The Constitution of the Republic of South Africa and Social Development:
An exploratory study of the link between the Bill of Rights and Social Development

by

Wilbur Winter

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SUPERVISOR: Dr MAVHUNGU ELIAS MUSITHA

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DECLARATION

Name: Wilbur Winter

Student number: 3358 241 6

Degree: Masters of Arts: Development Studies

Title: The Constitution of the Republic of South Africa and Social Development: An exploratory study of the link between the Bill of Rights and Social Development

I declare that the above dissertation is my own work and that all the sources that I have used or quoted have been indicated and acknowledged by means of complete references.

I further declare that I submitted the dissertation to originality checking software and that it falls within the accepted requirements for originality.

Lastly, I further declare that I have not previously submitted this work, or part of it, for examination at Unisa for another qualification or at any other higher education institution.

Signature: _____   Date: November 2020

Jacqueline Kraamwinkel

PO Box 38824 Garsfontein 0060 | +27 72 709 4463 | jackykraamwinkel@gmail.com

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To whom it may concern

This is to certify that the dissertation **THE CONSTITUTION OF SOUTH AFRICA AND SOCIAL DEVELOPMENT: AN EXPLORATORY STUDY OF THE LINK BETWEEN THE BILL OF RIGHTS AND SOCIAL DEVELOPMENT** by **WILBUR WINTER** has been copy-edited and proofread by a professional language editor in accordance with the requirements of the partial fulfilment of the degree **MASTER OF ARTS – DEVELOPMENT STUDIES** at the at the **UNIVERSITY OF SOUTH AFRICA (UNISA).**

Sincerely,

Jacky Kraamwinkel

BA (English and Psychology) – UJ
BA (Hons) English Literature – UJ
PEG membership no: KRA002

DEDICATION

This study is dedicated to all those people who have tried and tried again. To every person who had to face hardship and pain but stayed in the fight. To those people who have felt the urge to give up but stayed in the race. Though the battle was hard, the reward was worth every tear, every sleepless night and every moment of despair.

This study is for those people who were there for those going through the battles and the pain and the heartache and the rain. Even though the fighters fight on, they are not alone. During this study I was not alone. I dedicate this study to a true teacher and mentor, my supervisor Doc Musitha, who never gave up on me but served to encourage and inspire me. This study is dedicated to those pillars of support and strength like Doc Musitha who never stop us from dreaming and attaining those dreams.

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To the true Constitutionalists, stay strong.

To all of you, my thanks and gratitude.

ABSTRACT

Democracy in South Africa came at a price. The apartheid era did not accommodate or incorporate democratic and constitutional principles. The year 1996 saw a democratic Constitution being adopted, having been certified by the Constitutional Court. The Bill of Rights in the Constitution guarantees the rights and freedoms of all South Africans. The apartheid era ensured that the rights which are enjoyed today were reserved for only a portion of the South African population. This study emphasises the importance of the Constitution and the role and responsibility of every citizen to defend it. In defending the Constitution, the rights and freedoms of all South Africans are defended. The Bill of Rights promotes social development for all South Africans, as opposed to disparate social development under the divisive apartheid era. The Constitution is a powerful enabler for democracy and social cohesion and unity. This study depended on secondary sources which are vital to keeping historical facts alive and truthful. Desktop research is qualitative and, while less expensive, produces acceptable results and findings.

OPSOMMING

Demokrasie in Suid-Afrika het met 'n prys gekom. Die apartheidsera het nie demokratiese en grondwetlike beginsels geakkommodeer of opgeneem nie. In 1996 word 'n demokratiese Grondwet aanvaar, wat deur die Grondwet Hof gesertifiseer was. Die Handves van Menseregte in die Grondwet waarborg die regte en vryhede van alle Suid-Afrikaners. Die apartheidsera het verseker dat die regte wat vandag geniet word, slegs vir 'n gedeelte van die Suid-Afrikaanse bevolking gereserveer is. Hierdie studie beklemtoon die belangrikheid van die Grondwet en die rol en verantwoordelikheid van elke burger om dit te verdedig. Deur die Grondwet te verdedig word die regte en vryhede van alle Suid-Afrikaners verdedig. Die Handves van Menseregte bevorder sosiale ontwikkeling vir alle Suid-Afrikaners, in teenstelling met uiteenlopende sosiale ontwikkeling onder die verdelende apartheidsera. Die Grondwet is 'n kragtige instaatsteller vir demokrasie, sosiale samehorigheid en eenheid. Hierdie studie was afhanklik van sekondêre bronne wat noodsaaklik is om historiese feite lewendig en waaragtig te hou. Desktop-navorsing (boek) is kwalitatief en hoewel dit goedkoper is, lewer dit aanvaarbare resultate en bevindings op.

Key terms

Apartheid; Apartheid Era; Basic Needs; Constitution; Constitutionalism; Constitutional Principles; Bill of Rights; Democratic Constitution; Segregation; Racial Division; Human Rights; History; Social Development.

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CHAPTER 1: INTRODUCTION TO THIS STUDY

1.1   Introduction

This study explores how the successive apartheid-era constitutions of 1910, 1960 and 1983 impeded and restricted social development in South Africa and contrasts these with a democratic constitution. The year 1960 marked the end of an era concerning the 1910 constitution, as the referendum held on 5 October 1960 heralded a new constitutional dispensation – on 31 May 1961, South Africa became a republic; having had its constitution changed and introduced in January 1961. The year 1960 as used in this study will thus denote a reference point of the change to the 1910 constitution. The constitutional development in the apartheid era was underpinned by three constitutions, thus referred to as the "apartheid-era" constitutions in the study. The apartheid-era constitutions created certain conditions in order to impede the social development of black South Africans. The study will show that only a democratic constitution can provide a sufficient foundation to ensure that social development is fair and effective towards the entire nation of a country.

Constitutionalism has the potential to promote social development. People have basic needs that determine their quality of life or lack thereof. Basic needs have always existed, as shown in sections 26 and 27 in the Bill of Rights of the South African Constitution of 1996. Under the apartheid-era constitutions, the basic needs of specifically black South Africans were overlooked. Constitutionalism in South Africa is looked at in respect of the social, political and economic conditions that were created in the country by the apartheid-era constitutions. The legislation passed during the apartheid era was designed to empower white South Africans politically, economically and socially. Under apartheid legislation, black South Africans were excluded from any participation. White South Africans had the right to vote – contrary to black South Africans, who did not have any voting rights. Apartheid created different conditions for white and black South Africans living in the same country.

Although this study does not specifically focus on the matter of land, the dispossession of land in 1913 and 1936 has been one of the major single instruments to disempower black South Africans to this day. Access to land allows for economic empowerment and participation in the economy of South Africa, promoting and supporting social development (Bozzoli, 1987). This chapter discusses the following issues: research statement, aim of study, study objectives,

research questions, scope of study, rationale, research methodology, qualitative research, types of data (primary and secondary), structure, chapter layout and conclusion.

1.2 Research statement

A research statement, also known as the problem statement, makes a salient statement about what has been identified and how it has prompted research or study. A study needs to be guided or focused on a problem (Lederman & Lederman, 2015). Bouma and Atkinson (1995) state that in the event that there is a problem, an authority could be asked. A research problem guides and navigates the researcher through the study (Garbers, 1996). When undertaking any research, several variables may arise. The researcher works through data or available information in order to draw a conclusion or find an answer (Lederman & Lederman, 2015; Garbers, 1996). Neuman (2011) and Ellison (2010) stress the need to have a problem that is summed up in a brief statement. Thus, the research problem identifies what is wrong and a hypothesis then links the variables that need to be examined to solve a specific problem (Deane, 2010; Neuman, 2011).

Therefore:

> The year 1996 ushered in an era of true constitutionalism in South Africa. Prior to this, there were apartheid-era constitutions. These were steeped in racial segregation and tolerated human rights violations through the sacrosanct position of parliament. In comparison with constitutionalism, these apartheid-era constitutions were void of constitutional principles. Constitutionalism supports and promotes equal social development and human rights through legislation and elected political leaders aimed at improving the quality of life and living conditions of all citizens. This study explores constitutionalism and the conditions which exist both in its presence and absence.

1.3 The aim of this study

The history of South Africa shows that apartheid-era constitutions promoted separate development. Constitutionalism, as posited by this study, promotes social development and accountability among elected political leaders. True constitutionalism lends itself to creating unity, dignity and honesty in a society. Under apartheid-era constitutions (1910, 1960 and 1983), human rights were severely lacking; and the parliament and those elected as political

leaders were considered sacrosanct to the constitutions and the rule of law. The aim of this study is to explore how the successive apartheid-era constitutions impeded and restricted social development in South Africa and to contrast this with a democratic constitution. This study will weigh the apartheid-era constitutions against a democratic constitution. From this aim, specific objectives would be extracted and presented below.

1.4   Study objectives

Lederman and Lederman (2015) argue that narrow objectives are more practical. A set of objectives that are narrow or concise are easier to work with, thus providing more focus to the problem. This enables the study to be confined and narrowed within specific areas to achieve the objectives. Furthermore, Lederman and Lederman (2015) maintain that the objectives and the research questions are linked. Bwisa (2018) proffers that either could work; that is, a set of objectives or questions. However, there is consensus in that it will not harm but may enhance the research if both are presented in a short, clear form (Bwisa, 2018; Lederman & Lederman, 2015). By implication, this means that the scope of a study is limited to the objectives and questions that seek to be answered. The specific objectives of this study are thus four-fold, as indicated below:

- To explore the conditions in South Africa under the apartheid-era constitutions (1910, 1960 and 1983).
- To examine the apartheid-era constitutions for elements of constitutionalism.
- To contrast the democratic Constitution (1996) against the apartheid-era constitutions.
- To explore the link between the Constitution (1996) and social development and the influences that shaped this Constitution.

This study will not be able to focus on issues such as the downside to social development for fear of bloating the study. The reader will be able to use the information in the study to cross-reference with areas where social development has been lacking. This refers specifically to the lived experiences of the South African people, such as the Life Esedimeni tragedy in 2016/17 and even the 2012 Marikana Massacre. The Human Development Index (HDI) talks to improvements in life expectancy, per capita income and educational attainments. The reader will note that reference is made in the study to the Statisticians Report (2019) which similarly

deals with such issues. The objectives are commensurately weighed to the research questions which are discussed in the following section.

1.5   Research questions

The research questions need to be short, concise and focused in the direction of the research (Bwisa, 2018). The questions must be specific and not take the research outside of the research arena (Neuman, 2011). Lederman and Lederman (2015) and Neuman (2011), respectively, mention that the objectives and the questions are tied. These questions are, therefore, matched with the objectives to align the study so that the literature which is reviewed responds to them for a scientific conclusion.

- What conditions (social, political and economic) did apartheid-era constitutions create?
- What is constitutionalism and did the apartheid-era constitutions pass the muster of constitutionalism?
- What differences exist between the apartheid-era constitutions and the democratic Constitution?
- Does the democratic Constitution (1996) promote social development?

1.6   Scope of study

The use of the term scope is tied to the depth and breadth of a particular aspect. In the case of research, this talks directly to the scope of the research problem (Bwisa, 2018; Deane, 2010). The scope refers to areas and timelines that are to be researched in the quest to arrive at answers or solutions. In social science research, there are several aspects that lend themselves to a single element. This is referred to as the length, depth and breadth of the research (Neuman, 2011; Garbers, 1996). The scope of a study demarcates the research or study area. There should be timelines set for each study. Timelines and subject areas are stated in the scope (Ellison, 2010). The scope of time in this study is 1910 to 1996. Within the timeline of 1910 to 1996, constitutionalism in South Africa is explored via the apartheid-era constitutions and the conditions created by these constitutions.

1.7   Rationale of the study

The rationale states why the study was conducted and what the logical basis is (Bwisa, 2018; Lederman & Lederman, 2015). This study seeks to create knowledge and to bring about

awareness. Research is a way of knowing (Bouma & Atkinson, 1995). This study wants to create awareness among elected leaders, political appointees and citizens. Upon completion, this study will provide value to specific stakeholders, namely South African citizens, the elected political leaders, policy makers (at the different levels of government) and the operational implementers (political appointees) of policy and decisions. Elected political leaders must be aware that they serve all citizens of the country not only their constituencies. Policy and decision makers need to be knowledgeable of the decisions and policies, with attention being paid to due diligence, and how it impacts the lives of citizens. The responsibility and accountability which rests on elected officials must be taken seriously. Constitutionally, the elected leaders, their policy makers and the implementers should acknowledge that they are servants of the people. The oath that is administered by the Chief Justice – to uphold the Constitution – must be adhered to.

1.8   Research methodology

The methodology of this study sets out the route followed to collect, collate, analyse and interpret the information for the completion of the study (Garbers, 1996; Ellison, 2010). According to Bouma and Atkinson (1995), the methodology shows the researcher how to proceed with the research. Bryman (2007) argues that the methodology chosen must fit the type and content of the research.

Information for this study was collected entirely from sources that have been subjected to objective analysis and peer reviews. In the next section, the reason for choosing book (desktop) research for this study will be explained, based on the considerations and conditions under which this study was conducted. The use of secondary data that exists positions this study as qualitative research.

This study explores the history of the apartheid-era constitutions, which enforced laws that oppressed and created racial bias and conflict. By looking at the history of constitutionalism in South Africa, the reader is made aware that constitutions are important tools that empower society. Existing works in the form of written text and secondary data are suitable for academic study (Neuman, 2011; Garbers, 1996). This study is considered as book or desktop research. The reader will not encounter any interviews and data derived first-hand from individuals. Garbers (1996) and Bwisa (2018) seem to agree that research making use of secondary data is

an acceptable way to conduct academic research or study. Neuman (2011) and Bwisa (2018) support the use of credible data or research information that comes from sources that have been subjected to peer review and academic scrutiny.

1.9   Qualitative research

This is a qualitative research study. This study contains no data that was derived from active interpersonal collection. According to Bouma and Atkinson (2005: 206-207) and Bryman (2007), qualitative research can be described as any social science research that produces results that are not obtained by statistical procedures or other methods of quantification. They argue that some of the data may be quantified, but in the final analysis, it is qualitative. Garbers (1996) and Neuman (2011) corroborate this view where such research can refer to research about people's lives, their stories and behaviour; and it can also be used to examine organisations, relationships and social movements. Research conducted this way produces descriptive data, such as people's own spoken or written words or observable behaviour.

Historical research is considered to be qualitative in nature (Neuman, 2011; Ellison, 2010). This study, therefore, has a strong qualitative aspect to it. In the following section, the secondary data is discussed as these are the elements that support this study. Secondary data can be data that is already available and does not require data-gathering from sources through interviews or opinion polls and sampling (Garbers, 1996, Lederman & Lederman, 2015). In social science research, two sources of data exist, according to Neuman (2011), namely primary and secondary data. Primary and secondary data are considered the main sources used in social science research (Garbers, 1996; Neuman, 2011).

1.9.1   Primary data

Primary data is data that is collected by researchers directly from sources (Neuman; 2011; Bryman, 2007). Primary data is thus first-hand data directly collected and comprises interviews, surveys and experiments (Neuman, 2011; Garbers, 1996). Researchers use primary for specific purposes in their study and compile questions that elicit specific data for a study. This creates new data or information. This study is dependent on existing or secondary data and does not use the avenue of first-hand data collection.

1.9.2 Secondary data

Secondary data refers to data that has already been collected. This study accessed data through a legitimate academic form such as the use of textbooks, journals and historical texts. A letter is technically secondary data by description, but is academically classified as primary data (Neuman, 2011; Ellison, 2010). Bwisa (2018) alludes to secondary data as second-hand in that it was not directly derived from participants by the researcher. Bwisa (2018) does not undervalue this type of data and suggests that each study or research has access to reliable information which has been analysed. Neuman (2011) and Ellison (2010) support the use of credible secondary data and note that certain research is dependent on such sources as referred to in 1.8. This study makes use of existing material which is derived from books and published sources of information. The use of secondary research is not the definitive way of conducting research, but it is cost-effective. Neuman (2011) and Garbers (1996) refer to historical and legal studies as studies (academic disciplines) where existing text is acceptable for use in academic study.

1.10   Definition of concepts

The following definitions are used in their respective contexts in this study.

1.10.1 Apartheid

Apartheid is defined as a system or policy of racial segregation and political and economic discrimination against black South African citizens (Currie & De Waal, 2013; Giliomee & Mbenga, 2007). Apartheid means apartness or to be separate, and the term was used by the National Party (NP) (1948) to denote its racial segregation policies of separate development. In this study, the "apartheid era" is taken to mean the period from 1910 to 1993 wherein apartheid was legalised in South Africa.

