public accountability theory are applied to the public sphere of government, does one begin to see a fuller explanation of the different manifestations of maladministration.

The role of the Office of the Auditor General of South Africa (OAGSA), and also its scope of work - is provided for in the 1996 Constitution and the Public Audit Act. However a guide book authored by the Independent Regulatory Board for Auditors (IRBA, in conjunction with the Committee for Audit Standards (of which the OAGSA is a member), throws more light in regard to what the legislative framework entailed. Further, the OAGSA is empowered through legislation to from time to time, issue determinations and directives, in line with developments in accounting standards and auditee circumstances.

It was argued in the discussions of chapter 4, that the OAGSA is effective in the execution of its mandate - only when it independently, professionally and objectively audits, reports and recommends, as well as when it demonstrates through the medium of its reports - good, or significantly improved audit outcomes by auditees, that a discerning observer would be convinced that the OAGSA performs well. In other words, only when these two conditions are met, can one say that the Office of the Auditor General of South Africa is effective in the discharge of its roles and responsibilities as the State's external auditor.

In response to the second question of the study, it became clear from evidence collected, that the Office of the Auditor General did everything imaginable, in its attempts to improve audit performance among auditees. Taking everything into consideration, it indeed ingeniously extended the limits of its mandate to the full. What evidently remains to be done is certainly increased cooperation between Parliament and the OAGSA - particularly in these enduring times of poor audit outcomes. This is logically deducible from the realization that the Office of the Auditor General of South Africa, only has the power to 'audit and report', while parliament holds the power to 'take remedial action' (in the language of a section in the mandate of the Office of the Public Protector). That is, Parliament has the power to order corrective action within the ranks of auditees. The IRBA concurs with this view. The meaning construction undertaken with regard to the words that it used, namely: *encourage*, *assist* and *follow up*, directed at the OAGSA - attest to this claim. The idea behind the analyses of the court judgements which related to the Office of Public Protector (OPP) was to indicate that in the case of the OPP, contrary to what obtains in the Office of the Auditor General of South Africa – the power to 'take remedial action' was vested in the same office, namely, the Office of the Public Protector.

Of the few attempts that the OAGSA could still undertake, to rein in recurring audit findings, and thus poor audit performance, there still exists one, namely, engaging in information dissemination road shows. It is reasonable as has been argued in this report - to assume that engaging in public targeting roadshows, undertaken by the OAGSA, where information on the state of public audit performance - cannot be



regarded as acting out of step, or regarded as an overreach on the part of the OAGSA. Section 188 (3) of the 1996 Constitution opens the way for the adoption of any form of publication of this kind of information, that will give effect to the “made public” (Constitution, 1996: s 188 (3)) requirement of the section of the Constitution.

The OAGSA, true to its profile, which resembles more or less - that of an internal auditor, than that of an external auditor, as the discussions in chapter 1 revealed – did all that was imaginable in their thinking as concluded above, using the carrot rather than the stick approach – to get auditees to implement OAGSA recommendations, to no avail.

The result of this continued disregard for the recommendations - was a high incidence of unauthorized, irregular, fruitless and wasteful expenditures all over the public space. An illustration of the negative impact thereof was demonstrated through a hypothetical situation presented in the report, relating to the provision of one of this country’s pressing basic needs, namely, the provision of indigent housing by the Department of Human Settlements in South Africa.

The root causes for recurring poor audit findings were shown to consistently be:

- Lack of sufficient political will on the part of politicians and hence executive management, to improve audit outcomes.
- Incompetence, or lack of sufficient will on the part of executive management to implement internal controls, whether these be due to instability in key executive positions, or to the appointment of underqualified people to man these positions,

- Lack of consequences for poor performance or transgressions relating to public financial management

A world-wide comparative study on the powers and functions, as well as on the scope of work of Public Accounts Committees or Standing Committees for Public Accounts (respectively PACs or SCOPAs) was conducted in 2002. It persuasively convinced this researcher - that the enabling regulatory framework for these committees of parliament, at least in the countries that participated in the survey (South Africa was one) - was not only silent on what to do when PAC/SCOPA resolutions were not implemented, but also thus created a situation where the committees themselves did not see the need to sufficiently exert their energies on executing their primary role, namely, that of taking remedial action, to ensure that their resolutions were acted upon – to thus render themselves effective, in this researcher’s opinion. The committees instead, demonstrated a strong leaning towards following prescribed procedures and processes, to the spirit and the letter – and to the exclusion of the essential need to follow through, to ensure that their own resolutions were implemented.