1.10.2 Constitutionalism

Constitutionalism is the adherence to a constitutional system of government. It incorporates a set of ideas, attitudes and behaviour that expresses the principle of the power of governments (Lieberman, 1999; Le Roux & Davis, 2019). A touchstone of constitutionalism is the principle of limited government under a supreme law (higher law) (Lieberman, 1999; Bulmer, 2014). Hamilton (1935) observed: "Constitutionalism is the name given to the trust which men repose

in the power of words engrossed on parchment to keep a government in order" (cited in Lieberman, 1999).

1.10.3 Constitution

A constitution is a body of principles and laws of a nation that sets out the powers and duties of its government and is articulated in the basic provisions of the Constitution of the Republic of South Africa, 1996, made easy for learners. Constitutions are the laws that regulate the power of government (Currie & De Waal, 2013; Le Roux & Davis, 2019). The public law defines and states that the term "constitution" implies the fundamental law, written or unwritten, that establishes the character of a government by defining the basic principles to which society must conform; by describing the organisation of government and regulation, distribution and limitations on the functions of different government departments; and by prescribing the extent and manner of the exercise of its sovereign powers. A constitution is the fundamental law of the state (Mweru, 2015; Currie & De Waal, 2013; Bulmer, 2014).

1.10.4 Bill of Rights

A Bill of Rights is a statement of the rights and freedoms of all people (Motala & Ramaphosa, 2002; Benyon, 1978; Currie & De Waal, 2001). A Bill of Rights protects the basic rights of citizens (Currie & De Waal, 2013). These are the rights and freedoms that cannot be denied to any citizen of a country.

1.10.5 Social development

Social development is a process of planned social change designed to promote the well-being of the population as a whole in conjunction with a dynamic process of economic development (Midgley, 1995). Social development is the promotion of a sustainable society that is worthy of human dignity by empowering marginalised groups, women and men, to undertake their own development in order to improve their social and economic position so that they may acquire their rightful place in society (Bilance, 1997).

1.10.6 Human rights

Human rights are basic rights and freedoms that belong to every person in the world, from birth until death (Currie & De Waal, 2013; Motala & Ramaphosa, 2002). The Bill of Rights (1996)

is the cornerstone of democracy, it affirms the democratic values of human dignity, equality and freedom, and implicitly protects human rights.

1.10.7 Democracy

Democracy is a government in which supreme power is invested in the citizens and exercised by them directly through representation (Currie & De Waal, 2001). The United Nations (UN) does not have a specific definition of democracy, but ascribes to the doctrine of the "will of the people" as the source of legitimacy of sovereign states.

1.11   Structure and chapter layout

1.11.1 Chapter 1 – Introduction

Chapter 1 outlines and introduces the reader to the study. It would not be expedient to discuss Chapter 1 in its own chapter; suffice to say the reader should be aware that the layout of this study comprises five chapters as indicated in the next sections. Chapter 1 sets out the objectives and the research questions that form and explain why this study was undertaken.

1.11.2 Chapter 2 – Historical perspective

This chapter references the South African War (1899-1902) and the signing of the Peace of Vereeniging in May 1902. The timeline for the apartheid-era constitutional development is established and the chapter looks at the liberation efforts of the South African Native National Congress (SANNC) – later the ANC – as well as the PAC and its black consciousness ideology.

1.11.3 Chapter 3 – Literature review

Chapter 3 contrasts elements of the apartheid-era constitutions and the democratic Constitution. Constitutionalism was absent under the apartheid-era constitutions and these conditions were not conducive to social development. Constitutionalism is a set of principles that limit and create accountability in terms of government powers. The apartheid-era constitutions of 1910, 1960 and 1983 are described as sham constitutions. The Enlightenment era shone a light on the "absolutism". The separation of powers is discussed referring to Montesquieu and Voltaire. Constitutionalism offers a model to the world as a new form of constitutional governance. Social development is tied to a Bill of Rights, which is essential in any stable democracy as posited by this study. Social development under apartheid-era constitutions is explored in the literature review chapter of this study.

1.11.4 Chapter 4 – Chapter 9 institutions

Chapter 4 of this study delves into the functions of the Chapter 9 institutions. Chapter 9 institutions ensure the integrity of constitutionalism and ensure that faith in the Constitution is maintained among the citizens. These institutions ensure that the Constitution is safeguarded and defended, and provide society with recourse when governments do not comply with the obligations placed on it by a supreme law. Chapter 9 institutions ensure that the rule of law is upheld and that government conducts itself in accordance herewith. In addition, they have to ensure that civil society does not lose respect for the rule of law and the Constitution.

1.11.5 Chapter 5 – Contextual analysis and discussion

The closing chapter of this study reflects on the information that supports the study. The contextual analysis will put in context constitutionalism and how it relates to the people of South Africa. This study shows how constitutional principles can serve all citizens. This study posits that national pride requires national unity. National unity will require a symbol around which a diverse nation can rally. Knowledge about constitutional principles remains important. History provides South Africa with valuable lessons in humanity, dignity and morality. When reflecting on past atrocities, South Africans will be reminded of the importance of protecting their rights and holding their government accountable. Chapter 5 provides the reader with a summary of the chapters, the findings, the limitations and recommendations; and concludes with a summary of the important findings.

1.12 Conclusion

This chapter informed the reader about this study. It has laid out what is in the rest of the study and provided a brief description of what each chapter entails. It described the methodology of this study and set it down as a literature study without any fieldwork and interviews. There is a distinct absence of data collection and data analysis, as this is purely a book study.

The next chapter of this study takes the reader through the historical perspective of this study. The reader will note the starting point (1910) as indicated earlier in this chapter. This period marked the first constitution. The apartheid-era constitutions sought to divide South Africans and to ensure economic and political freedom for a few South Africans. The historical perspective (Chapter 2) explores this in detail.

CHAPTER 2: HISTORICAL PERSPECTIVE OF SOUTH AFRICAN CONSTITUTIONAL DEVELOPMENT (1910-1994)

2.1   Introduction

This chapter aims to look at the path from the first constitution (1910) to the current Constitution (1996) (from here on simply referred to as the Constitution) as well as briefly citing the two constitutions which emanated between 1960 and 1983. As background to the first constitution of 1910, this study will first provide context from the build-up to the start, with the Anglo-Boer War that ended in 1902 with a peace treaty named the Treaty of Vereeniging. The 1993 interim constitution marked a shift from the preceding constitutions in that it inculcated the democratic ideals for a constitutional democracy in South Africa. The interim constitution emerged from the Convention for a Democratic South Africa (Codesa) and as such would already start to represent the will of the people (Asmal, 2011). Human rights were biased toward white South Africans who were of Afrikaner (Dutch) and English (British) descent.

This chapter presents an argument that South Africa has a history of a trampled social development project through its constitutional development from 1910 until 1994. This changed when the country transitioned to a democratic dispensation. This historical period is characterised by human rights abuses and the denial of human dignity dictated by apartheid policies. The history of South Africa is documented. The history and struggle of South Africa's oppressed, marginalised and dehumanised people are available in literature (Lodge, 1983; Odendaal, 2013; Booysen, 2015). Giliomee and Mbenga (2007: IX) illustrate how that history was rather skewed and almost misleading by presenting a "white" representation of the facts. The apartheid-era laws were divisive and inhumane. The social development of all South Africans suffered under these laws. Apartheid-era constitutional legislation impeded social development and these two issues are at the heart of this study.

South Africa had three constitutions (1910, 1960 and 1983) outside of its constitutional democracy (1994). The Constitution of 1996 is the first constitution in South Africa that was based on the principles and values of an equal society void of any racial discrimination and segregation (Marais et al., 2001). This Constitution was preceded by the interim constitution and the adoption of the amended constitution in 1996 will thus be touched on in this chapter.

There will be brief references to the period before 1910. Such references will be brief and as salient as possible. It will be done only to supplement the background information to give a clearer picture of the tapestry or history that relates to the context of this chapter.

The first constitution is assumed to have been in 1910 when the Union government was formed to reconcile the British and the Afrikaners who signed the Treaty of Vereeniging in 1903. The constitution that followed did not include the majority of black people, thus setting the country on a path for liberation struggles that ended in 1994 when a democratic Constitution was signed and adopted in 1996. It also contrasts the past constitutions that were void of any human rights, values and lacked the constitutional principles which are essential for constitutionalism.

2.2   The South African War and the first South African constitution

The South African War (1899-1902), also called the Anglo-Boer War, was about the interests of the "colonisers" – the British and the Dutch. This study uses the term "Dutch" to indicate the origins of the Afrikaners in South Africa. Scholars may argue that by 1900 the Afrikaners could be seen as South Africans as they had their own, new and unique African language, namely Afrikaans, and had formed a new and unique culture no longer mirroring that of the Dutch.

The feuding nations, who by 1900 could be considered naturalised, both wanted total control of South Africa. Neither wanted to be ruled by the other, and the political and economic factors inflamed tensions. Land and the ownership thereof played an important aspect in the war, as the economic power was vested in the land (Lodge, 1982; Giliomee & Mbenga, 2007). The land housed the minerals; therefore, the mining industry had to possess the land. The same applies to the agricultural sector. When the Treaty of Vereeniging was signed in May 1902, the war between Britain and the two Boer republics (Transvaal and the Orange Free State) officially ended, leading to the Bloemfontein Convention (1908) and the drafting of the 1910 constitution (Giliomee & Mbenga, 2007). Power was shared by the British and the Afrikaners, while the British claims to have won the war. A union was formed with the four provinces: Natal, the Cape, Transvaal and the Orange Free State. Under the Balfour Declaration of 1926, Britain and the dominions were all equal.

Human rights were absent for all black people in the 1910 constitution (Sachs, 1973; Giliomee & Mbenga, 2007). Their representation was piecemeal and nothing was written into the statutes to ensure the rights of black South Africans. The year 1910 saw the British withdrawing from the government of South Africa (Giliomee & Mbenga, 2007: 230-231). The intention to withdraw was in no way a total relinquishing of the British rights to South Africa, its wealth and the oppression of its people. This was primarily aimed at ensuring that the British influence remained in the form of the British settlers who had moved to South Africa.

By 1948, Jan Smuts was a leader of the United Party (UP), which gave a political home to the English-speaking South Africans (Giliomee & Mbenga, 2007). The national election took place on 26 May 1948 and DF Malan won "with a razor-thin majority of five seats, and only 40% of the overall electoral vote" (Giliomee & Mbenga, 2007: 310). Sachs (1973) and Terreblanche (2002) both allude to the animosity between the British and the Boers, which spanned nine decades of oppressive colonial rule in South Africa. This hatred and distrust were also due to the fact that the British had laid claim to much of the fertile land and later, on the discovery of gold, created further conflict (Bundy, 1979).

The 1910 constitution divided the British and the Afrikaners (politically and economically), while completely disregarding the rights of the black South Africans. Black South Africans held no land rights and became servants of either the British or the Afrikaners. After the war, much disillusionment prevailed among the black people of the Transvaal and the Orange River colonies about the terms of the Treaty of Vereeniging (Giliomee & Mbenga, 2007: 231). This constitution (1910) served only to unite the white parties (constituencies) and to divide up the land between these shareholders (Giliomee & Mbenga, 2007: 232-233). It was also an economic cohesion between two competing economies, namely the British and Dutch.

Constitutional and legislative development focused on the restriction of social interaction and limited the access of African people to skills and the market to such an extent that they became no more than cheap labour (SAHO, 2019; Giliomee & Mbenga, 2007; Lodge, 1983). The industrialisation and the development of the economy brought about urbanisation, greater segregationist laws and growing militancy among workers (Lodge, 1983; SAHO, 2019; Odendaal, 1984).

The absence of black representation as the two white groups deliberated the destiny of South Africa is striking. Odendaal (1984) and Lodge (1983) allude to the emergence of black political organisations at this time of black political exclusion.

Politically aware black South Africans knew that the formation of the Union would have momentous consequences for them (Giliomee & Mbenga, 2007). Before the National Convention (1908), black leaders held a conference to discuss their attitude towards the white thrust for unification. When the deliberations of the National Convention started (12 October 1908), black and white sympathisers sent petitions and messages to the convention, pleading that the rights of black and coloured people be respected. The draft Act was made available in February 1909, and through black [owned] newspapers, which served as the voice of the black people of South Africa, it was rejected (Giliomee & Mbenga, 2007: 231). The Act made clear the colour bar provisions, which was outrightly rejected. The newspapers, as a voice of the people, "warned of a future filled with bitter hatred and even violence" (Giliomee & Mbenga, 2007: 231).

2.3   Natives Land Act of 1913

The 1913 Land Act flowed from the 1910 Constitution of the Union, placing all economic and political power in the hands of the British and Afrikaners. All land in South Africa became owned and possessed by the British and Afrikaners. According to Lodge (1983), the Land Act was a deliberate attempt to ensure that the black South Africans remained impoverished, landless and at the mercy of the white landowners. Black South Africans woke up to be reduced to a source of labour to satisfy white economic superiority (Bundy, 1979; Lodge, 1983). The primary economic sectors, mining and agriculture, were divided between the British and the white South Africans. The mining industry became dominated by the British, while the agricultural sector was run by the Boers (Lodge, 1983; Giliomee & Mbenga, 2007).

2.4   The rise of the ANC in 1912

"The administrative seeds of apartheid were sown in the country's first decades by the Union government, which denied political power to black South Africans. It was to these laws, which included colour bars and racial segregation of land, that the early ANC – previously the SANNC – addressed itself. Under the leadership of Dr Pixley Seme, the organisation first proclaimed its commitment to nonracialism: the peoples of South Africa were to be viewed as

one, regardless of skin colour" (Davis, 1987: 4). Following on from the reconciliatory tone, the Union government responded with a host of laws that perpetuated its separate development policy. These apartheid laws ranged from land segregation per the 1913 Land Act to the Natives Land Bill and the Mines and Works Act of 1911 (Lodge, 1983: 4-5).

As seen in the above quote, from the very first interactions at a political and social level, the SANNC had acknowledged that white people were also regarded as South Africans. Giliomee and Mbenga (2007) cite Odendaal when indicating how that the rejection of the Land Act of 1913 by black South Africans gave rise to the emergence of a number of black political organisations.

The Land Act brought with it a complexity of social implications. The Act was also tied to other Acts and legislation. The colour bars and the racial segregation of land were among these pieces of legislation (Lodge, 1983: 4). Under the leadership of Seme, the ANC proclaimed its commitment to nonracialism. The ANC at the time was still conservative in its tactics, but it nevertheless started to develop an understanding of the intention of the Land Act and the racial separation as a result of the economic dominance sought by the Union government (Lodge, 1983: 4).

2.5   Land ownership and apartheid economics

Giliomee and Mbenga (2007: 178-179) make the argument that: "For most of the nineteenth century, access and ownership of land was not as severe a problem for Africans as it later became. Loss of land was a political problem, a spiritual problem, but from a narrow economic point of view, land was still available in the 19th century to enterprising people who were prepared to take available opportunities."

In Natal, for example, five out of six million theoretically white acres in 1870 were owned by big land companies such as De Beers Consolidated Mines, Anglo America, the Transvaal Land and Exploration Company as well as the Carnegie Corporation; these companies were quite willing to rent the land out to black South Africans while waiting for the value of the land to rise. This statement is placed at the front to highlight how the land was already in the hands of white-owned land companies (Lodge, 1983). It is also important to look at how Africans were already exporting maize from Natal to Cape Town in the 1850s. This was even earlier than

when they produced maize for the diamond fields in the 1870s (Giliomee & Mbenga, 2007: 178). The point here is that the black South Africans were able to produce crops and trade over large distances (Giliomee & Mbenga, 2007). It further shows that land had already become an issue because it empowered black farmers economically. This element of social development was something that the white regimes were not comfortable with. The white farmers were predominantly stock farmers. These white farmers had an abundance of land, but a shortage of labour (Lodge, 1983: 2). To address the labour shortages and the need for white farmers and the white race to grow and progress economically, they had to ensure that social development for black South Africans was stunted and severely impeded. Black economic development posed a threat to white farmers and the rest of the white race.

The 1913 Land Act was aimed specifically at reducing black South African land ownership. The 1926 Act had a far-reaching intention and that was to ensure that the meagre portion of land (later called homelands and Bantustans) (Lodge, 1983: 261) would be reduced with stricter measures being imposed on ownership and agricultural production by black South Africans. This created dire poverty and forced black South Africans to seek employment in the white-controlled and white-regulated industries (Lodge, 1983; Bozzoli, 1987). The 1913 Land Act was not the last; another one came into effect in 1936.

2.6   The 1936 Native Land Act

The Native Trust and Land Act (1936) – subsequently renamed the Bantu Trust and Land Act, 1936 and the Development Trust and Land Act, 1936 – sought the reorganisation of the country's agricultural structures. The recommendations of the Beaumont Commission (March 1916) aimed to once again divide the land between black and white South Africans, which invariably favoured the white minority. Flemmer (1976: 42-45) argues that the commission was tasked with finding land and defining boundaries for territorial segregation between black and white people, and recommending which areas were to be allocated to white and black people, respectively.

The 1936 Act, known as Hertzog legislation, perpetuated this impoverishment and dependency on the white-run economy. Black South Africans were seen as a source of cheap and dispensable labour. The Native Trust and Land Bill of 1936 ensured that the homelands were now under the control of a Native Trust, which bought up the land previously allotted to black

South Africans. The Act diminished African communal tenure which was exclusively for African occupation (Lodge, 1983). Bundy (1979) alludes to the shrinking ability of black South African people to provide for themselves. Lodge (1987: 19) refers to the shrinking of the income and material position of mineworkers who were drawn from the landless portion of the reserves, and how the fluctuating food prices negatively affected these people.

2.7   World War II

After World War II, black South Africans envisioned a changed South Africa where equality and equal opportunities would come to exist. World War II had a very destabilising effect on Europe. These effects were experienced globally. It is considered that two factors were the primary causes of World War II – Adolf Hitler and the severe terms of the peace treaty which was unilaterally imposed on Germany. The Treaty of Versailles was signed on 28 June 1919. South Africa was a signatory to the Treaty of Versailles. The treaty is, therefore, tied to both wars; and the end of World War I was actually a primary contributor to World War II. Hitler used the burden placed on Germany as a rallying tool to get elected as the German chancellor to restore Germany to its pre-war superpower status.

2.7.1   The Treaty of Versailles as a cause of World War II

The Peace Treaty of Versailles intended to promote international peace and security to avoid another war. South Africa was a signatory of the Treaty of Versailles; and as of 1910, South Africa was also a member of the Commonwealth due to the Union government that was formed after the Anglo-Boer War. In April 1919, members from the SANNC as well as Sol Plaatje brought the living conditions of black South Africans to the attention of the British parliament. The British government, however, was adamant and stuck to its doctrine of non-interference in South Africa's affairs (Giliomee & Mbenga, 2007: 243).

As mentioned, South Africa was a signatory of the Treaty of Versailles and a member of the Commonwealth, which then links South Africa to both World War I and II. South Africa was represented by Louis Botha and Jan Smuts at the Paris peace conference (Giliomee & Mbenga, 2007: 244). Smuts was instrumental in South Africa's participation as a British ally in World War II (Giliomee & Mbenga, 2007).

The reparations as punishment of Germany for the role they played in causing World War I, as determined by the Treaty of Versailles, caused great unhappiness among the nation, and Hitler took full advantage of this. In his rise to power, Hitler and his National Socialist (Nazi) Party negotiated and signed treaties with Italy and Japan, and stoked the fires of German nationalism as part of his quest for world domination. The invasion of Poland caused Great Britain and France to declare war on Germany. Relevant to this discourse is Hitler's obsession with the "purity" and "superiority" of the German race, to which he referred to as "Aryan" supremacy. Hitler believed that war was the only way to gain the necessary "Lebensraum" or living space for this "pure" race to expand (History.Com, 2009). This meant eliminating anyone – any race, colour, culture or physical imperfection – who did not fit his dream of Aryan domination and thus would, by merely existing, threaten to "dilute" the purity and, therefore, the strength of the Aryan race. It was most opportune to also use the "pure race" reasoning to imbue hatred of different races (History.Com, 2009; Neiberg, 2017).

South Africa was drawn into World War II after Smuts had gone against Hertzog in 1938 (Giliomee & Mbenga, 2007). While Hertzog wanted South Africa to remain neutral if Britain entered the war, Smuts believed that South Africa was obliged to help stop Hitler for the sake of all humanity. For the black South Africans who enlisted, the war opened up new worlds but once again demonstrated their inferior position at home (Giliomee & Mbenga, 2007: 295).

2.7.2   The end of World War II

Following World War II, colonial governments became increasingly aware that colonial rule could not be maintained forever, although they remained hesitant to relinquish their authority despite the UN declaration that all people have the right to self-determination. As part of the steps toward African self-governance, colonial governments began to invest in education and schools in the colonies. This resulted in a growing number of young, educated black people whose social and political mobility was restricted by colonial rule. They were frustrated with the limited prospects they held under the colonial state and increasingly driven to fight for an end to colonial rule. Self-rule became the slogan.

Giliomee and Mbenga (2007: 297) argue that the early war years offered hope after the bleak decades of repression. Smuts spoke of the country (South Africa) as being carried on the back of the native (Giliomee & Mbenga 2007: 297). The end of World War II did not bring any

change to the policies of the NP government and instead saw black South Africans being subjected to harsher apartheid laws and economic exclusion (Giliomee & Mbenga, 2007: 308, 310, 315; Lodge, 1983).

2.8   Signing the Atlantic Charter

The UN was founded in 1945 after World War II by 51 countries committed to maintaining international peace and security, developing friendly relations among nations and promoting social progress, better living standards and human rights (History.com Editors, 2011). The UN had four primary objectives.

The UN is intent on restoring human dignity to all people. It has to fulfil a balancing act in that there were countries that sought to attain their sovereignty. "When the UN was founded in 1945, some 750 million people, nearly one-third of the world's population, lived in territories that were dependent on colonial powers. Today, fewer than two million people live under colonial rule in the 17 remaining non-self-governing territories. The wave of decolonisation, which changed the face of the planet, was born with the UN and represents the world body's first great success … Affirming the principle of self-determination, the Charter describes the responsibility of States for territories under their administration as 'a sacred trust' in which the interests of their inhabitants are paramount" (UN Publications).

The UN cannot guarantee any country its freedom. Thus, after the war, many countries were still under the rule of their initial governments, South Africa and its apartheid government included. At this point, the UN intervened and imposed various sanctions and economic isolation. The UN forwarded the philosophy that the rights of human beings should come first and that the leaders of nations should develop the necessary human compassion and ensure that their countries embrace the values of dignity, honesty and the global phenomenon that leaders are elected by the people. This implies that leaders should be guided by the needs and wishes of the people whom they come to serve.

2.9   The Declaration of Universal Human Rights (10 December 1948)

The Universal Declaration of Human Rights (UDHR) is a document that acts as a global road map for freedom and equality, protecting the rights of every individual, everywhere. It was the first time countries agreed on the freedoms and rights that deserve universal protection for

every individual to live their lives freely, equally and in dignity. The UDHR was adopted by the newly established UN on 10 December 1948 and specifically addressed the already increasing suffering brought on by poverty and the undemocratic exclusion of citizens from participating in politics and their economies. The UDHR also aimed to give back identities to the oppressed people around the world. Underpinning the UN Charter, which advocated world peace and a single human race (divorced of colour), the UDHR supported the Charter in that world peace could not come to pass where people were oppressed, regarded as unequal, and separated from political and economic activity. This reflects on South Africa, which still has a severely separated society wherein race was seen as an identity. This identity disregarded the rights of black South Africans to be citizens in their place of birth. It further meant that politically they were disregarded and voiceless. Economically, the land was never theirs to own. The UN recognised these atrocities against humanity; and therefore, in the interest of goodwill and peace among all men, the need for a declaration that allowed all people of all races of all citizenship to be recognised within a single global nation.

In 1948, the entire world seemingly sought to move from the archaic practice of exploitation, dehumanisation and racialism into an era that saw all people as equal (UN Charter, 1945; UN UDHR, 1948). In 1948, Smuts sought to dilute the power of the United Party (UP) and consolidate all power in the hands of the NP, which was a strong nationalist movement (Giliomee & Mbenga, 2007: 310). It required policies and legislation that would subject all black people in South Africa to be workers and servants of the white masters (Sachs, 1973, Wolpe, 1972). The NP also sought to have a constitution that was similar to the constitution of 1910, void of any recognition of black people and their rights (Giliomee & Mbenga, 2007; Lodge, 1983).

In 1948, after the UDHR was adopted, in Verwoerd's speech he maintained that the Europeans and non-Europeans in South Africa were "scattered" and that tensions between the two groups had been building up to a crisis. He further referenced social situations of poverty and rising crime due to urbanisation, saying that "increasing white-black competition in the urban labour market would produce the most terrific clash of interests imaginable" (Giliomee & Mbenga, 2007: 296). In 1948, Verwoerd told the Natives Representative Council that the only way to avoid a clash would be to adopt "a development divorced of each other" (Giliomee & Mbenga,

2007: 296). This signalled the intention of separate development for white and black South Africans.

Yet among the Afrikaners, there existed divisions between the moderates, who sought white unity, and the extremists, who saw similarities between Afrikaner Nationalism and Nazism. The values of the UN's UHRD were not unanimously adopted by its members. South Africa, for one, did not embrace the UHRD (Asmal, 2011; Odendaal, 1984). It continued to insist upon its sovereign independence; while the UN, like the Commonwealth, did not seek to alienate any nation for fear that pacts might be formed by like-minded nations and result in war.

The UHRD was a call to all nations, with backing and support from the nations who had signed the initial charter. While the world and its leaders moved to create a harmonious world with human rights and dignity for all, the apartheid regime under Smuts chose to ignore this. Instead, it paved the way to Afrikaner Nationalism and legislated racial segregation (SAHO, 2019). The legislation under the 1910 constitution allowed for segregationist policies and the Acts, which excluded black South Africans from political participation, were restrictive and tokenistic by nature (Lodge, 1983; Davis, 1987). While some black people, like coloured people and Indians, did participate in the parliament, their voices were restricted and they possessed no powers to have whatever was tabled, executed (Giliomee & Mbenga, 2007).

2.10   Human rights movements in South Africa

In 1947, the Natives Representative Council demanded the removal of all discriminatory laws. The black people of South Africa remained landless, poverty-stricken and without real citizenship. The pass laws were enacted to prevent the freedom of movement and this further enforced the homelands as the places where black South Africans belonged; the apartheid government also did not want the over-urbanisation of white areas where black South Africans were forced to seek employment to survive. South Africa has the process of general elections which was exclusionary and only intended for the white voting minority. The Afrikaners and the white English-speaking community had always contested these elections. The 1948 elections are important in that they showed the existing divisions in the white voting community. There existed two primary parties who contested the 1948 elections: the UP, under Smuts, had support from the English-speaking white South Africans. The *Herenigde* (later

Herstigte) *Nasionale Party* (HNP, translated as the Reunited National Party), under Malan, sought to place the interests of the Afrikaners first.

The 1948 election had four primary contestants in the form of the NP, UP, HNP and the Afrikaner party. At the onset of the build-up to the election each of the stronger parties, the UP and the HNP, both entered into coalitions with the smaller parties. The HNP was a splinter group of the NP.

The UP was seen to be leaning to the left and enjoyed a cordial and working relationship with the Labour Party – predominantly English-speaking white South Africans. Smuts was strongly in favour of the continued relationship between South Africa and Britain. It was Smuts who ensured that South Africa entered World War II as a British ally.

Smuts and his followers were in favour of a pragmatic approach, arguing that racial integration was inevitable and that the government should thus relax regulations that sought to prevent black people from moving into urban areas. While still seeking to maintain white dominance, the UP argued in favour of gradually reforming the political system so that black South Africans could eventually, at some unspecified point in the future, exercise some sort of power in a racially integrated South Africa (Giliomee & Mbenga, 2007).

The HNP's platform argued to the contrary – that only total separation of the races would prevent a move toward equality and the eventual overwhelming of white society by black South Africans. The HNP stated that Africans should be viewed as only temporary dwellers in the cities and should be forced periodically to return to the countryside to meet the labour needs of farmers (primarily Afrikaners). In addition, the HNP declared that Africans should develop political bodies in "their true fatherland", the African reserves, and should have no form of parliamentary representation in South Africa. Malan also called for the prohibition of mixed marriages, the banning of black trade unions and stricter enforcement of job reservation.

Running on this platform of apartheid, as it was termed for the first time, Malan and the HNP benefited from the weight given to rural electorates, defeating Smuts and the UP. The HNP won a majority of the seats contested, but only a minority of the votes cast (redacted, Politicsweb, 2012).

The NP ruled South Africa until 1993. It introduced the policy of apartheid and enacted such notorious laws as the Suppression of Communism Act, the Group Areas Act, the Separate Registration of Voters Act, the Bantu Authorities Act, the pass laws and the stock limitation laws. Apartheid provoked resistance and in response to these laws black, coloured and Indian people found cause to unite in action and launched the Defiance Campaign in 1952 (redacted, SAHO, 2019).

Human rights violations were still the order of the day and the engrained 1910 constitution still prevailed to ensure economic exclusion and for black South Africans to remain forever dependent on the white economy. Political participation was still restricted and the laws passed ensured that black people could not engage in any political activity. The international community and the UN all responded by declaring some or other dissatisfaction with the apartheid regime and its racial segregation policies (Lodge, 1983; Davis, 1987; Giliomee & Mbenga, 2007).

2.11   The rise of protest actions

In 1952, a more "radical youthful" ANC was to embark on the Defiance Campaign. The campaign was launched under the banner of the Congress Youth League and was the ANC's first mass protest (Davis, 1987: 6; Lodge, 1983: 33-37). Lodge (1983) also elaborates on some of the internal strife which beset the Youth League as they had come up against the more cautious and conservative old guard (Lodge, 1983: 37). By June 1955, the ANC had started to seek allies in whatever guise they could be found. Initially, both the Congress and the Youth League were opposed to collaborating with communists and, including Mandela and Oliver Tambo, wanted to expel the few who belonged to the ANC (Davis, 1987: 7). The ANC's efforts were gaining momentum and the M-Plan had to be implemented. The M-Plan represented the first practical effort from within the Congress to prepare for the days of underground activity which lay ahead (Davis, 1987: 7, Lodge, 1983: 75-75).

In June 1955, the Congress of the People was organised and held in Johannesburg's Kliptown Township. In 1945, the ANC and its allies had established a National Action Council for the Congress of the People. An army of freedom volunteers (Lodge, 1983; Davis, 1987; Asmal, 2011) began collecting "demands" nationwide for inclusion in the Freedom Charter. These demands were assembled and on the eve of the Congress of the People (26-27 June 1955),

Lionel (Rusty) Bernstein hurriedly put together a draft document (Lodge, 1983: 71). Bernstein was a member of the Congress of Democrats – a group of white ANC sympathisers. The Charter contained a list of basic democratic demands and reaffirmed that South Africa belongs to all who live in it, black and white (Lodge, 1983: 71-72). It called for the ownership of mines and industry monopolies to be transferred to the "people as a whole", the redistribution of land to all those who work it, and for an end to the restrictions on labour and trade unions. The inclusion of racial minorities created the break-away of the African nationalists. This break-away from the ANC saw the formation of the Pan African Congress (PAC) in 1959 (Giliomee & Mbenga, 2007: 328-329).

The provisions of the Freedom Charter reflect the basic desires of the "people". The demands of the people were expressed as demands at the Congress of the People. These demands represented the demands of a people who wanted to destroy the existing dispensation which separated the people of South Africa.

2.12   The homelands system

The homeland system was one such creation of apartheid that denied black South Africans land ownership and at the same time ensured that they lived only where the apartheid legislation allowed them to. Apartheid legislation was drafted and enforced, but was rejected by the majority of South African citizens. The above demands clearly illustrate that a free society was sought by the people and the destruction of the homelands was essential in a free society. The realisation of what these laws intended to achieve resulted in resistance and massive disapproval of the apartheid legislation which deprived the majority of South Africans from owning and living off their land. As a nation, South Africans were divided by legislation that prohibited inter-racial marriages and "racial distancing" was practised as a law. During the 1970s, approximately three million people were forcibly resettled in "homelands" (Lodge, 1983; Odendaal, 1984).

2.13   A new political trajectory

In 1960, two incidents set South Africa on a different political trajectory: the Sharpeville massacre and Verwoerd's referendum, which was held to decide whether South Africa should become a republic.

As described by Davis (1987), the Sharpeville Massacre on 21 March 1960 was the result of the conflict and uprising in Cato Ridge, Natal, where pass law protestors killed several policemen. The defiance of the pass law was viewed as deliberate provocation. The police at the Sharpeville police station were on edge and, as such, without there being an order, fired into the group of protestors. The South African Police at Sharpeville shot and killed 69 peaceful demonstrators outside the station. On 30 March 1960, the government called a state of emergency and the very next month (8 April 1960) it banned the ANC and the PAC. The ANC, PAC, the South African Communist Party (SACP) and other anti-apartheid movements were banned and went underground or into exile.

On 9 April 1960 Davis Pratt shot Verwoerd in the head, seriously wounding him, but Verwoerd recovered very quickly and went on to plan for a referendum to declare South Africa a republic (Giliomee & Mbenga, 2007: 335-336). At this time it appears that Verwoerd wanted to "have his cake and eat it" as he had planned to both remain in the Commonwealth and at the same time get South Africa declared a republic.