In response to the last question of the research, the study demonstrated that developments in case law, taken together with perceived gaps in legislation, revealed much that Parliament and the Office of the Auditor General of South Africa should take note of. Two case law judgements scrutinized, ably demonstrated that Constitutional Institutions in South Africa cannot be dismissed at will, as simply advisory bodies whose proposals could be arbitrarily rejected. Of critical importance to the OAGSA, is the finding by the Supreme Court of Appeal (*DA v SABC*, 8 October

2015: para [45]) – that decisions of administrative bodies of State, including Constitutional Institutions, remain in full force and effect, until such time that a court of law revokes them. Also, the sections in the Public Finance Management Act of 1999 (PFMA) as amended, the Municipal Finance Management Act of 2003 (as amended), and the National Treasury Regulations – which left gaps in the pieces of legislation, which evidently provided opportunities to scrupulous agents (refer to the p-a theory), to use the gaps, to advance their own ends – were shown to be expressly needing the attention of Parliament and the executive arm of government.

Lastly the concept of leadership was shown to be at the centre of all poor internal controls in organizations, not excluding public institutions. The impact of poor quality leadership permeates the entire public service, if the recurring poor audit results are anything to go by. Also, worst case scenarios abounded in the local sphere of government, as well as in public entities.

A close scrutiny of a couple of leadership perspectives, revealed that definitions of leadership are typically behaviour seeking and behaviour oriented – and that leadership is not necessarily innate in individuals, but can also be acquired through education and training. Furthermore, the positive correlation between leadership and organizational performance is significantly enhanced by efforts on the part of executive leadership - which seek to align executive leadership vision, views and aspirations - throughout the levels of leadership in the organization.

Leadership therefore, is also at the core of the poor audit performance, as reported in the OAGSA's annual reports.

Lastly, the OAGSA's annual audit reports make no mention of awards, emanating from the Office itself, which sought to enhance excellence in public financial management performance, thereby indicating that the Office had given no thought to these, or did not see much value in introducing them as a directly affected player in the national audit performance. Although the presence of some awards (Vuna Awards) emanating from elsewhere is acknowledged – the OAGSA apparently played no significant role, if it did at all, in the awards' initiation.

### **5.3 CONCLUSIONS AND RECOMMENDATIONS**

The first question of this research study sought to establish whether capitalist democracy played a role, if any, or whether it impacted, if at all, in presently observable accountability relationships in government institutions – particularly with regard to the primary principal, namely, the electorate. Further, it also sought to establish whether capitalist democracy played a role in the lukewarm or weak commitment within the ranks of politicians - to the strategic thrust of consequence management.

This study has through tracing the origins of the political system and its methods of operation - established that in theory and in practice, the political system indeed had as its purpose and from inception, the displacement, albeit through mutual consent - of the electorate as the effective primary principal, and placed in its stead political parties. It however did this by design, and within the provisions of the Constitution and the law.

With regard to the second part of this first question, the system played a role, although only partly. Although it impacted on the accountability relations, in that it implicitly redirected greater accountability by state institutions, to the political parties themselves, rather than to the electorate – it however did not play a role in the weak commitment to consequence management. The principal agency theory, taken together with the rational choice theory, from economics and behavioural psychology respectively - were able to account for this turn of events, within the ranks of politicians and executive leaders of government alike.

The second question relates to whether the Office of the Auditor General of South Africa still had room to increase its scope of work within its legislative framework, to in this way, render itself more effective in the discharge of its duties, or whether developments in legislation or amendments thereon, have the potential to render this office effective, in improving public audit outcomes and thus public financial management.

The analyses and discussions of this report, indicated that, yes, the OAGSA did everything that was humanly imaginable. There was however still some room left in this researcher's opinion - for the Office of the Auditor General to further extend the limits of its scope of work. It could for instance achieve this through enhanced cooperation with a willing Parliament, through engaging in concerted efforts to publicize its audit reports by holding public road shows, where it would dispense information on the state of audit performance in government institutions.

A combination of, or an enhanced cooperation between the Office of the Auditor General and a willing Parliament, holds great potential. The two institutions have

been shown in the report, to be able to each achieve effectiveness, only through combining their respective powers, namely: to audit and report, and to order corrective action respectively. This need arises in consequence to the true statement that the Constitution unfortunately did not see it appropriate to delegate to the OAGSA, the power to enforce implementation of either its own recommendations/guidelines, or Parliament's (SCOPA's) resolutions.

Case law developments look promising in advancing the cause of Constitutional Institutions in South Africa, through their attempts to put these institutions in their rightful place, as the Constitution had envisaged. The Supreme Court of Appeal judgement is of critical significance as of to date, and is certainly of great assistance in this regard. Its finding was: that the decisions of administrative bodies of the State, including Constitutional Institutions - remain in full force and effect, until such time that a court of law renders them invalid.

Also, it has been argued in this study - that leadership plays a pivotal role in organizational performance, and that the public sector was no exception. The analyses of the study indicated that the quality of leadership, and the alignment of leadership vision and views within the ranks of all levels of leadership in an organization – respectively, positively correlates with, or enhances organizational performance. The same goal of extending the limits of the OAGSA's cope of work could also therefore be achieved - through the OAGSA determinedly organizing for training and education programmes, to significantly strengthen appropriate leadership behaviours, and hence capacity within State institutions, albeit working in conjunction with the other avenues for improvement, as cited above. It therefore

makes perfect sense to recommend that education and training of leaders be undertaken in earnest, prior to any thoughts of invoking consequence management policy directives.