As the Sharpeville massacre (1960) shocked the world, British Labour Prime Minister Harold Macmillan's "winds of change" speech seemed to be foreboding of what was to transpire in South Africa (Giliomee & Mbenga, 2007: 336). The granting of independence in the Congo saw many white people flee that country. Macmillan stated in the parliament that the winds of change were blowing through the continent and that the growth of political consciousness was a political fact (Giliomee & Mbenga, 2007).

South Africa became increasingly isolated internationally (SAHO, 2011; Asmal, 2011). The isolation was directly related to the apartheid policies which the government had adopted. The Commonwealth had certain focal areas and there was increasing pressure being exercised on South Africa, as it was not conforming to the requirements of the Commonwealth.

On 5 October 1960, a referendum was held (among white voters, the only South Africans eligible to vote on such matters) to decide whether South Africa should become a republic. The result showed that 52% of voters were in favour of a republic. In accordance with his promise that the republic would remain within the British Commonwealth, Verwoerd, the South African prime minister, went to London in March 1961 to give the Conference of Commonwealth

Prime Ministers formal notice that South Africa was going to change from a monarchy to a republic, and at the same time to request permission to remain within the British Commonwealth. This request was strongly opposed by African states, joined by India and Canada, not because of the proposed constitutional change, but because of South Africa's policy of apartheid. When it was clear that his request would not be granted, Verwoerd withdrew South Africa's application for membership of the British Commonwealth "in the interests of South Africa's honour and dignity" (SAHO, 2020; Giliomee & Mbenga, 2007).

2.14   Reaction by the apartheid state to resistance to apartheid

The apartheid government had always sought to use the legal mechanisms available to them under the guise of a constitution. By restricting political participation, the apartheid regimes took control of the lives of black people. The apartheid regime effectively rendered the black people of South Africa without a political voice. It further meant that the people had no rights and, therefore, were not eligible to be considered as citizens in the country of their birth (Lodge, 1983, Currie & De Waal, 2013). Constitutions have the rule of law as inherent support (Currie & De Waal, 2013). The unconstitutional political methodology of apartheid ensured the suppression and arrest of black leaders, illustrating how the apartheid regimes used [abused] constitutions to deny South Africans their human rights.

By June 1962, the NP forced the Sabotage Act of 1962 through the parliament. The Act gave the justice minister the power to ban any individual he considered to be a suspected "terrorist". This meant that the government could restrict a person's political activities as well as prevent any publication and distribution of statements made by such banned people. In 1963, the General Law Amendment Act was approved by the parliament and gave the police the power to detain people for up to 90 days. Such detention could transpire without giving any reasons (Davis, 1987: 17; Currie & De Waal, 2013).

An eight-hectare farm was bought to serve as the national headquarters of the ANC's military arm, Umkhonto we Sizwe (MK). The farm, Lilliesleaf, was situated outside of Rivonia, a white suburb in the Johannesburg area (Davis, 1987: 17; SAHO, 2011). By this time, Mandela was actively involved in the operations of MK as one of the co-founders and the driver of the M-Plan. The MK was started in the wake of the Sharpeville massacre. The South African police wasted no time in discovering the whereabouts of the new headquarters and on 11 July 1963

several ANC and MK members were arrested, leading to the Rivonia treason trial (SAHO, 2011; Davis, 1987: 17-18). The raid by the police led to the capture of nearly all of the MK high command. The MK chief saboteur in Natal turned state's witness and gave detailed information against the MK operatives. The top leadership of the ANC/MK were arrested in the persons of Mandela, Walter Sisulu and Govan Mbeki; and they were sentenced to life in prison in 1963 (SAHO, 2019; Davis, 1987: 18; Lodge, 1983). These leaders remained in the country, while some of the more prominent leaders went into exile.

The arrest and sentencing of the leadership brought the ANC's operational capacity into the spotlight, but marked the end to the amateurism of their operational offensive (Davis, 1987; Giliomee & Mbenga, 2007). The role of the international community and sympathisers cannot be discarded in the fight for liberation in South Africa. As early as 1964, the Rivonia Trial was just beginning when the Irish Anti-Apartheid Movement began campaigning for the release of Mandela and his co-accused who were facing the death penalty (Asmal, 2011: 84). It must also be remembered that the journey to the Constitution (1996) was also as a result of the foreign mission of the ANC which was carried by the people acting behind the scenes like Asmal and Oliver Tambo. Their work was heavily supported by the international community; particularly the UN, who provided a voice to the liberation struggle in South Africa.

Lodge (1983) argues that the political and protest actions of the ANC during the 1960s seem much more subdued than in the 1970s, when activities became intense and prolonged (Lodge, 1983: 321). Davis (1987) concurs with this and highlights the fact that the third stage of opposition in South Africa started with the aftermath of Rivonia and the violence of Soweto. These events bracketed a 12-year period characterised by slow-paced reconstruction efforts within the ANC, a building of momentum of rage among black South African and increasing governmental repression (Davis, 1987: 21). Davis (1987) further argues that the days of peaceful protest had passed with the 1960 bannings, and tactics of politically isolated sabotage had disappeared with the police invasion of Lilliesleaf (Davis, 1987: 7; Lodge 1983: 321).

The period leading to 1976 can be viewed as a period of response with equal or greater force – the South African government not only recruited an army of informers whose activities promoted a climate of fear and distrust, effectively paralysing any political initiative among Africans (Lodge, 1983: 321). This statement resonates with that of Moorcraft (2018: 348) as

well as Davis (1987: 6) when describing the intense efforts to suppress any political organisation and resistance. It was emphasised by the South African government to ensure that legislation placed restrictions on black political activity and also that the policies were so designed to effectively curb any African political dissent (Lodge, 1983: 321). Further to this, Lodge (1983) states that the decade leading to the Soweto uprisings was marked by the vicious enforcement of legislation to force black South Africans back into the homelands. This was a reversal of the urbanisation that was occurring as more black people sought to find jobs in the urban and industrial areas, which comprised the mining and manufacturing sectors.

By 1967, the fact that it was futile to participate in white liberal institutions and the reason why became evident to the National Union of South African Students. Lodge (1987: 323) highlights this issue in which the university authorities, during an annual conference at Rhodes University, insisted that African delegates use separate social facilities. This, it is argued, gave rise to the establishment of an all-black movement, the South African Students' Organisation. The voice of students armed with knowledge of the destructive nature of apartheid had gained momentum in that the youth was actively engaging in protest against the oppressive apartheid laws, which dictated what the youth and students were taught. A fuse had been lit in 1976 and was headed straight to a powder keg in Soweto.

In 1976, schoolchildren started a series of protests in Soweto, protesting against being forced to have their classes in the Afrikaans language. During the skirmishes, police shot and killed several protestors, sparking a violent uprising throughout the country in which some 600 people were killed (Lodge, 1983; Asmal, 2011; Davis, 1987). The 1976 uprising was perhaps the fiercest resistance the apartheid government of that time experienced (SAHO, 2019). These student uprisings also reverberated across the globe. Moorcraft (2018: 343) describes it as a moment when the apartheid iron began to bend.

In the aftermath of the uprising, the UN Security Council passed a resolution strongly condemning the South African government for its resort to massive violence against and killing of the African people (Asmal, 2011: 93). The South African government received a barrage of criticism and the arms embargo followed in November 1977, with Resolution 418 being unanimously adopted (Asmal, 2011). The Western powers also halted support to the South African government. The UN declared 1978 International Anti-Apartheid Year. Liberation

movements like the ANC were invited to Geneva, giving the ANC an extremely powerful international platform from which to wage the liberation struggle (Asmal, 2011: 93). The uprising also saw a steady flow of young black South Africans leaving the country (Davis, 1987: 28). At the time of the uprising, it was evident that the foreign mission had been gaining some traction and the need to have guerrillas trained abroad became a priority. The students also sought to be safer on foreign soil, while at the same time being equipped to take over the country.

On the homefront, the fear and shock tactics of the apartheid government increased as it needed to quell the amount of youth leaving South Africa and in so doing giving the international community evidence of its human rights abuses. The growing anti-apartheid voice outside of the country meant that resources were now being sought and accumulated to launch further military and legal attacks on the illegitimate apartheid system (Davis, 1987; Lodge, 1983).

The apartheid regime sought to artificially appease the international community by giving token political participation to coloured and Indian people in 1983. This represented yet another low for apartheid, as the people had been educated politically and saw the division and the smokescreen created by the 1983 referendum and the constitution of that year.

2.15   The third South African constitution (1983)

The constitution of 1983 was a last-ditch attempt to divide the black population of South Africa along colour lines. This constitution gave rise to the tricameral parliament. This meant there was a separate parliament for white, coloured and Indian groups (SAHO, 2019; Giliomee & Mbenga, 2007). This constitution excluded black people (Giliomee & Mbenga, 2007). Once again the oppressive regime played its hand and the race card. The thinking was to divide and give token privileges to coloured and Indian people. This would ensure that these two population groups would rally all and sundry behind the white token masters (Asmal, 2011). This misgiving came in the form that the very communities that these people were to serve, turned on them (Giliomee & Mbenga, 2007; Asmal, 2011).

The 1983 constitution further highlighted the entrenched nature of oppression and racial segregation (SAHO, 2019; Giliomee & Mbenga, 2007). The demand for equality, human rights and freedom became a particularly important socio-political issue. More than ever, there was a

need to consolidate all energies to address the common South African problem of racial oppression and the exclusion of people from the economy. The 1983 constitution cannot be seen outside of the history of segregation and separate development which defines the history of South Africa. It did ensure, though, that whatever constitution grew from the past oppression had to be reflective of the struggle and suffering of all South African people. After 1983, the mobilisation efforts gained renewed momentum as the international community started to assist in developing a democratic constitution for South Africa. By the mid-1980s, drafts were already being worked on for a democratic South African constitution (Asmal, 2011).

2.16   Convention for a Democratic South Africa (Codesa)

The first democratic elections held in South Africa in 1994 were supported by the interim constitution (27 April 1994), which gave authority to the Independent Electoral Commission and the Electoral Act. The interim constitution emanated from Codesa 1 and 2, 1991-1993. These conventions were, in fact, the negotiation platforms between the liberation movements and the then ruling NP. These platforms also aimed to be as inclusive as possible and had a host of other parties ranging from the far left to the extremist right. It remained a contestation around what the democratic dispensation for South Africa would look like.

Codesa 2 had ended and termed to have failed without any agreements being reached, but the way was paved for the elections (Giliomee & Mbenga, 2007; Van Zyl Slabbert, 2006; Asmal, 2011). The commitment signed by all parties at the Codesa 1 was binding and stood to pave the way to a free, fair and equal South Africa, through the interim constitution (Asmal, 2011). The democratic Constitution of 1996 aimed to secure and ensure human rights for all South Africans. It further sought to ensure social development for all, emphasising equality and human dignity. These rights can be tied to the UN's UHRD.

Asmal (2011) states that in the course of 1990 and 1991, there followed a series of bilateral meetings and accords between De Klerk's government and the ANC that committed both parties to a process of negotiation and addressed the obstacles to creating a climate for negotiations, including spiralling violence, intimidation, the issue of political prisoners as well as the armed struggle (Asmal, 2011). Asmal (2011) further states that the process of talks about talks culminated in September 1991 in the first multilateral agreement of the transition, with the adoption of the National Peace Accord. Asmal goes further and says that those in the ANC

were guided by the basic objectives, principles and minimum requirements stipulated in the Harare Declaration as this best served the interests of the oppressed (Asmal, 2011: 119).

According to Asmal (2011), constitutional negotiations began on 20 December 1991 under the Codesa name. Delegations from 19 political organisations took part. Five working groups were established, each made up of 38 delegates and 38 advisers. "These working groups had, as their themes, the creation of a climate for free political activity; the determination of basic constitutional principles; the establishment of transitional procedures for the homelands of Bophuthatswana, Ciskei, Transkei and Venda; the setting and overseeing of timetables for the transition; and the creation of procedures for dealing with new problems that would arise during the transition itself" (Asmal, 2011: 91).

2.17   Crafting an inclusive constitution at Codesa

The negotiations were not always as cordial as the participants would have wanted (Asmal, 2011). Gumede (2005) indicates that while the ANC may have won the political battle, the economic side was lost. Some trade-offs were required for the successful completion of the negotiation process. As mentioned, there were negotiations about negotiations and also the ever-present international community was eager to see the outcome of the negotiations. Asmal (2011) refers to talks about talks and describes how this played out.

By the mid-1980s, the ANC had already started to look at formulating drafts for a constitution for South Africa that represented the values of the Freedom Charter. The ANC had a wealth of experience in the form of people who assisted and here the ANC leadership come to the fore (Tambo, Sisulu, Mandela), while Albie Sachs, Arthur Chaskalson and George Bizos served to bring in a wealth of legal knowledge. Asmal (2011: 120) reflects how Sachs suggested the government of national unity and reconstruction. This later led to the principle being accepted and the idea and it later became the ANC government's Reconstruction and Development Plan.

The ANC walked out of Codesa in mid-May 1992. The Boipatong massacre (17 June 1992) did little to colour the bleakness that befell the South African political situation. After breaking off negotiations, the ANC decided to embark on a campaign of rolling mass action (Giliomee & Mbenga, 2007: 405). It must be noted that Codesa was the product of much negotiation behind the scenes and involved the dominant leaders of the ANC and the NP. Intelligence

personas like Neil Barnard from the National Intelligence Agency played a role in convincing their political leaders to open up talks with the ANC leadership (Van Zyl Slabbert, 2006). South Africa started on an economic downward trajectory. The Bisho incident left 29 people dead. Heavy diplomatic pressure (wisdom and logic gained from the past) brought both sides back to the table (Giliomee & Mbenga, 2007: 405).

The ANC had to deliver on its promise of a democratic South Africa and a constitutional dispensation. More than ever, the South African population yearned for peace and there was already a promise of unity. Born out of the struggles over the decades, equality and human rights had to receive centre stage. The international community had heeded the call by the UN's UDHR.

Social development can rightfully be considered a human right. Marais, Muthien, Jansen van Rensburg, Maaga, De Wet and Coetzee (2001) refer to Weyers (2001) when discussing how the inauguration speech of President Mandela alluded to the importance of social development in South Africa. The 1994 inauguration speech is well known as the "Never and Never Again" speech.

The democratic government also has to ensure that all South African citizens are allowed and empowered to develop to their fullest potential. To this end, the Constitution dictates the role that government must fulfil in ensuring that its citizens are developed and that their basic needs are taken care of. This goes to the argument in this study that there is an obligation on the government to ensure the well-being of all South Africans. It is essential to note that the Constitution makes it an obligation on the government and further allows for this to be enforced. Currie and De Waal (2013) state that the government is compelled to ensure that the socio-economic rights of citizens are upheld.

Social development is inextricably a part of the Constitution. Social development is, however, not the sole domain of government. Society – which comprises all South Africans – has a role to play in the social development of the nation (Marais et al., 2001).

2.18   Conclusion

The constitutional era of South Africa is marked by three dates that predate the 1993 constitution, the interim constitution and the 1996 Constitution, as amended and adopted. The three "constitutional dates" before 1993 include 1910, which saw the creation of the Union of South Africa. The year 1960 saw a referendum which resulted in South Africa being declared a republic. This period marked the Sharpeville massacre and also the expulsion of South Africa from the Commonwealth. The year 1983 brought about another "white referendum" which again split the white ruling parties, as coloured and Indian South Africans were granted seats in parliament or, as it was called, representation. The liberals argued that this would antagonise the black South Africans, who made up the majority and had to have political representation.

The three racially exclusive constitutions (1910, 1960, 1983) had the primary goal of keeping South Africa a "white man's land". Being a white man's land meant that the economy remained white and economic participation by black South Africans was allowed merely to the extent of "tokenism". Apartheid ensured that economic development was only for the white South Africans and, as such, social development both at a material level as well as a social level benefitted white people only.

South Africa's constitutional development was not an inclusive process. When the most crucial aspect of development (land and access to the economy) are off-limits, the people who are restricted in this way are at a social development disadvantage and no development can take place. Historically, this chapter has tried to highlight a few issues that led to the majority of South Africans remaining in abject poverty with no opportunities and severe restrictions on economic participation. The issue of land has been debated and argued by Bozzoli (1987) as well as Walker, Bohlin, Hall and Kepe (2010).

The 1996 Constitution is ever mindful of the oppression and how it created poverty and severe social underdevelopment. The Constitution has a severe human rights obligation. This obligation is placed on the democratically elected government to ensure that social development takes priority and that human rights and the freedoms of citizens are never again trampled on and eroded. Government, as per the will of South Africans, has to ensure that programmes and resources are availed to fulfil its mandate of alleviating poverty, building a united South Africa and ensuring that social development for the nation is prioritised.

All citizens have to actively participate and ensure that they know their rights and what they may require of government. The responsibility to build the nation cannot rest on the government alone. This requires a substantial partnership wherein all take up their responsibility and embrace the values and ethics espoused by the Constitution (1996).

In the next chapter, the literature review, the creation of a new constitution that ensured human rights and dignity for all will be discussed. The chapter will look at the link between the 1996 Constitution under a democratic government and how social development is ensured under the democratic Constitution of 1996.

CHAPTER: 3 LITERATURE REVIEW – THEORETICAL FRAMEWORK ON SOCIAL DEVELOPMENT AND THE CONSTITUTION OF SOUTH AFRICA

3.1 Introduction

This chapter will focus on the literature and secondary data which supports this study and outline the sources which have been used in the study. The study is purely a research study and uses available secondary sources in the absence of any contact of persons to obtain information. This study relies solely upon written sources that are specific to the topic, which is social development and the Constitution of South Africa (1996), hereafter referred to as the Constitution. This study consists of information that is available as printed material as well as online searches. This study can be classified as "social science research that produces results that are not obtained by statistical procedures or other methods of quantification" (Bouma & Atkinson, 1995: 206).

This chapter will take the reader through the sources which have been used in this study. The study sets out from the historical perspective of South African constitutional development (1910, 1960 and 1983). Chapter 2 of this study shows how the democratic Constitution which was adopted in 1996 has a strong bias towards social development. South Africa has a history of segregation and separate development along racial lines (Lodge, 1983; Asmal 2011; Mandela, 1994).

3.2 Theoretical framework

A theoretical framework can be considered as the frame or structure that supports a study. As an example, the analogy of a house will be used. To construct a house, a solid foundation is required. The foundation needs to support the walls, the roof and everything else required to construct a solid house. The theoretical framework should thus be based on tried and tested methods to arrive at an answer.

In this study, the link between the Constitution and social development is explored. There are also other elements in addition to these prominent elements. Tied to this framework is the historical perspective of constitutional development, which has been delimited to 1910, 1960 and 1983.

The Constitution is weighed against the constitutions of 1910, 1960 and 1983. The 1993 interim constitution will surface to explain the democratic elections and the adoption of the 1996 Constitution (Motala & Ramaphosa, 2002). Social development has many requirements for it to be achieved and yet absolute social development cannot be attained, as it changes within each society and within each human being. The historical element plots the path to democracy. Liberation efforts were consistently disrupted (Davis, 1987) and the momentum was broken by the apartheid regime (Lodge, 1983). Asmal (2011) indicates the intricacies and dynamics under which he and Sachs were working on drafting the first formative pages of a democratic constitution for South Africa in the mid-1980s. The intricacies of this theoretical framework are much like a solid foundation. Care needs to be taken in its construction. It is unwise to build a brick house on wet concrete.

Garbers (1996) argues that the theoretical framework must provide adequate support for the study. Neuman (2011) considers a theoretical framework as a very general theoretical system with assumptions, concepts and specific social theories. Bouma and Atkinson (1995) look at the construction of the framework as well as the comparable variables. The theoretical framework sets out to show which elements support a study. Theoretical research looks to test or explore a theory (Bouma & Atkinson, 1995). Lederman and Lederman (2015) argue that a solid framework is essential and could lead to the collapse of a study or research. The framework has to support the study. Neuman (2011) states that a theoretical framework is more than a formal or substantive theory. It includes many specific formal and substantive theories that may share basic assumptions and general concepts.

This study has many elements and concepts which are intertwined. The discipline of law, constitutionalism and social science (social development) are tied together. The history of South Africa is also tied to this study. Like the concrete mixture, stone, sand, cement and water are combined in their correct proportions to provide a solid foundation. In this case, the theoretical elements combined should make this a viable study supported by a suitable framework. This study is underpinned by principles of constitutionalism and social development (in the South African context) along with historical elements that give this study a progressive path.

3.3 Theory of constitutionalism

Constitutionalism means different things to different people and is often placed in different contexts (Lieberman, 1999). Constitutionalism is a central and protean political concept that for more than two millennia has never surrendered to a formal, fixed definition (Lieberman, 1999). In its earliest incarnation, constitutionalism was taken merely as a descriptive fact. To the ancient Greeks, a constitution meant "the state as it actually is" (Lieberman, 1999; [Mcilwain, 1966]). Asmal (2011: 168-169) refers to constitutionalism as a set of laws that allow governments to rule but at the behest of the people.

This section of this study will look to create the parameters of constitutionalism, particularly within the South African context. It will look at the theory of constitutionalism and rely on the thoughts of some US constitutionalists like Fellman (1973), Lieberman (1999) and Tribe (2000).

Constitutionalism can be viewed as the relationship between law, politics and society (Rapatsa, 2014; Lieberman, 1999). It refers to how the state is regulated through a higher law (Lieberman, 1999, Fellman, 1973; Rapatsa, 2014). Constitutionalism is an inanimate thing (Currie & De Waal, 2013) that cannot be physically grasped, but it has immense power (Chaskalson, 2003; Sachs, 1973). It reflects the attitudes of people and how they can and should use the power of a constitution to hold governments in check (Le Roux & Davis, 2019, while at the same time it serves a legal framework (Currie & De Waal, 2013) within which society, in general, can conduct itself (Currie & De Waal, 2013; Venter, 2013). It reflects society's values and attitudes towards civility, human rights and dignity (Asmal, 2011). Constitutionalism reflects the level of social development of a society (Marais et al., 2001).

When looking at South Africa in 1910, 1960 and 1983, it becomes apparent that constitutionalism is interpreted in different ways and in different contexts (Motala & Ramaphosa, 2002: 18-19). This study holds the view that the apartheid-era constitutions were what Lieberman (1999) considers "sham" constitutions and, therefore, these documents were void of the essence of what constitutionalism is. Although South Africa had these constitutions, they did not embrace a spirit of humanity and human dignity, nor did they seek to ensure that every citizens' human rights were upheld. In his autobiography, Mandela gives an account of how black South Africans experienced daily life: "Everyday life for black people in apartheid

South Africa was a sequence of constant embarrassments, deprivations and humiliations" (Asmal, 2011: 167).

Constitutionalism is reflected in the actions and posture of governments and those in power towards the treatment of citizens and their rights (Venter, 2013; Currie & De Waal, 2013). It also speaks to those values and principles which gird a society, ensuring dignity and humanity (Asmal, 2011). Constitutionalism rejects arbitrary government; it recognises and respects people's rights despite the contrary will of officials or even popular majorities (Lieberman, 1999: 730). Lieberman (1999) refers to Fellman (1973) when stating, "Today the idea of constitutionalism comprises a cluster of particular jurisprudential and sociological attributes, summed up as limited government under a higher law" (Fellman 1973: 485). Manifestly, not every state claiming independent sovereignty can lay claim to the constitutional mantle (Lieberman, 1999).

3.3.1   The role of constitutionalism in a society

Promulgation of a constitution does not guarantee constitutionalism (Lieberman, 1999; Fellman, 1973). Constitutionalism, in this study, will refer to a constitution as the "higher law" to which governments are subjected (Lieberman, 1999; Fellman, 1973). The idea that society is subject to laws implies that governments need to be regulated by a higher law, which in South Africa is the embodiment of the Constitution of 1996. Society as a collective has certain laws which enforce certain behaviour (Tribe, 2000).

Lieberman (1999) argues that constitutions make all citizens equal and hold them accountable to the higher law or the constitution. There are thus no separate laws for office bearers and ordinary citizens (Lieberman, 1999). This sentiment was expressed by the Enlightenment writers, which will reflect later in this chapter.

The UDHR of 1948 is discussed in Chapter 2 of this study. Human rights and human dignity are elements that are strongly evident in the South African Constitution and more expressly so in the Bill of Rights of 1996 (hereafter referred to as Bill of Rights).

The UDHR is tied to this study in that it reflects a political will on the side of world leaders from some of the stronger nations globally. The UDHR was adopted by the UN General

Assembly on 10 December 1948. Motivated by the experiences of the preceding world wars (World War I and World War II), the UDHR marks the first time that countries agreed on a comprehensive statement of inalienable human rights (Currie & De Waal, 2013).

The UDHR declares that human rights are universal – to be enjoyed by all people, no matter who they are or where they live. The declaration includes civil and political rights, such as the right to life, liberty, free speech and privacy. It also includes economic, social and cultural rights, such as the right to social security, health and education.

The values espoused in the UDHR are not binding (Blake & Walters, 1987: 195) and are dependent on countries for the implementation and inclusion in the laws and policies of these countries. Social development must be driven by the governments that embrace constitutionalism (Freedom Charter, 1955; Asmal, 2011; Constitution and Bill of Rights, 1996). The UDHR speaks to the development of governments that, for a long (historical) period, were responsible for acts of war and barbarism in the form of slavery (Rodney, 1972: 14). Rodney (1972) talks about how countries that were developing prior to capitalism created the subjection of human beings (specifically Asia and Africa) to provide labour to create wealth (profits) for the capitalist system.

The UDHR had a profound influence on the development of international human rights law (Blake & Walters, 1987). Some argue that because countries have consistently invoked the declaration for more than 60 years, it has become binding as a part of customary international law. Asmal (2011: 100) along with Motala and Ramaphosa (2002) argue that the concept of customary law is evident in South African history, which dates to the 1943 Bill of Rights in the Africans' Claims document.

Asmal (2011) talks about collective and individual rights, citing the 1954 Women's Charter which says, "The level of civilisation which any society has reached can be measured by the degree of freedom that its members enjoy" (Asmal, 2011: 100). The charter addresses four key areas: personal rights such as freedom and equality; relationship rights such as nationality and having a family; spiritual and political rights such as the freedom of religion and voting; and economic, social and cultural rights, which cover work, wages, education and social security.

The Constitution of 1996, therefore, seeks to address the past by ensuring that social development takes place for all South Africans (Marais et al., 2001). The Constitution is laden with rights and freedoms (Currie & De Waal, 2001). The rule of law takes precedence and the Constitution both guarantees these rights and gives a powerful voice to all South Africans (Asmal, 2011; Le Roux & Davis, 2019).

The government, under the Constitution as espoused in the Bill of Rights, has to ensure and protect the rights and freedoms of all South Africans (Currie & De Waal, 2013; Marais et al., 2001; Motala & Ramaphosa, 2002). The Constitution instructs the government (by way of the Bill of Rights) about its duty to develop and uplift all South Africans (Mandela, 1994; Marais et al., 2001).

The influence of the Freedom Charter (1955) cannot be ignored, as the Freedom Charter expressed the will of the people and the subsequent values of South Africans (Asmal, 2011: 105). As outlined by the Freedom Charter, human rights and human dignity underpin the Constitution (Asmal, 2011: 105). The inclusivity of the 1996 Constitution is a reflection of the developmental process that the ANC had to go through (Asmal, 2011: 101).

The inclusion of the international perspective on constitutionalism and human rights in this section is because South Africa is part of the global family. Asmal (2011) describes the importance of the international community in assisting with the liberation of South Africa, referring to entities like the UN, the Red Cross and the Irish Anti-Apartheid Movement (Asmal, 2011).

The understanding required to draft an all-inclusive constitution is reflective of the international influences of thought and practicalities (Asmal, 2011). Guidance and support in this endeavour came from all around the world to place the needs and interests of the South African people first. The ANC also had to learn the theory to apply the doctrines (Kasrils, 1993; Mbeki, 2002).

Globally, the Enlightenment writers have had an influence on constitutions that uphold the rule of law, human dignity and the regulating and management of power through built-in elements such as the separation of powers and the rule of law (Lieberman, 1999; Fellman, 1973; Currie

& De Waal, 2013). The Enlightenment is particularly useful to this study, as this era provided the base upon which strong "modern" constitutions are formed (Lieberman, 1999).

3.3.2 The Enlightenment era's influence on constitutionalism and promotion of social development

The Enlightenment thinkers are included to illustrate that the notion of regulating power was prevalent as early as the 1700s (Tribe, 2000; Lieberman, 1999). The excesses of the monarchs were a denial of human rights as well as of the dignities that all people must receive. The inclusion of the Enlightenment serves to draw attention to constitutional thought and the need to ensure the rights and freedoms of all people. Coupled to this is the regulating of power (Asmal, 2011), and governments being responsible for the upliftment of their citizens (Bill of Rights, 1996).

3.3.3 France and the United States of America – Early forms of constitutionalism

"The modern concept of a constitution (signs of constitutionalism) has been attributed to the American Constitution of 1787, which includes a Bill of Rights" (Lieberman, 1999; Fellman, 1973). Other earlier forms of constitutionalism include the French Declaration of Rights of 1789. Both constitutions were created as a consequence of "liberation" – from colonialism and the monarchy, respectively – to promote the ideal of a republican state (Tribe, 2000; Mojapelo, 2013). Both these countries experienced violent revolutions or uprisings due to the citizens not accepting that they should be treated differently from the people in power (Neiberg, 2017).

Constitutions thus began to evolve to be in tune with the citizens and their needs (Fellman, 1973). No longer was a constitution a body of law, institutions and customs forming the state, but it contained the concept of republicanism: the people constituting a state (Grimm, 2012; Lieberman, 1999). According to Bok (2003), Montesquieu created the foundation upon which many constitutions are developed.

Around the time of the first American Constitution (1787), the needs of people were much the same (Samuel, 2009). They needed food, shelter, security and healthcare. The structure of society was such that people sought to be self-sufficient and farm. They required land and wanted to own said land.

The right to own possessions and accrue wealth has been vested in humanity since the first inhabitants walked the planet (Rodney, 1972: 5, 6, 7; Giliomee & Mbenga, 2007: 6-7), where the early humans are discussed. Security is what brought like-minded humans together. This closeness brought a sense of security and belonging. It also presented a sense of identity and roles developed from this. As a collective, the early humans would then hunt, build and store things to address their needs. This progression was often upset as other groups would attack, steal and plunder. To this end, a regulatory framework was needed to set rules and later laws in place. Constitutions, by their nature, regulate the power of governments. Constitutions must have a set of guiding principles that constitute the elements of constitutionalism (Motala & Ramaphosa, 2002).

3.3.4 Vestiges of constitutionalism and the development of binding constitutions

Constitutionalism is evident in the thinking of the philosophers of the Enlightenment (1715-1789) (Lieberman, 1999). The constitutionalist thoughts of Montesquieu, Voltaire and Rousseau have a historical role to play in clarifying what constitutions are and how they came to exist; but at the same time, constitutions serve to regulate society and avoid social abuse by those in power (Bok, 2003; Grimm, 2012). Voltaire (1734), in his doctrine relating to the separation of powers, still believed that human beings need leadership, but he negates the fact that the leaders to which he alludes are human beings who themselves are fallible and, as such, when entrusted with immense power, need an equally immense constitution or legally enforceable entity that will keep them in check. Gathitu (2016) further accredits much of the influences on modern-day constitutions to the works of the Enlightenment thinkers as well as the works of thinkers like Locke. This is seen as advocating for more power in the hands of the people (Fanon, 1962). Constitutions generally regulate society (Fombad, 2010; Gathitu, 2016; Le Roux & Davis, 2019). The oldest constitution, drawn up in the United States of America on 25 May 1787, consisted more of a set of rules by which all citizens would live.

The philosophers of the Enlightenment did not necessarily have a constitution, but rather rules that regulated and were based upon fairness, honesty, trust and humanity. This would allow for people to grow materialistically and develop a sense of dignity as opposed to just seeing the ruling elite as representatives of such values (History.com Editors, 2010; Benyon, 1978). The next section looks at two writers who contributed to the development of constitutions and the

elements of constitutionalism. They are accredited by constitutionalists with having laid the foundation for the separation of powers to regulate the power which governments have.

3.3.5   Enlightenment writers (Montesquieu and Voltaire)

Voltaire and Montesquieu (1740) were vocal about the monarch's abuse of power and the need for a supreme law that governed both commoner and royal (Montesquieu, 1748; SAHO@20, 2019). Their writings represent the first formations of constitutionalism, showing that the monarchy and government have an obligation towards their citizens.

Montesquieu, unlike Voltaire, believed that man is able to self-regulate and be the designer of their own (social) development plan (Samuel, 2009). As such, for the harmonious existence of society, there should be laws that regulate rather than stifle society as it takes control of its actions and day-to-day affairs. Voltaire (1763) held firm the belief that "human law must in every case be based on natural law". The Enlightenment was a period in which the rights of people, but more so the role of government, was much contested. It is evident that Montesquieu, at the time of the French monarchy, recognised the need to restrict the power of the monarch as this was the formative place at which corruption and the abuse of power were detected. Voltaire had a distrust of democracy (Raj, 2013). Voltaire is quoted as saying that he "would rather obey one lion than 200 rats of (his own) species". What this element of government talks to is a system of a strong monarchy with enlightened advisors.