Therefore, if the OAGSA and Parliament were to stand together, and resolve that they would henceforth engage in: effective consequence management, focused education and training of public institutions' leadership, introducing excellence awards in audit performance, and public directed roadshows as suggested previously in this report, to fully inform the public on the state of audit performance in South Africa - then recurring audit findings, and hence poor audit performance - would be thus done away with. Poor audit performance would henceforth merely be a thing of the past.

To be specific, this researcher proposes that Parliament takes a firm decision that it would henceforth consider the advisability of engaging the assistance of, or work in partnership with the Office of the Auditor General of South Africa in the exercise of its (Parliament's) powers to enforce implementation of its resolutions. This would have good consequences even if the assistance were to be legitimized for, initially low profile cases (cases where no high ranking politician is involved) – although the ethical basis for this practice is not unassailable.

An interesting question from a discerning reader could be: What are the chances that this change of resolve or thinking happens within the ranks of Parliamentarians? Only case law developments could assist in answering the question. The extent to which the South African government respects the country's constitutional framework

would determine the extent to which Parliament would be willing to review its approach to arresting poor audit performance – and thus take the OAGSA seriously.

The exclusion of high profile cases makes sense, this researcher submits. The arguments of this report contended among others, that political representatives, whether in Parliament or form part of the executive arm of government – are the responsibility of their respective political parties, who deployed them to serve in the various capacities in the first place. Parliament, which deployed politicians to man the executive arm of government, legitimately reserves the right to deal with instances where the politicians in the executive mismanages or misuses their powers to govern. If any stakeholder were to be dissatisfied with how Parliament exercises this right, the courts of the land are there to hear such complaints.

Also, the introduction of excellence awards by the OAGSA itself, would serve much, in motivating for innovation and excellence in public financial management. In particular, the OAGSA is well placed to know what aspects of audit performance to target for excellence awards, which are fundamental to the promotion of sound public financial management.

Another of the findings of the research was that good leadership is a *sin qua non* in State institutions. That is, it is something that government institutions cannot do without. Judging by the extent of poor audit performance discernible in State organs, particularly poor internal controls, there is a growing perception that an explanation for this, is to be found in the quality of leadership within the institutions. The perception of an overwhelming lack of good leadership therefore – remains a candidate for further research within State institutions.



## **5.4 MOTIVATION FOR TWO OF THE RECOMMENDATIONS**

### **5.4.1 ROADSHOWS**

This researcher has noted that the Office of the Auditor General of South Africa already undertakes annual visits to State auditees, who reportedly assemble at pre-arranged venues, to inform them of its audit findings, probably focusing on those (findings) that are widespread. The runs-in are also known as roadshows undertaken by the OAGSA. There is however no clarity - regarding whether the roadshows include members of the public.

It is however envisaged in this report, that there might be resistance to the idea of adopting this form of dissemination of audit information to the general public, in appropriate languages, particularly from some political parties - and not without valid reasons.

The possibility that members of the OAGSA through disseminating this information, might intentionally or unintentional project one party, one community formation or another, in bad light – has the potential to cast doubt in many minds, on its suitability. Great care on the part of the OAGSA therefore needs to be exercised, and this is certainly indispensable.

The possibility of this proposition having unintended consequences – necessitates the development of a high sense of independence (from political party formations), and of objective reporting within the Office of the Auditor General of South Africa. That is, one needs to report the facts - without peddling.

Sight is not lost of the eventuality that some members of the public (the audience) might be intent on using the opportunity to expose their adversaries or supposed culprits - through posing questions which might undermine the practice of independence and objective reporting. Perceived lack of political independence and shirking objectivity - are indefensible in these circumstances, and should therefore be determinedly avoided.

Section 188 (3) of the 1996 Constitution actually legitimizes the option. It reads thus:

“The Auditor General must submit audit reports to any legislature that has a direct interest in the audit, and to any other authority prescribed by national legislation. All reports must be made public.”

The latter sentence of the above extract constitutes the focus of this discourse.

Firstly, the said clause in effect states that the general public must not only have access to the reports, but must also have adequate knowledge of the contents of the reports.

Ensuring adequate access by members of the public (assuming the State undertakes to foot the bill), to the documents in their written form - is without doubt, exceedingly costly.

Furthermore, the majority of the poor masses of South Africa’s population has neither the means, nor the capacity, nor the language (in this case, English) – to acquire and to engage in this focused reading of the, now public document. Neither

has this researcher seen any such documents translated to the other 10 official languages of this country.

It therefore makes sense to utilize the option, which needless to say, has long been regarded by political parties and various community formations alike – as best suited to effectively reach out to the otherwise unreachable, mostly underprivileged members of the population of South Africa.