Constitutionalism has had an effect on societies globally. There are very few modern constitutions that do not hold human rights and freedom in high regard. The separation of powers serves as a measure of checks and balances (Olivier, 2016; Venter, 2013) which empowers citizens (Lieberman, 1999) to hold governments and rulers to account. This makes the history of the Enlightenment important. It can be considered as the birth of responsible and ethical governance. Lieberman (1999) states that constitutionalism is "a determinate, stable legal order which prevents the arbitrary exercise of political power and subjects both the governed and the governors to 'one law for all' (people)". A "constitution is necessary in order to limit government and … if there is to be government by consent" (Scruton, 1984: 94). And, from the time of Montesquieu, constitutionalism absorbed the maxim, in Madison's words, that the "accumulation of all powers – in the same hands – may justly be pronounced the very definition of tyranny" (Lieberman, 1999; Madison 1961).

3.3.6   The French Revolution: Excesses and poverty

The primary causes of the French Revolution were the basic disregard for the right of the impoverished citizens (Maier, 1978). There was a monarch that by virtue of power had destroyed France economically. The aristocracy lived a royal life and their type of lifestyle, excesses, opulence and sumptuousness was a drastic drain on the state's coffers. Fiscal prudence was non-existent (Maier, 1987; Blake & Walters, 1987). Spending was the norm and income collection suffered as it was spent before it was collected. The peasants merely existed at the whims of the monarchs (SAHO@20, 2019). The monarchs did not realise that their wealth rested on the peasantry (Maier, 1987; Blake & Walters, 1987). A regulatory framework for society was absent; the monarchs ruled and the peasants slaved (History.com Editors, 2010; Giliomee & Mbenga, 2007). In the South African context, the state controlled the coffers, the judiciary and all economic and political matters, while the majority of South Africans were completely disregarded with regard to economic and social development.

South Africa, during the apartheid era, gave birth to the formation of a liberation movement (Giliomee & Mbenga, 2007). At its infancy, the ANC also had to gain knowledge about the strategy of the apartheid regimes as well as the politics which played itself out internationally. The Communist Party had a history of international activity and brought that knowledge base with it as an ally of the ANC.

3.3.7   Socialist thought – An influence in South African liberation

In this section, this study makes the claim that Lenin, Marx, Trotsky and Gramsci (Buci-Glucksmann, 1980) all contributed to the social development debate and the liberation efforts by providing the intellectual and theoretical stimulus to the political leadership. These elements have been in the South African political discourse since the first gathering in 1912, which started the process to develop a black South African liberation movement (Lodge, 1983; Davis, 1987; Giliomee & Mbenga, 2007; Callinicos, 1992). The socialist thinkers are included as a reminder that South Africa, post-1994, did not develop or adopt a socialist system (Callinicos, 1992: 120, 121). As mentioned, the ANC had to muster all forms of assistance and, hence, today the alliances formed by the ANC during the liberation struggle still exists (Lodge, 1983; Giliomee & Mbenga, 2007; Bundy, 1979). While socialist thinking was part of the ideas during the liberation period, it must not be seen to be the essence of this study. These theories will only be saliently touched upon.

The liberation effort in South Africa was a period of social development. It involved the thinking of how best to liberate South Africa from the apartheid system which beset the country. The leadership had to develop a strategy that culminated in the M-Plan (Lodge, 1983; Davis, 1987; Giliomee & Mbenga, 2007) – see Chapter 2. The inclusion of socialist thought under the Enlightenment is so structured to show the reader how various elements became infused into the Constitution of 1996 and how it ties in with the freedoms and rights of the people of South Africa. Elements of the Enlightenment exist in the Constitution of 1996 in the form of the separation of powers, the rule of law and the dignity of citizens. Socialism is described in its name and is infused with the spirit of the people as a social entity. Prior to the 1994 democratic election, communism was banned in South Africa. The political establishment was averse to social integration and social equality. The alliance between the ANC and the Communist Party is ever-present in the history of the ANC (Booysen, 2015). It is in light of this that the Enlightenment will be followed by socialist thought in that it talks to the influences that present themselves in the Constitution of 1996.

3.3.8 Socialism and communism as revolutionary influencers on South African liberation

Socialism and communism have been posited as influencers in the liberation politics of South Africa (Callinicos, 1992). At a theoretical level, these thoughts influenced the early revolutionary thinking of the liberation leadership. It is to this end that this study will include these thoughts, as it is inherent in the political and social discourse of South African political thinking. Socialism and communism have not been ideologies that were strongly expressed as alternatives to the political economy of apartheid (Lodge, 1983; Bundy, 1979). The liberation movement, at one point, sought to eject all communists from its ranks (Giliomee & Mbenga, 2007; Davis, 1987). It was as a result of the lack of resources and the restricted movement of black South Africans that the leadership agreed to form a partnership and alliance with the South African Communist Party. The communist thought is tied to the revolutionary elements of South African liberation (Callinicos, 1992; Bundy, 1979). The liberation of South Africa is peppered with several elements that appear to be of a socialist nature (Callinicos, 1992).

3.4 Constitutionalism and the Constitution of South Africa, 1996

This section will look at the 1996 Constitution and how elements such as the rule of law have been placed central to constitutionalism in South Africa. Currie and De Waal (2013: 10) state

that the idea of constitutionalism is bolstered by the specific entrenchment of the rule of law in the founding provisions. Currie and De Waal (2013) further state that the rule of law requires state institutions to act in accordance with the law. This means that various organs of state must obey the law and that the state cannot exercise power over anyone unless the law permits it to do so (Currie & De Waal, 2013: 10-11). Thus, the Constitution governs all laws that refer to citizens, their rights and freedoms (Motala & Ramaphosa, 2002). Motala and Ramaphosa argue that the Constitution serves two primary functions: to grant power and to limit power (Motala & Ramaphosa, 2002: 221).

3.4.1 The Constitution of South Africa (1996): A tool for social development

This study seeks to place the Constitution in its rightful place and therefore the reader will be directed to the effort and the noble spirit that birthed the 1996 Constitution. The reader will also be shown that constitutions serve a key role in society, but it must be remembered that constitutions by themselves are powerless. The notion of "sham constitutions", expressed by Lieberman (1999) draws attention to the fact that constitutions can be abused and effectively mean very little to the citizens of a country if the "higher law" (Lieberman, 1999; Tribe, 2000; Le Roux & Davis, 2019) notion is not enforced and empowered by the citizens. This section will show that the content of the Constitution of 1996 had to reflect the will of the people as well as what had to be changed to create a united South Africa, free of the prejudices and racial division of the past. This section seeks to explain why importance is placed on human rights, dignity, freedoms and unity in the 1996 Constitution.

3.4.2 A cohesive constitution for South Africa

The Constitution (1996) resulted from robust negotiations which received attention at an international level (Asmal, 2011: 119, 121, 125; Motala & Ramaphosa, 2002). This has been discussed in Chapter 2 under Codesa. Callinicos (1992: 92-95) in an interview with Collin Bundy shows that while the liberation movement had its own agenda, elsewhere there were other agendas, both economic and political, at play. The implication here refers to international relationships (Asmal, 2011). When the ANC walked out of Codesa, the international community, specifically Russia and the USA, persuaded them to go back to the negotiating table with the NP and all others who had a vested interest in the future of South Africa (Giliomee & Mbenga, 2007: 403-404; Van Zyl Slabbert, 2006).

3.4.3 South Africa's Constitution: Act 108 of 1996

The Constitution is a generous document that is legally enforceable. The Bill of Rights was drafted to provide for the rights and liberties of all South Africans. The Constitution gives a wide spectrum of human rights to all and promotes equality, dignity, freedom and humanity (Le Roux & Davis, 2019). The Constitution and the Bill of Rights will apply to all laws and binds the legislature, the executive, the judiciary and all organs of state (Currie & De Waal, 2013: 33; Lieberman, 1999).

3.4.4 Social development and the Bill of Rights

The Bill of Rights is scribed as Chapter 2 in the Constitution. "This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom" (Constitution, 1996). Subsection 2 makes the obligation on the state quite clear, "The state must respect, protect, promote and fulfil the rights in the Bill of Rights" (Constitution, 1996: Chapter 2, Section 7). The Bill of Rights, then, clearly sets out the freedoms of each citizen which directly ties to social development as citizens are free to live, work and participate in the economy, politics and religion. The Bill also states that citizenship, housing, healthcare, food, water and social security must be available to all South Africans. These prescribed elements lend themselves (if adequately provided) to conducive conditions for social development. The South African government must ensure that the most basic needs of South Africans are provided for (Currie & De Waal, 2013: 563-567). Thus, the shopping list changes as societal needs change.

3.4.5 Chapter 9 institutions

Chapter 9 in the Constitution sets out the establishment and governing principles of state institutions supporting constitutional democracy. These state institutions are:
- The Public Protector
- The South African Human Rights Commission
- The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities
- The Commission for Gender Equality
- The Auditor-General
- The Electoral Commission
- The Independent Authority to Regulate Broadcasting

Chapter 4 of this study will take a deeper look at the functions of Chapter 9 institutions in their support of South Africa's constitutional democracy.

3.4.6   The Constitutional Court

The Constitutional Court is the highest court in the country. Everyone, including the government and the president, must comply with the decisions of this court (Supremacy of the Constitution, Chapter 1, Section 2). All other courts in the country have to abide by its decisions (Currie & De Waal, 2013; Le Roux & Davis, 2019). Yet the Constitutional Court is inaccessible to the poor due to the exorbitant legal costs (Le Roux & Davis, 2019). Legal aid clinics avoid blocking up the courts, while private litigation is too expensive. Chapter 9 institutions ideally would be focusing on the poor and voiceless regarding socio-economic rights, but to little effect as trust in these institutions seem to be waning (Le Roux & Davis, 2019; Currie & De Waal, 2013).

3.5   Citizens and the Constitution

Each citizen should be familiar with the Constitution, the Bill of Rights as well as their respective rights, freedoms and privileges (Le Roux & Davis, 2019). The importance of having a strong social cohesion cannot be overemphasised (Asmal, 2011) with regard to how society has to protect and uphold the Constitution. This is particularly evident in South African society, which was once divided through legislated segregation (Chaskalson, 2003; Sachs, 1973). Citizens have a clear role in defending and upholding the Constitution (Chaskalson, 2003; Le Roux & Davis, 2019). Trotsky (1978) alludes to how a revolution that was supposed to be for the rights and freedoms of all citizens eventually came to nothing as the citizens themselves were not familiar with their rights (Currie & De Waal, 2013), nor did they take the revolutionary spirit into the new situation (Mbeki, 2002). Instead, ideas and ideals of freedoms were taken for granted and not protected by the masses, which in turn led to the abuse of powers and the subsequent freedoms being trampled on. The custodians and protectors of any revolution are society, which comprises all citizens (Chaskalson, 2003). In this case, the term revolution can also be read as "social conscience or social awareness" and it is this state that the Constitution alludes to when it speaks to a unified nation free of fear and need (Mandela, 1994). Citizens may be journalists, legal practitioners, priests as well as members of security forces. Their moral fabric and make-up require them to be loyal to their country, but they should

be in touch with the general feeling of society. Their voice should be one of discipline, ethics and honesty. Integrity is cardinal in this regard (Chaskalson, 2003).

The government of South Africa has a constitutional obligation to its citizens (Currie & De Waal, 2013). It is democratically elected based on its election manifesto; but once in power, the promises of the election manifesto become inferior to the legal and binding obligations as imposed by the Constitution (Le Roux & Davis, 2019).

The importance of a government having respect for the basic rights of individuals under the rule of law along with respect for human dignity, equality and freedom being emphasised in the Bill of Rights is highlighted by Currie and De Waal (2013: 13-14). De Vos (2012) along with Currie and De Waal (2013) explain the need for constitutions and the regulation of power. Aziz (2011) talks of power at the psychological level.

There are several socio-economic rights in the 1996 Bill of Rights, of which sections 26 and 27 are the most visible and entrench the right of all citizens to access to adequate housing, healthcare services, sufficient food and water, as well as social security (Currie & De Waal, 2013: 565). To this is tied the Reconstruction and Development Plan (1994) as well as the initiatives and programmes of the Department of Social Development and the subsequent Acts which regulate its activities.

3.6   Social development – The South African perspective

This section seeks to explain what social development comprises and how social development and the Bill of Rights are inextricably tied, with the Constitution and the Bill of Rights as fundamental elements in social development in South Africa. The Bill of Rights could be presented as a rallying point with the potential to unite all South Africans and provide a single identity that can unite the nation. A united nation has a better chance of pooling its energy and providing a better life and living conditions for all. The rule of law must be engrained in the social fabric if it is to make a difference and improve the development of society as a cohesive entity.

3.6.1 Social development and social responsibility

Social development is dependent on society and based on the values and principles of equality (Mbeki, 2002; Mandela, 1994). It has to be driven and administered in accordance with the essence of the Constitution and requires society to be active (Le Roux & Davis, 2019; Asmal, 2011). Society should have a sense of national unity and social pride (Currie & De Waal, 2013). Society has to have faith in the institutions that support the national constitutional project as well as faith in those individuals at the helm of those structures (Le Roux & Davis, 2019). The Constitution and the Bill of Rights make it abundantly clear that all South Africans are equal and enjoy the same rights and freedoms (Currie & De Waal, 2013). The aspect of equality is a fundamental constitutional commitment (Marais et al., 2001; Le Roux & Davis, 2019). The Constitution makes it clear that economic equality is not reserved for a few, but must be for all citizens (Currie & De Waal, 2013; Le Roux & Davis, 2019). Organs of state have been devised and placed within the ambit of the Constitution (1996) to ensure that the voiceless are heard within the political and social discourse, but when these vital institutions are left powerless, the voice of the South African citizenry become silent and the rights and freedoms guaranteed by the Constitution seem to fade away.

3.6.2 A definition of social development

Midgley (1995, 2013) illustrates how the definition of social development came about. This term morphed from its concept of purely human development to incorporate the changes in technology and also the advances made in the commercial and economic sectors. Marx (1960) viewed development against the industrial development of countries and the development of people within the context of the labour market. Labourers, according to Marx, would be allowed limited development under a capitalist society, as any further development would see them as threatening the capitalist status quo of cheap labour for higher profit (Marx, 1960; Callinicos, 1992). Midgley (1995), when expounding on the definition of social development, creates two poles: "Social, meaning people, and development, meaning growth and change".

"The term 'social development' consists of two words – social and development – both of which inform the way it has been defined. Both should be examined in more depth. Today, the term social is used by sociologists and other social scientists to refer to human interactions and the complex phenomena that arise from these interactions, such as a large number of groups and associations including the family, neighbourhood associations, formal organisations,

communities and even societies. These interactions also give rise to social networks, values, cultures and institutions. The term also has a welfare connotation that alludes to people's well-being and collective efforts to improve social conditions. Both meanings of the term have influenced the way the concept of social development has been used. The second word, development, has a dynamic connotation and refers to a process of change, growth, progress or evolution. Although originally used to connote a process of societal change, the term "development" has been primarily linked to economic modernisation in the developing countries after World War II, where it was originally defined as involving growth and industrialisation. This definition has now been broadened to connote a multifaceted process that comprises social, cultural, gender, political, environmental as well as economic dimensions" (Midgley, 2013).

3.6.3 Social development – Context-specific

The need for a concise and purposeful definition of social development is evident. This is not easily attainable as each country, community, nation and cultural group has specific requirements that are important for their specific social development. What is evident is that the basics remain much the same (Ki-Moon, 2015; Midgley, 2013). Social development is inextricably tied to human beings who make up a given society or group (Mandela, 1994; Marais et al., 2001). There will always be a need for identity, whether social or national; but no matter where the need for identity arises from, there is always a totem that unites people (Mandela, 1994; Blake & Walters, 1987: 11-13). This is important, as social development is fluid. There cannot be a "one size fits all" approach, as it will lead to the loss of a personal identity of any given society (Blake & Walters, 1987; Maier, 1987). There may be a case where societies need to adopt a "give and take" approach, but this needs to be done with the future in mind. Sacrificing an element in one culture may have detrimental effects on that same society in the future (Midgley, 2013; Gray 2006; Giliomee & Mbenga, 2007).

3.6.4 Social development is about people

Social development is about people, their circumstances, their past lived experiences and how they ultimately grow as individuals and as a society (Wolpe, 1988; Mandela, 1994). The importance of a solid morally based and social-orientated constitution becomes important in the social development of citizens (Le Roux & Davis, 2019; Currie & De Waal, 2013). The citizens need to know their constitutional rights and must be free and substantially empowered

to enforce these rights and freedoms. This is where the independence of the judiciary and the rule of law becomes crucial (Gathitu, 2016; Le Roux & Davis, 2019; Currie & De Waal, 2013).