The question from an ardent reader at this point might be: What does South Africa's mostly underprivileged population stand to gain from the exercise of this option by the OAGSA?

The answer to the question is not hard to find. The concept of democracy was earlier on in this report, defined – in such a way that it was projected as supportive amongst others, of the idea of ensuring that the voting public is open to supplies of information from all sources, a view which thus places them in a position to prudently judge for themselves, what is best for them. Objective reporting of information - which by definition, seeks to share factual information without peddling it - and in this case, on what the masses presumably do not know - certainly serves this purpose well.

#### **5.4.2 ENHANCED COOPERATION BETWEEN THE OAGSA AND PARLIAMENT**

Parliament is aware, or at least ought to have been aware all along, that it only, holds the power to enforce the implementation of its resolutions, particularly those which sought to counter situations which threatened to, or had the potential to negate the executive arm of government's efforts, to ensure that it (the executive)

was not only seen to be, but also remained, committed to sound public financial management.

In the case of the institution of the Public Protector (and the South African Human Rights Commission (SAHRC)), the Constitution for whatever reasons - saw it most befitting, to wrestle part of this right from Parliament, and award a share of the power instead, to them (the Public Protector and the SAHRC) in their respective dealings with matters falling within their mandates - as the OPP and the SAHRC saw it appropriate. It is however disappointing to note, that this fundamental unstated intention by the Constitution drafters, has only recently been entrenched in law in the case of the Office of the Public Protector, through the Supreme Court of Appeal's judgement - cited elsewhere in this report.

For the rest of the Constitutional Institutions, this was not to be. Except the two aforementioned, they all rely on assistance from, and partnering with Parliament, for the enforcement of their recommendations/decisions. In the case of public financial management, this state of affairs is deducible from the, lately perennial lamentations of the OAGSA, over a disturbingly poor consequent management culture within government (refer to opening quote in chapter 1).

All that this researcher humbly request hereby - is enhanced cooperation between the Office of the Auditor General and Parliament. The cooperation would, if it happens, inevitably entail the two public institutions partnering with, and assisting each other, as well as together following up on audit interventions - or causing consequences to follow failure to comply.

In this proposed enhanced cooperation environment, Parliament could also consider authorising the Office of the Auditor General of South Africa, to present its recommendations and proposed interventions, not as 'recommendations and proposed interventions' anymore – but as decisions from the OAGSA to the auditees, on what needs to be done to turn a bad audit situation around.

The decision of the Supreme Court of Appeal will take over from this point. To remind the reader, the decision of the court was: the decisions of administrative State organs, including Constitutional Institutions - stand in fact and in law. That is, they exist in fact and are in full force and effect, for so long as no court of law has invalidated them. In effect, the court decision orders a State institution which does not see its way clear to executing the decisions of the OAGSA – to do the only alternative available to it, namely, to take the matter to court for a review.

Is not this procedure exceedingly simple and feasible, especially with the Supreme Court of Appeal decision now in place, to thus empower the OAGSA? This without doubt - is not possible without Parliament's enabling act of co-opting the OAGSA in the manner as herein suggested.

In summary, this researcher thought it most appropriate, to propose a feasible solution which in his opinion, stood a good chance of assisting, in turning the culture of poor consequence management around.

It is this researcher's considered opinion - that the culture of poor consequence management, as well as the dearth of good leadership within government - are at the core of recurring audit findings, and hence poor audit outcomes in South Africa.

## **5.5 SUMMARY OF CONTRIBUTIONS**

A few conclusions discussed above are isolated hereunder and presented as possible candidates in respect of contribution to knowledge.

Firstly the conclusion, although not in itself constituting new knowledge - that pronounced accountability to political parties rather than to the electorate by members of Parliament and the Executive, was by design and mutual consent between political parties and the electorate – was evidently perceived as an excellent idea to come about in the early years of the democratic rule, since the general public saw embodied in the majority ruling party, the body electorate – and consequently overwhelmingly voted it into power. However, the interests of a party and its backers need not always converge. Principal agency and rational choice theories reveal other factors which come to play to, bedevil matters. In particular information asymmetries and personal interests and the need for recognition within the ranks of agents - gained the upper hand in no time. As it turns out in the findings of this report, a ruling political party/coalition of parties in a capitalist democracy - fully assume(s) the role of the voting public (the principal), in fact and in law.

The assumption of the role of principal by the political parties logically follows from the design of the system of capitalist democracy throughout the world, and the provisions of the Constitution and the law in South Africa. The doubling up of the roles of principal and agent thus commenced from this level.

Also, the informed view that when information asymmetries (p-a theory) are hopelessly turned against the electorate, to thus optimally favour the agent, the electorate stands to suffer extreme neglect and large scale impoverishment – is in itself both revealing and astonishing.

Further, the identification of opportunities for extending the limits of the scope of work of the OAGSA for exploration - such as conducting public roadshows to disseminate audit information, or the OAGSA having delegated to it a share of the power to enforce implementation of Parliamentary resolutions – are probably novel ideas.