Tied to these two aspects is the need for the enforcement of the separation of powers (Currie & De Waal, 2013), as implied in the Constitution. There is a great responsibility on each citizen to embrace their freedoms and rights (Mandela, 1994), but in so doing, the need to embrace and defend the Constitution is the primary weapon of defence in ensuring the rights and freedoms that the Constitution enshrines (Chaskalson, 2003; Sachs, 1990). There is also a need for trust in the democratically elected government of the day (Le Roux & Davis, 2019). As such, there must be a strong bond between the citizens of government (Mandela, 1994; Asmal, 2011) in ensuring that social development never again is biased towards only one sector of South African society. All are equal and, therefore, all shall share in the wealth of the nation (Freedom Charter, 1955). The Constitution reflects the aspirations of not only the struggle for freedom, but also that of each South African to be free of want and fear (Mandela, 1994).

3.6.5   The goal of social development

Social development seeks to improve the lives of people; to find better and improved ways of satisfying the basic needs of all people. It further has to find ways to improve the provision of services that enhance the quality of life of all people. This can further be read in the Bill of Rights, which deals with healthcare, food, water and social security. Prior to 1996 and the adoption of the Constitution, South Africa experienced quite the antithesis of the democratic constitution – the previous constitutions of South Africa (1910, 1960, 1983) were all formed out of some or other necessity. Gordhan, in Le Roux and Dennis (2019), states that the Constitution commits us to uplift the poor, quoting Cameron who in 2014 told the Johannesburg Bar that, "The Constitution itself cannot save South Africa from crime, corruption, misgovernance, governmental inefficiency and police brutality (read "securocratisation"). What can save us is the Constitution in combination with a proud, deeply sceptical population, together with principled lawyering" (Cameron, 2014). The need for unity in a society (Nolutshungu, 1992) or national unity (Mandela, 1994) is an aspiration of the Constitution.

3.7 Basic human needs: Basic human rights

The needs of humans remain the same and the Constitution encapsulates these basic needs as rights. Food, water, housing, oxygen are primary needs that all humans are entitled to have and sections 26 and 27 in the Bill of Rights accept this as trite within the Constitution (Currie & De Waal, 2013: 565). These are also universal needs and are part of the UN's list of basic human needs as expressed as basic human rights (Ki-Moon, 2015).

3.7.1 The growing needs of citizens

The overall wellbeing of citizens requires security and their access to courts (Bill of Rights, 1996: Sections 12, 33 and 34) becomes important (Le Roux & Davis, 2019; Maier, 1987). The spiritual and mental health of citizens has to be ensured in the form of the freedom to practise any religion (Maier, 1987; Berger, 1987: 107-110), provided such a practice is not harmful, offensive or disruptive to the environment and the rest of society (Bill of Rights, 1996: Section 15; Marais et al., 2001). Above, Maier (1987) refers to Berger (1987) when reflecting on the role of religion and the future of politics. As the list of requirements that determines social development changes and increases, so too will the applied definition of social development for a specific country and society change (Midgley, 2013, 1998; Maier, 1987). It is, therefore, the responsibility of each citizen to be empowered and developed in a manner that assists the specific society to grow and develop (Le Roux & Davis, 2019, Gray, 2006).

3.7.2 Social and human development initiatives in South Africa

Through the Constitution and the Bill of Rights (Asmal, 2011; Le Roux & Davis, 2019), the government must ensure that it protects all citizens and ensures that social development transpires (Bill of Rights, 1996: Section 12). Fanon (1962) and Rodney (1972) expound and express theories that explain the South African context of social development. They are applicable in the manner in which oppression has dissolved the human dignity and the creative spirit of black South Africans. Giliomee and Mbenga (2007) show that development took place based on European understanding and the belief that South Africa had to become a satellite of Britain and The Netherlands. Rodney (1972: 209) further describes how Africa was deliberately kept in a state of developmental confusion. This study interprets Rodney (1973) and Lodge (1983) as saying that when Europe sought its economic development, it was dependent on a system of colonisation. These influences also impacted how social development

was stunted, as the African continent was subjected to outside influences that indirectly drove their social and human development initiatives (Rodney, 1972: 68).

3.7.3   Social development initiatives in South Africa (1994)

South Africa presents as a highly disparate society. The lines which divide affluence from poverty are evident. Poverty is an issue that runs deep. In the presence of the Constitution, all are supposed to be equal, but the economic divide creates much inequality. The Reconstruction and Development Programme was implemented in 1994 and aimed to address inequality by implementing a social programme of development wherein the government partnered with the citizens. There are other programmes which are driven by the government also and two of these will be touched on briefly.

The Accelerated and Shared Growth Initiative for South Africa (Asgisa) was crafted in 2005 and launched in February 2006. This was the introduction of policies, programmes and interventions to get South Africa's economy to grow. The growth was intended to halve the poverty and unemployment in South Africa between 2004 and 2014.

The National Skills Development Plan (NSDP) is set out in the *Government Gazette* of 7 March 2019. Its objective is to expand the knowledge and competencies of the labour force. This would lead to improved productivity and employment. Its ultimate goal is to improve the quality of life of all workers and to provide better prospects of work and labour mobility.

While Gumede (2005) addresses the need for equality and the attempt by the government to address such, much still needs to be done by way of developing a collective approach to the serious problems of the underdevelopment of the black majority which transpired under the apartheid government (Lodge, 1983; Bundy, 1979). The UN Millennium Summit in New York (2000) alluded to poverty as an ever-increasing impediment to social development (Midgley, 2013). While the South African government has had policies and programmes in place post-1996, ensuring that these actually materialise in real terms for the poor has become a battle. The government must be held accountable, but society has to be at the forefront to ensure the achievement of its social objectives (Currie & De Waal, 2013; Lieberman, 1999).

3.7.4 The Reconstruction and Development Programme (1994)

The Reconstruction and Development Plan (RDP) is aimed at addressing the immense socio-economic problems brought on by apartheid. The RDP has indicated that housing, clean water, electrification, land reform, healthcare and public works were the most affected areas under the apartheid system. The six areas which have been identified are tied to five key programmes (listed below) and are, in fact, considered basic needs. It is suggested that these six areas would contribute positively to social development.

The five key programmes comprise:
- Meeting basic needs
- Developing our human resources
- Building the economy
- Democratising the state and society
- Implementing the RDP

3.7.5 Three imperatives of the National Development Plan (A Vision for 2030)

The National Development Plan (A Vision for 2030) aims to eliminate poverty and reduce inequality by 2030 (National Development Plan Vision, 2030). The three imperatives of the National Development Plan (A Vision for 2030) are poverty, unemployment and inequality.

Poverty is a manifestation of a period of human rights violations (Mbeki, 2002) and the denial of economic participation of black people through the apartheid system (Lodge, 1983). It was important to ensure the economic exclusion of all black South Africans to benefit the white minority both socially and economically (Bundy, 1979). The Land Act (1913), according to Modise and Mtshiselwa (2013), "engineered the poverty of black people". Both Lodge (1983) and Davis (1987) further argue that land dispossession was a way to ensure lifelong poverty and subjugation for black South Africans.

The poverty that is experienced in South Africa today was created decades ago and is tied in with the levels of unemployment (Odendaal, 1984; Terreblanche, 2002). The land was owned and its bounty was that of the white landowners (Moakley, 2020). The participation of black South Africans was kept at a level that posed the least threat to the British and Afrikaners (Lodge, 1983; Giliomee & Mbenga, 2007) as they sought to accrue wealth. Gumede

(2005: 236) presents the reality of a government that came to power with the hope of giving a better life to all South Africans. Programmes aimed at alleviating poverty (RDP, 1994) are also measures aimed at addressing past injustices. This is a process of social development which requires that the past is not forgotten, but that all South Africans develop as a single nation with a unified vision of protecting the right and freedom of all citizens, at the same time solving the ever-present deprivation that exists due to a lack of resources and ingenuity.

The Statistician-General in its 2019 report indicated that currently there are still various inequalities present in South Africa (Maluleke, 2019). The report breaks down the various inequalities that exist, based upon various indices. The Gini coefficient is one such tool that gives an indication of the inequalities in South Africa society and in which areas they are located.

The Gini coefficient has been a commonly used measure of inequality in South Africa. The Gini ranges from 0 to 1, where 0 indicates perfect equality (all individuals have the same income) and 1 indicates perfect inequality (where one person has all the income and the rest have none). Therefore, the closer the Gini coefficient gets to 1, the more unequal the population is. On the other hand, as the Gini coefficient approaches 0, the more equal the population becomes (Maluleke, 2019: 32).

Racial inequality was legislated and made law under the apartheid government. Today, in a democratic South Africa, racial inequality still manifests in every aspect of society, be it economic, education or access to facilities. This inequality exists within the various race groups as well as among gender groups within the specific race groups. Land ownership was forbidden, which culminated in economic exclusion. Chapter 2 showed how racial inequality under apartheid led to unequal development. Today, education and the prevalent inequality therein still imply that one race is more advantaged than the other in the labour market. Skills inequality is still prevalent and is reflected as such in the inequality in earnings. Under apartheid, gender inequality was also present (Bozzoli, 1987).

In summary, the Statistician General's report (2019) shows that inequality exists at a gender level across all race groups. It shows that education inequality exists not only among the race groups, but also across gender within the various race groups. The same applies to property

(land) ownership and earnings (income). The implication is that white South Africans still have the advantage in education, earnings, property and jobs. The concern is that all South Africans enjoy the same political rights and yet, post-democracy, there are still inequalities in South African society.

It is not the place of this study to address social dissatisfaction, but rather to show how the Constitution should be mustered to defend the rights of citizens, hold the government accountable and address the shortcomings.

3.8   Conclusion

This chapter aimed to show how those societies dictate their legal needs. As shown by the Enlightenment, wherein the monarchy was oblivious to the suffering and degrading treatment of citizens, that society expressed a need for justice and the upholding of their human rights. It further showed that class differences such as racial discrimination divide society, and that society recognises the injustices and the oppression by those in power. Society then demands justice and equality. It is the law that is enforced that brings the monarch and governments to book. As such, the Enlightenment shone a light on the excesses and abuses by those entrusted with power. A remedy was needed; it had to be enforceable and society had to embrace it to give power to that remedy. Legally binding laws do not discriminate. This chapter showed how that constitutionalism is an important aspect that guides the conduct of citizens and elected leaders. The principles enshrined in the doctrine of constitutionalism are essential building blocks that support national unity, good governance and social development.

Society determines its levels of equality and humanity (Sachs, 1973). When society entrusts individuals and governments with power, that society has further power to regulate the power vested in the entrusted ones. An active and politically aware society is better equipped to ensuring justice and equality. Knowing the constitution and respecting it are important social principles. This goes further in that an empowered society is as powerful as its constitution. The enforceable constitution and society have a symbiotic relationship. A constitution is a document that by itself can do nothing. Therefore, any constitution should be the voice and will of its people. The inverse opposite also exists in that the people give a voice and the necessary power to uphold that constitution.

The next chapter will look at the Constitution which created Chapter 9 institutions to support the constitutional democracy of South Africa. These institutions should serve the citizens of South Africa and have a specific role in ensuring that those in power are held accountable. The finances of the state are also scrutinised and managed. Excesses and irregularities in spending must be guarded against. There is a need for media bodies to present information that is factual and honest to the people of South Africa. Culture, language and religion are important to a diverse society and, therefore, these rights must be defended and protected. In all these aspects, society has to be active both in directing these institutions and also in ensuring that they, too, are held accountable for their respective functions and purpose.

CHAPTER 4: STATE INSTITUTIONS SUPPORTING CONSTITUTIONAL DEMOCRACY (CHAPTER 9 INSTITUTIONS)

4.1 Introduction

The previous chapter showed the importance of constitutionalism as a guide for social conduct and the importance of social development as a unifier of society. The importance of good governance supported by democratic and constitutional principles is expressed in the preceding chapter. Chapter 9 of the Constitution of the Republic of South Africa (1996) provides for six legal entities (institutions) which support South Africa's democracy. In the mid-1980s, the ANC started the process of "constitutionalising" South Africa.

The "constitutionalising" started after pressure mounted on the ANC to put forward concrete proposals for a post-apartheid constitutional order (Asmal, 2011: 101). Asmal (2011) remarks that, at this time, an astonishing array of constitutional proposals for South Africa were being put forward and debated by a spectrum of organisations, academics, activists and think tanks, both at home and internationally, often by people who saw themselves as strongly anti-apartheid (Asmal, 2011: 101). Asmal (2011) expresses concern for the protection of the rights of minority groups. The South African Constitution (1996) is a central element of this study. The overarching element of constitutionalism in South Africa is looked at from a historical perspective (1910, 1960 and 1983; referred to in this study as the apartheid era) which is discussed in Chapter 2 of this study. Chapter 3 looks at the Constitution and elements of constitutionalism. This chapter looks at the functions of institutions that have been created by Section 181(1) of Chapter 9 of the Constitution. These institutions are separate from the Executive and the Legislature (Motala & Ramaphosa, 2002: 196; Constitution, 1996: S181).

This chapter will draw attention to elements that empower citizens through access to the institutions that support democracy, commonly referred to as Chapter 9 institutions. The Public Protector and the Auditor-General investigate the elements of state resources that are intended to improve the lives of citizens. The monitoring of state funds and the reasons why funds are not availed to improve the lives of South African must be looked at and reported on. The Human Rights Commission has a responsibility to address and provide remedies where these transgressions under a democratic state occur. These institutions support democracy, which is an element of constitutionalism.

4.2 Constitutionalism

Constitutionalism is a central and protean political concept that, for more than two millennia, has never surrendered to a formal, fixed definition. In its earliest incarnation, constitutionalism was taken merely as a descriptive fact. To the ancient Greeks, the constitution meant "the state as it actually is" (Lieberman, 1999; [Mcilwain, 1966: 26]).

Lieberman (1999) refers to Fellman (1973) when stating that: "Today the idea of constitutionalism comprises a cluster of particular jurisprudential and sociological attributes, summed up as 'limited government under a higher law'…" (Lieberman, 1999; Fellman 1973: 485). Manifestly, not every state claiming independent sovereignty can lay claim to the constitutional mantle (Lieberman, 1999). This statement directly refers to Chapter 2 of this study, which showed that the preceding apartheid-era constitutions were void of the elements of constitutionalism.

Lieberman (1999) observes the following statement when giving definition and practical form to constitutionalism and quotes Hamilton (1937), who wryly observed: "Constitutionalism is the name given to the trust which men repose in the power of words engrossed on parchment to keep a government in order" (Lieberman, 1999; Hamilton, 1937: 255). Constitutionalism is not just any government and not just any order. Constitutionalism rejects arbitrary government; it recognises and respects people's rights despite the contrary will of officials or even popular majorities (Lieberman, 1999: 730).

Constitutionalism is "a determinate, stable legal order which prevents the arbitrary exercise of political power and subjects both the governed and the governors to one law for all (people)" (Dunner, 1964: 120). A "constitution is necessary in order to limit government and … if there is to be government by consent" (Lieberman, 1999; Scruton, 1984: 94). And, from the time of Montesquieu, constitutionalism absorbed the maxim, in Madison's words, that the "accumulation of all powers … in the same hands … may justly be pronounced the very definition of tyranny" (Madison, 1961: 301).

Beginning in the Roman republic, and wandering in and out of political and legal consciousness for a millennium and a half, the concept mutated: it came to be held that there was law antecedent to the state; that it came from the people, or custom, or God, or the natural order;

and that even private citizens, as members of the public, may seek relief from the government's abuse of the citizenry's public rights (Lieberman, 1999).

In England, from the twelfth century, the judges held that the king was obligated to follow the law, meaning that he could not imprison someone who had not been tried in court. By the sixteenth century, the term "'a man's home is his castle' that not even the king could invade" was an adage that expressed the deeply entrenched notion of rights superior to the arbitrary will of the ruler. Through the Magna Carta (1215), the Habeas Corpus Act (1614), the Bill of Rights (1689), the Act of Settlement (1701) and other parliamentary enactments, a British constitution was gradually assembled. Modern constitutionalism in practice emerged with the American Revolution (Lieberman, 1999). For the drafters and ratifiers of the world's oldest continuing written constitution, a constitution was, as Paine put it, "the act of the ... people constituting a government"; and, he might have added, with terms and conditions attached (Lieberman, 1999; Paine, 1991: 82).

Modern constitutionalism seems to consist of these ingredients: (1) a fixed and public constitution, (2) ratified by the people, (3) equally applicable to all, that restrains arbitrary decrees by (4) separating government powers and (5) mandating impartial and fair procedures, and (6) that permits the people through regular elections to select their leaders, all in order (7) to preserve space in which at least some degree of individual autonomy may flourish. Promulgation of a constitution does not guarantee constitutionalism (Lieberman, 1999).