Also, the conclusion that, the OAGSA alone cannot win the battle to improve audit outcomes, that it heavily relies on Parliament for partnering and assistance - and the proposition that Parliament considers the advisability of inviting and legitimizing the sharing of the power to order corrective action with - could similarly, possibly be a novel approach.

Further, the revelation that PACs (alias SCOPAs), unfortunately for the democratic world – did not appear to have provided themselves with firm policy guidelines for consequence management in situations where auditees did not implement the PACs' resolutions, to the satisfaction of the Parliament – other than to annually engage in different forms of persuasion, to urge auditees on, to mend their ways. This situation prevailing - despite Parliament's undisputed power to order corrective action within government, where appropriate.

Lastly the identification of appropriate case law judgements for application in the enhancement of the role of the Office of the Auditor General, with a view to improving audit outcomes and hence public financial management in South Africa – has the potential to also be a candidate for ingenuity and thoughtfulness.

## **5.6 SUGGESTIONS FOR FURTHER RESEARCH**

It would certainly be interesting to this researcher to read a report of a research study, subsequent to this one, which confirms his finding that Parliament has presently, no well-articulated directives - or no procedural rule book which sets out in no uncertain terms, how Parliament is to ensure the implementation of its own resolutions on reports annually tabled before it by various State organs and Constitutional Institutions - as well as how it is to follow up on the implementation thereof, in a manner which could be considered effective and results orientated. The interesting part of the finding would certainly be: if such a study were to find that Parliament in fact had such a guide/rule book, the study would certainly have to explain how come Parliament did not generally cause consequences to follow, in particularly glaring cases of failure by auditees, to execute Parliament's (OAGSA's) resolutions, or in glaring cases of breach, gross negligence or malfeasance in public financial management.

Secondly, the principal agency theory suggests that finding an optimal contract of engagement between a principal and an agent is one of their research concerns. By this is meant finding an arrangement and consequently striking a deal, a contract where the interests of both the principal and the agent are optimally served. It so happens that this researcher presently yearns for a research study that could



convince a discerning reader that – such an optimal contract exists and is possible to strike, in a capitalist democratic system of government, such as South Africa's.

Thirdly, this researcher is of the view that a formal/scientific research avenue possibly exists which would bring about a firm establishment or otherwise, of the perception that there is political interference in the appointment of administrative leadership in government. There is no doubt - that the OAGSA, through its annual reports over the years – has firmly established that the leadership of State institutions does not play their role as they should. They in general, do not have the capacity to lead and administer institutions of government. What could be behind this widespread incapacity at this level? One may want to know.

Lastly, the idea of an evaluation study, to gauge the impact of the Vuna Awards over, say the last 12 years to date, of their existence – is another of the options for further study that this researcher envisaged.

## BIBLIOGRAPHY

**Adejuwon, D.** 2012. The Dilemma of Accountability and Good Governance for improved Public Service Delivery in Nigeria. *Africa's Public Service Delivery & Performance Review Journal*, Volume 1(3).

**Adsera, A., Boix, C., Payne, M.** 2003. Are You Being Served? Political Accountability and Quality of Government. *The Journal of Law, Economics & Organization*, 19 (2), 445 – 490. Chicago, United States of America: Oxford University Press.

**Auditor General of South Africa (AGSA).** 2013. Integrated Annual Report 2012-13 (to Parliament). Pretoria: Government Printers.

**AGSA.** 2006 and 2013. General National Audit Reports, Eastern Cape. Cape Town: Government Printers.

**AGSA.**2006. Public Service and Administration Portfolio Committee Address. Pretoria: Government Printers.

**AGSA.** 2011 – 2013. General Provincial Audit Reports, Eastern Cape. Pretoria: Government Printers.

**AGSA.** 2013. Business Day Live. Johannesburg: Business Day.

**AGSA.** 2010. Media Release. Auditor-General commits to assist municipalities towards clean audits by 2014 .

**AGSA.** 2013. Media Release: Auditor-General calls on Eastern Cape provincial leadership to take full ownership of the internal control environment as the province's audit outcomes stagnate.

**AGSA.** 2013. Media Release : Auditor-General is optimistic as national, provincial departments and public entities improve their audit outcomes

**Auditor General OF South Africa.** 2014. Media Release. Cape Town, South Africa: Government Printers.

**AGSA Directive.** 2011. Directive Issued in Terms of the Public Audit Act, 2004 (Act No. 25 of 2004). 2011. Pretoria, South Africa.

**Ahmed, J. U.** 2010. Documentary Research Method: New Dimensions. *Industrial Journal of Management and Sociology*, 4 (1), 1 – 14.

**Atkinson, M. M., Fulton, M.** 2013. Understanding Public Sector Ethics: Beyond Agency Theory in Canada's Sponsorship Scandal. *International Public Management Journal*, 16 (3), 386 – 412.

**Babbi, L.** 2008. *The Basics of Social Research. Second Edition.* Belmont, USA: Thompson Wardsworth.

**Badenhorst, C.** 2008. *Dissertation Writing: A Research Journey. First Edition.* Pretoria, South Africa: Van Schaik Publishers.

**Bossidy, L. & Charan, R.** 2002. *Execution, the Discipline of Getting Things Done. First Edition.* United States of America: Random House Business Books.

**Botha, C.** 1998. *Statutory Interpretation: an Introduction for students. Third Edition.* Cape Town: Juta and Co. Ltd.

**Bovaird, T., Loffler, E. Eds.** 2003. *Public Management and Governance. First edition.* London, United Kingdom: Routledge Publishers.

**Braun, V., Clarke, V.** 2013. *Successful Qualitative Research: A practical Guide for Beginners. First Edition.* London, UK: SAGE Publishers.

**Butler, A.** 2013. The State of the South African Presidency. *The Journal of the Helen Suzman Foundation*, 71 (12), 4 – 9.

**Butler – Kisber, L.** 2010. *Qualitative Inquiry. First Edition.* LONDON, UK: SAGE Publications.

**Cameron, E.** 2014. *Justice: A Personal Account. First Edition.* Cape Town, South Africa: Tafelberg Publishers.

**Cloete, f., Wissink, H., De Coning, C.** 2006. *Improving Public Policy, from theory to practice. 2<sup>nd</sup> Edition.* Pretoria, South Africa; Van Schaik Publishers.

**Chirwa, D. M., Nijzink, I.** 2012. *Accountable Government in Africa: Perspectives from Law and Political Studies. First Edition.* Cape Town, South Africa: United Nations University Press.

**Chapman, R. A. and Greenaway J. R.** 1980. The Dynamics of Administrative Reform. 1<sup>st</sup> Edition. London UK: Croom Helm Publishers.

**Cook, B. J.** Democracy and Administration. 2007. First Edition. Maryland, United States of America: Johns Hopkins University Press.

**Corder, H.** 2012. Judicial Review of Parliamentary actions in South Africa: A nuanced Interpretation of the Separation of Powers. *Accountable Government in Africa* by Chirwa and Nijzink, 85 – 104.

**Denzin, N. K., Lincoln, Y. S.** 2005. Qualitative Research. Third Edition. London, UK: SAGE Publications.

**Department for International Development (DFID).** 2008. Growth, Building Jobs and Prosperity in Developing Countries. London, United Kingdom: DFID.

**De Vos, P.** 2012. Balancing Independence and Accountability: The role of Chapter 9 Institutions in South Africa's Constitutional Democracy. *Accountable Government in Africa* by Chirwa and Nijzink, 160 – 177.

**Dintwe, S.** 2012. The African National Congress Led Government's (In) Ability to counter Public Corruption: a Forensic Criminological Perspective. *Africa's Public Service Delivery & Performance Review Journal*, Volume 1(2).

**Eastern Cape Provincial Legislature Research Unit.** 2014. Standing Committee on Public Accounts, End of Term Report: 2009/10 – 2012/13. Bhisho, South Africa.

**Eisenhardt, K. M.** 1989. Agency Theory: An Assessment and Review. *Academy of Management*, 14 (1), 57 – 74.

**Esser, I., Havenga, M. Ed.** 2012. Corporate Governance Annual Review 2012. First Edition. Durban, South Africa: LexisNexis Publishers.

**Fatile, J.** 2012. Corruption and the challenges of Good Governance in the Nigerian Public Sector. *Africa's Public Service Delivery & Performance Review Journal*, 1(3).

**Fossey, E., Harvey, C., McDermott, F., Davidson, L.** 2002. Understanding and Evaluating Qualitative Research,. *Australian and New Zealand Journal of Psychiatry*, 36, 717 – 732.

**Greenberg, J. and Folge, R.** 1988. Controversial Issues in Social Research Methods. First Edition. Ohio, USA: Spring- Verslag Publishers.

**Greenwood, J., and Wilson, D.** 1989. Public Administration in Britain. 2<sup>nd</sup> Edition. London, UK: Unwin Hyman Ltd Publishers.

**Gorard S.** 2013. Research Design, Creating Robust Approaches for the Social Sciences. First Edition. Los Angeles, USA: SAGE Publications Ltd.

**Hooker, J. N.** 2011. Moral Implications of Rational Choice Theories. Pittsburgh, US: Tepper School of Business, Carnegie Mellon University.

**Hornhill, C.** 2012. JJN Cloete's South African Public Administration and Management. tenth Edition. Pretoria, South Africa: Van Schaik Publishers.

**Hostee, E.** 2006. Constructing a Good Dissertation. First Edition. Johannesburg, South Africa: EPE.

**Hrebiniak, L. G.** 2005. Making Strategy Work. First Edition. New Jersey, USA: Wharton School Publishers.

**Independent Regulatory Board for Auditors (IRBA).** 2012. Guidance for Auditing in the Public Sector. Pretoria: IRBA.

**Ijeoma, E.** 2014. Introduction to South Africa's Monitoring and Evaluation in Government. First Edition. Pretoria, South Africa: Verity Publishers.

**Ijeoma, E.** 2013. South Africa's Public Administration in Context. First Edition. Pretoria: Verity Publishers.

**Institute of Directors.** 2009. Draft Code of Governance – 2009, King Committee on Governance Principles. Draft Edition. Johannesburg, South Africa: Institute of Directors.

**International Federation of Accountants (IFAC).** 2009. Code of Professional Conduct for Registered Auditors. Pretoria: IRBA.

**Jansen, J. D.** 2011. The Quality of Doctoral Education in South Africa: A question of Significance. Perspectives in Education, 29 (3).

**Jonck, M. Ed.** Fundamentals of Auditing. First Edition. Durban, South Africa: LexisNexis Publishers.

**Kabelo, M. Ed.** 2007. Public Finance Fundamentals. First Edition. Cape Town, South Africa; Juta Publishers.

**Katsamunska, P.** 2012. Classical and Modern Approaches to Public Administration: Economic Alternative, Issue 1, 74 – 81.

**Khumalo, M.** 2007. An investigation of the efficacy of the Office of the Auditor-General in ensuring public financial accountability in the Gauteng Province: unpublished Masters Mini-thesis.

**Lederman, D., Loayza, N. V., Soares, R. R.** 2005. Accountability and Corruption: Political Institutions Matter. *Economics and Politics*, 17, 0954 – 1985.

**Levy, A., Motshabi, K. Ed.** 2014. *The Dispute Resolution Digest 2014*. First Edition. Cape Town, South Africa: juta Publishers.

**Marx, B. , Schonfeldt, N. , Van der Watt, A., Van Dyk, V., Mare, D., Ramuadzisi, T.** 2011. *Fundamentals of Auditing*. Fifth Edition. Durban, South Africa: Lexis Nexis Publishers.

**Maskin, E., Tirole, J.** 2004. The Politician and the Judge: Accountability in Government. *The American Economic Review*, 94 (4), 1034 – 1054. United States of America: The American Economic Association.

**Messier, W. F. Jr., Glover, S. M., Prawitt, D. F.** 2008. *Auditing and Assurance Services, A Systematic Approach*. Sixth Edition. New York, US: McGraw – Hill Irwin Publishers.

**McMillan, J.** 2007. Accountability of Government. Paper delivered at the AboveBoard Accountability Forum. Australian National University, Canberra, Australia: [University Publication].

**McMenamin, I.** 2004. Varieties of Capitalist Democracy: What Difference Does East-Central Europe Make? *Journal of Public Policy*, 24 (3), 259 – 274. Cambridge, United Kingdom: Cambridge University Press.

**Millichamp, A. and Taylor, J.** 2012. *Auditing*. Tenth Edition. Hampshire, UK: Cengage Learning EMEA. .

**Mitnick, B. M.** 1992. The Theory of Agency and Organizational Analysis: Ethics and Agency Theory. Eds Bowie, N.E and Freeman, R. F. 75 – 96. New York: Oxford University Press.

**Mofolo, M.** 2012. Strengthening Performance Management system Implementation in South African municipalities. *Africa's Public Service Delivery & Performance Review Journal*, 1(1).

- Mogalakwe, M.** 2006. The Use of Documentary Research Methods in Social Research. *African Social Review*, 10 (1), 221 – 230.
- Mouton, J.** 1996. *Understanding Social Research*. First Edition. Pretoria: Van Schaik Publishers.
- Murray, C.** 2006. The Human Rights Commission Et Al. *P.E.R*, 9 (2), 121 – 147.
- South African Government. 2004. Public Audit Act No 25 of 2004
- Nash, A. 2012.** Post-Apartheid Accountability: The Transformation of a Political Idea. *Accountable Government in Africa* by Chrwa and Nijzink, Eds, 13 – 25.
- National Audit Office (NAO).** 2008. *The Use of Sanctions and Rewards in the Public Sector*. First Edition. London, United Kingdom: NAO Press Office.
- Olson, M.** 1993. Dictatorship, Democracy, and Development. *American Political Science Review*, 87 (3).
- O'Reilly, C., Caldwell, D., Chatman, J. A.** 2005. *How Leadership Matters: The Effects of Leadership Alignment on Strategic Execution*. Research Paper No. 1895. Stanford Graduate School of Business, United States of America: [University Publication].
- Pauw, C. J., Woods G., Van der Linde, G. A. J., Fourie, D., Visser, C. B.** 2009. *Managing Public Money, Systems from South*. 2<sup>nd</sup> Edition. Sandton, South Africa: Heinemann Publishers.
- Perrow, C.** 1986. Economic Theories of Organization: *Theory Sociology*, 15, 11 – 45.
- Prinsloo, J., Roos, M.** 2006. *Performance Auditing: A step-by-Step Approach*. First Edition. Pretoria, South Africa: Van Schaik Publishers.
- Presthus, R.** 1967. *Public Administration*. 1<sup>st</sup> Edition. New York, US: Ronald Press Company.
- Public Service Commission.** 2013. *Annual Report*: Pretoria: Government Printers.
- Public Service Commission.** 2008. *Basic Concepts in Monitoring and Evaluation*. Pretoria: Government Printers.
- Puttic, G. and Van Esch, S.** 1998. *The Principles and Practice of Auditing*. Seventh Edition. Cape Town: Juta and Co Ltd.

**Puttick, G. and Van Esch, S.** 2007. The Principles and Practice of Auditing. Ninth Edition. Cape Town, South Africa: Juta and Co Publishers.

**Reich, R.** 2007. How Capitalism is Killing Democracy: Economist's View, 05/09/2007.

**Robertson, J. C. and Davis, F. G.** 1988. Auditing. Fifth Edition. Texas, US: Business Publications Inc.

**Robertson, J. C., F. G.** 1996. Auditing. Eighth Edition. Chicago, US: Irwin Publishers Series.

**Rondinelli, D. A. Ed.** 2007. Public Administration and Democratic Government. First Issue. Vienna, Austria.

**Romzek, B. S.** 2000. Dynamics of Public Sector Accountability in an Era of Reform. *International Review of Administrative Sciences*, 66, 21 – 24. New York, United States of America: Sage Publications.

**Rhodes, R. A. W.** 1997. Understanding Governance: Policy Networks, Governance, Reflexivity and Accountability. First Edition. Bershire, United Kingdom: Open University Press.

**Roos, M.** 2012. Governance and Public Sector Transformation in South Africa: Reporting and providing Assurance on Service Delivery Information. *Africa's Public Service Delivery & Performance Review Journal*, 1(3).

**Schwela E., Burger, J., Fox, W., and Muller, J. J.** 2001. Public Resource Management. 1<sup>st</sup> Edition. Cape Town, South Africa: Juta and Company.

**Seabi J., Athanasou J.A., et al.** 2012. Complete your Thesis or Dissertation Successfully: Practical Guidelines. First Edition. Cape Town: Juta & Company Ltd.

**Scott, J.** 1990. A Matter of Record, Documentary Sources in Social Research. Cambridge United Kingdom: Polity Press.

**Scott, J.** 2000. Rational Choice Theory. G Borwning at al. Eds. Understanding Contemporary Society: Theories of the Present. Sage Publishers.

**Schwarzmantel, J.** 1995. Capitalist Democracy. *Socialist Register: Why Not Capitalism?* 31,207 – 224. London, United Kingdom: Public Knowledge Projects (PKP) Publishers.

**Shapiro, S. P.** 2005. Agency Thoery. *Annual Reviews, Sociology*, 31: 263 – 284.



**Streeck, W.** 2011. The Crisis of Democratic Capitalism. Florence. ??

**Supreme Court of Appeal of South Africa Judgement.** 8 October 2015. DA vs Hlaudi Motsoeneng & SABC: The SCA Judgement.

**Supreme Court of Appeal of South Africa Judgement.** 2004. Oudekraal Estates vs the City of Cape Town and Others, Case No. 41/2003.

**Suttner, R.** 2015. Recovering Democracy in South Africa. First Edition. Johannesburg, South Africa: Jacana Media PtyLtd.

**Thakhathi, D. R.** 2013. Inaugural Lecture: Moving from Bureaucracy to Revocracy – The Role of Leaders in Accelerating Transformation and Service Delivery in the Public Service. South Africa: University of Fort Hare.

**Trochim, William M.** 2006. The Research Methods Knowledge Base. 2nd Edition. Internet WWW page, at URL: <<http://www.socialresearchmethods.net/kb/>> (version current as of October 20, 2006).

**Van Der Waldt, G., Du Toit, D. F. P.** 1999. Managing For Excellence in the Public Sector. 2<sup>nd</sup> Edition. Cape Town. South Africa: Juta and Company.

**Van Den berg, M. E. S.** 2010. Critical Reasoning and the Art of Argumentation. Revised Edition. Pretoria, South Africa: University of South Africa.

**Van Niekerk, A., Iinstrom, K.** 2006. Unfair Dismissal. Third Edition. Cape Town, South Africa: Siber Ink Publishers.

**Wehner, J.** 2002. Best Practices of Public Account Committees. Cape Town, South Africa: Institute for Democracy in South Africa.

**Western Cape Division of the High Court of South Africa Judgement.** 2014. Case No. 12497/2014.

**Younkins, E.** 1998. The Concept Foundations of Democratic Capitalism. The Social Critic, 1 – 6. Wheeler Jesuit University, West Virginia, United States of America: [University publication].