For the Constitution (1996) to be adopted, it had to receive certification. This judgement was handed down on 4 December 1996. This process of certification requires that the Constitution of 1996 satisfies the constitutional principles set out in Schedule 4 of the interim constitution of 1993. The interim constitution came into effect in April 1994 and was superseded by the certified Constitution of 1996 (Motala & Ramaphosa, 2002: 8). The certification by the Constitutional Court in 1996 is an ingredient of constitutionalism (Lieberman, 1999). Having been certified, the Constitution became the supreme law of the Republic of South Africa. The Constitution then made the Constitutional Court the final arbiter over the Constitution (Motala & Ramaphosa, 2002: 13).

4.2.1 Core principles of constitutionalism

Motala and Ramaphosa (2002) state that the two core principles of constitutionalism include the limitation on the use of random power by the government, and the guarantee of individual rights and freedoms enforceable by the courts. An important mechanism to prevent government tyranny is through the principle of the separation of powers. The Constitution achieves these core principles of constitutionalism by distributing government power among the three agencies of government – the legislative, executive and judicial branches. Power is also limited within prescribed boundaries (Motala & Ramaphosa, 2002: 175). Implicit in this is the presence of the Chapter 9 institutions which, at the behest of society, hold the government to account.

The next section looks at the institutions that were created by the Constitution in support of constitutional democracy. This study holds the Constitution and the Bill of Rights (1996) at its theoretical foundation. There are elements of constitutionalism that are inherent in the Constitution of South Africa (Motala & Ramaphosa, 2002). Chapter 9 of the Constitution creates the Chapter 9 institutions and sets out their respective functions.

4.3   Chapter 9 institutions

Constitutional democracy rests on the principles of democracy and constitutionalism. Apart from observing the rule of law, the Constitution requires the government to respect the principle of democracy (Currie & De Waal, 2013: 14). Currie and De Waal (2013) argue that since the American and French revolutions, it has been accepted that no person or institution has the divine right to govern others (Currie & De Waal, 2013: 14). Chapters 2 and 3 of this study reflect on the French Revolution and the manner in which the monarchy ruled. This is with reference to Montesquieu and Voltaire. These chapters reflect on the unconstitutional constitutions of South Africa of 1910, 1960 and 1983. The Constitution of 1996 acknowledges three forms of democracy: representative democracy, participatory democracy and direct democracy (Currie & De Waal, 2013: 15). The aforementioned is brought to the attention as it provides some clarity as to why the six Chapter 9 institutions are important to South Africa's constitutional democracy.

"The Chapter 9s are supposed to be partners in advancing the Constitution's transformative project, as well as scrutineers of government power and performance. They are important because they further support our faith in law and the Constitution" (Le Roux & Davis, 2019: 3).

Chapter 9 institutions have to ensure that all South Africans retain their faith in the Constitution. They have to ensure that the processes which guide the constitutional project are beyond reproach. Pienaar (2000) raises the issue about the role of the Public Protector in fighting corruption. The implication is that the Chapter 9 institutions and the leaders of such institutions must themselves be without blemish. This suggests that a tarnished image implies a tarnished or impugned execution of the functions of a specific office. Le Roux and Davis (2019: 3) allude to the fact that Chapter 9 institutions need to be aware that they carry the faith of South Africans when they execute their respective functions. Le Roux and Davis (2019: 5) add the duality of lawfare. They expound on the good and bad with implicit reference to the abuse of law. Chapter 9 institutions must ensure that the conduct of these offices reassures and strengthen the faith of citizens in their Constitution.

Chapter 9, Section 181 (1) of the Constitution lists the six institutions that fortify constitutional democracy in the Republic:
- The Public Protector
- The South African Human Rights Commission
- The Commission for the Promotions and Protection of the Rights of Cultural, Religious and Linguistic Communities
- The Commission for Gender Equality
- The Electoral Commission
- Independent Authority to Regulate Broadcasting

(2)   These institutions are independent and subject to the Constitution. These institutions must remain impartial. They should perform their functions objectively without any hindrance or undue pressure.

(3)   Other government departments need to assist and protect Chapter 9 institutions. This will guarantee the impartiality, neutrality, esteem and efficacy of these institutions.

(4)   People or government departments should not impede the running of these institutions.

(5)   These institutions report to the National Assembly. They report on their actions and execution of their duties to the National Assembly annually.

A point of contestation in the theory of democracy stems from the notion that the voted governments of the people should exercise autonomous authority, as opposed to the competing principle of constitutionality and restricted government (Motala & Ramaphosa, 2002: 51). Here

attention is drawn to the manner in which the independence of the Chapter 9 institutions may be influenced through ever-present contestation between the political sphere and the independent organs of state. Institutions supporting constitutional democracy have powers and these powers are regulated by the rule of law and the Constitution of South Africa.

These institutions are accountable to the National Assembly, but also to the citizens of South Africa. Currie and De Waal (2013) refer to Mureinik (1994) as arguing that, "the new Constitution promotes a 'culture of justification', a culture in which every exercise of power is expected to be justified; in which the leadership given by government rests on the cogency of the case offered in defence of its decisions, not the fear inspired by the force at its command. The new order must be a community built on persuasion, not coercion" (Currie & De Waal, 2013: 17).

As with the principle of democracy, some of the most important specific provisions flowing from the principle of answerability are found in the Bill of Rights. Currie and De Waal (2013) cite the right to just administrative action in Section 33 (Currie & De Waal, 2013: 17). This ties to the rights of citizens and their right to basic human needs and their social developmental needs being taken care of by the state. Chapter 9 institutions are answerable to and serve the South African people (Bill of Rights, Section 33). Each of the six Chapter 9 institutions has specific functions to perform in the support of constitutional democracy and, by implication, these functions are performed for the greater good of all South African citizens. This chapter outlines the various functions of each of these institutions. The Constitution of South Africa governs these institutions and places a high premium on the required integrity for the heads of these institutions.

4.4   Office of the Public Protector

Chapter 9, Section 182 of the Constitution states the duties and responsibilities of the Public Protector (Act 108 of 1996):

(1)   The office of the Public Protector authorised by law and the constitution –

    (a)   To scrutinise government matters, or the implementation of government policies in all state affairs that is alleged or suspected to be wrong which may result in any offenses or malfeasance.

    (b)   It has to provide an account for such transgresses; and

(c)   Institute suitable corrective measures.

(2)   The Public Protector has further powers given by national legislation.

(3)   The Public Protector cannot probe the decisions of the courts.

(4)   The Public Protector has to be reachable by all citizens and groups.

(5)   All reports by the Public Protector must be available to all persons. Where extraordinary situations exist, such reports may be kept confidential.

Having stated the functions, the reader is drawn to the argument by Pienaar (2000) wherein the part of the Public Protector in dealing with malfeasance is questioned. Section 181, Subsection 1(a) makes it clear that the Public Protector has a duty to investigate any conduct in state affairs. This implies that the citizenry can seek remedy to dwindling state funds that were otherwise intended for social development and upliftment. Currie and De Waal (2013) draw attention to socio-economic rights in the Bill of Rights, sections 26 and 27. Currie and De Waal (2013) argue that sections 26 and 27 enforce the right of everyone to have access to adequate housing, healthcare services, sufficient food and water, and social security. They require the state to take "reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights" (Currie & De Waal, 2013: 565).

This study contends that the Constitution places an obligation on the government to provide for the basic needs of all South Africans as far as is reasonable and within the resources of the state. In ensuring that sections 26 and 27 are complied with, the role of the Public Protector becomes clearer. The citizenry can seek relief via the Office of the Public Protector.

The contract of the Public Protector is not open-ended and for good reason. Section 183 states that the Public Protector is appointed for a non-renewable period of seven years. This is important in that the intersection between politics and the judiciary as well as other organs of state are often blurred when personalities become the official designation or, put another way, the persona becomes a power more important than the office and the functions (Le Roux & Davis, 2019).

4.4.1 The Public Protector's role in social development

The purpose of the Public Protector is to ensure that there is an effective public service that maintains a high standard of professional ethics (Motala & Ramaphosa, 2002: 198). Section 182(1) sets out the powers of the Public Protector with specific regard to the above-mentioned. Section 182(4) makes it clear that the Public Protector must be available to all persons and communities (Motala & Ramaphosa, 2002: 198). The Public Protector is an office sculpted on the institution of the ombudsman, whose function is to ensure that government officials carry out their tasks effectually, equitably and without corruption or prejudice and aggrieved members of the public are able to lodge their complaints with the Public Protector (Motala & Ramaphosa, 2002: 198).

The Public Protector has been empowered by the Constitution to investigate any conduct in state affairs, or the public administration in any sphere of government (Motala & Ramaphosa, 2002: 198). This means that where there are allegations or suspicions of improper conduct or impropriety, the Public Protector needs to investigate these and report transparently in such regard. There is also the power given by national legislation to take appropriate remedial action (Motala & Ramaphosa, 2002; Constitution, 1996 Sec 181(1)(c). Impropriety and improper conduct in state affairs and public administration imply that the resources which were meant for social development have been incorrectly managed. Corruption may have set in.

As such, the government was not able to fulfil its obligation to the citizen's second-generation rights. Second-generation rights are also known as socio-economic rights (Currie & De Waal, 2013: 564). Human rights and the basic social conditions in which people live are interconnected (Currie & De Waal, 2012: 564). Sections 26 and 27 of the Bill of Rights refer specifically to social-economic rights. Malfeasance results in citizens not receiving adequate housing, healthcare services, sufficient food and water and social security (Currie & De Waal, 2013: 565; Motala & Ramaphosa, 2002: 197-199). The Public Protector has to ensure that remedial action is swift and that social development does not suffer (Currie & De Waal, 2013; Le Roux & Davis, 2019). Through the effective and efficient actions of the Public Protector in safeguarding resources for socio-economic rights, the Public Protector becomes an entity that advances social development.

4.5   The South African Human Rights Commission

South Africa has a history of human rights abuses and this study sought to highlight this. Even though South Africa had constitutions during the apartheid era (1910, 1960 and 1983), they did not lend themselves to constitutionalism and constitutional principles (Motala & Ramaphosa, 2002: 7). Asmal (2011) reflects on the human rights abuses under apartheid and shows how the Constitution of 1996 had to reflect the will of the people and address the apartheid atrocities. Subsequently, sections 181 and 184 of the Constitution (1996) provide for a Human Rights Commission.

The Human Rights Commission was created under Section 184 of the Constitution (1996). Section 184, subsections 1 to 4 gives the functions of the Commission.

(1)   The South African Human Rights Commission must –

    (a)   Encourage respect for human rights and support a culture of human rights;

    (b)   Support the development and attainment of human rights; and

    (c)   Check and measure the observance of human rights in the Republic.

(2)   The South African Human Rights Commission has powers, which are controlled by legislation; to perform its functions it must –

    (a)   Investigate the compliance to human rights and report on such;

    (b)   Take appropriate steps where human rights have been violated and provide reparation;

    (c)   Conduct research; and

    (d)   Raise awareness through education.

(3)   Annually, the South African Human Rights Commission must be provided with information on the measures that state institutions take to bring to realisation the rights stated in the Bill of Rights regarding housing, healthcare, food, water, social security, education and the environment.

(4)   The South African Human Rights Commission has further powers and functions given by national legislation.

4.5.1   Human Rights Commission and social development

Human rights and human dignity are closely related. It is argued that human dignity is the foundation of human rights (Asmal, 2011). Asmal (2011) argues that the emphasis on human rights in the UN Charter is closely tied to the need for the restoration of human dignity (Asmal,

2011: 89, 98). The UN Charter is discussed in the previous chapter of this study. This study has looked at human rights and the desecration of the human dignity of black South Africans under the apartheid regime. Asmal (2011) further quotes Mandela when he describes the effect of living under apartheid as a black person. Mandela talks about the embarrassments, deprivations and humiliations (Asmal, 2011: 167). The Constitution of 1996 makes provision under law that the dignity and human rights of all South Africans be restored. The journey to democracy was marred by apartheid atrocities and, as such, the democratic Constitution has to ensure that human rights are paramount and the government has to be responsible for driving this process in conjunction with the citizens.

Human dignity is a central value of the "objective, normative value system" established by the Constitution. According to Section 1 of the Constitution, the Republic of South Africa is founded on the values of "human dignity, the achievement of equality and the advancement of human rights and freedoms" (Currie & De Waal, 2013: 250). Motala and Ramaphosa (2002) argue that the protection of human dignity means that human beings stand at the centre of the system of government. Human dignity has been defined as the founding value of the new Constitution. The centrality of human dignity is particularly important given the legacy of the apartheid era, which denied the humanity of the majority of South African citizens (Motala & Ramaphosa, 2002: 223). Motala and Ramaphosa (2002), when looking to define human dignity, raise the point that, "the starting point to human dignity is the individual, and the need to respect the uniqueness of each individual. The uniqueness of each individual requires that each individual be permitted to develop his or her individual talents in an optimal fashion" (Motala & Ramaphosa, 2002: 224). For Ackerman, human dignity is the equivalent of personal freedom and individual autonomy (Motala & Ramaphosa, 2002: 224). The Human Rights Commission thus has the important task of ensuring that human rights and dignity is protected and that each South African is comfortable with their citizenship and their collective spirit of dignity. Culture, language and religion are elements that are protected in the Bill of Rights. Mokgoro, cited in Motala and Ramaphosa (2002), states that the Constitution seeks to find a balance between the interests of the individual and society (Motala & Ramaphosa, 2002: 224). Society is a multifaceted entity and, as such, cultural, religious and linguistic rights must be upheld in a democratic society.

Human rights are essential in the advancement of social development (Currie & De Waal, 2013; Le Roux & Davis, 2019). Society needs to have its dignity restored and upheld consistently (Asmal, 2011). Apartheid eroded the dignity of black South Africans. By restoring and enhancing human dignity, the quality of life is improved which has a positive effect on the development of the individual as well as society at large.

4.6 Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Rights Commission)

In addition to the human rights violations that mar South Africa's past, language and cultural identities were oppressed along with the majority of South African citizens. The CRL Rights Commission has to ensure that all languages, cultures and religions enjoy the guaranteed freedoms as outlined in Chapter 2 of the Constitution (1996).

The functions of the CRL Rights Commission are set out in Section 185, subsections 1 to 4:

(1)   The commission's objectives are the promotion and protection of the rights of culture, religion and speech (linguistic) communities –

    (a)   To stimulate respect for the rights of cultural, religious and linguistic communities;

    (b)   To promote peace, friendship, humanity, tolerance and national unity among cultural, religious and linguistic communities on the basis of equality without discrimination, and free association; and

    (c)   To drive the establishment of a cultural council for communities in South Africa.

(2)   The commission is empowered to fulfil its mandate and achieve its objectives. It has powers to monitor, investigate, research, educate, lobby, advise and report on issues concerning the rights of cultural, religious and linguistic communities.

(3)   The commission may report any matter which falls within its powers and functions to the South African Human Rights Commission for investigation.

(4)   The commission has the additional powers and functions prescribed by national legislation.

4.6.1   CRL Rights Commission and social development

The CRL Rights Commission should ideally work closely with the Human Rights Commission. Cultural and linguistic biases and discrimination are intertwined with specific groups within

South Africa. The Afrikaans language issue has been a rather contentious issue in that Afrikaans was tied to the oppressor. However, English is also a language tied to the coloniser. The Constitution seeks to create a balance in that the preamble states, "Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights". This study contends that the liberation efforts were specifically aimed at all South Africans and that it seeks unity for a single sovereign South Africa.

Section 31(1) in the Bill of Rights allows persons who belong to cultural, religious or linguistic communities the right, along with other members of that community –

(a)   To enjoy their culture. They may practise their religion and may use their language.

(b)   To create, join and uphold cultural, religious and linguistic associations and other organs of civil society.

This talks to the right of association as well. Social development requires the quality of life of an individual to be improved (Marais et al., 2001). This implies that his or her overall well-being, emotionally, spiritually, culturally and through any specific language will enhance individual development and, at the same time, the society benefits from the presence of a person who makes a positive contribution to that society. These are considered first-generation rights (Currie & De Waal, 2013: 564) and are fundamental to the overall well-being of people which impacts social development. Social development is more than the provision of basic needs. The need to be part of a similar group that embraces the same values and principles or cultural, religious and linguistic practices gives a sense of security and belonging to human beings. The Constitution guarantees these freedoms and government needs to ensure that these rights are provided for and protected (Marais et al., 2001: 263, 266, 268).

4.7   Commission for Gender Equality

According to Section 187, the functions of the Commission for Gender Equality are as follows:

(1)   The Commission for Gender Equality must support respect for gender parity. It must strive to protect, develop and attain gender parity.

(2)   The commission has the power to perform its functions. The commission can monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality.

(3)   The Commission for Gender Equality has further powers and functions given to it under national legislation.

4.7.1   Commission for Gender Equality and social development

The Commission for Gender Equality is concerned with the rights of women. It challenges those social aspects that discriminate against women based on their gender. It holds the government, the private sector and other organisations to account to confirm that they protect gender equality. The commission focuses on the representation of women in public life. Employment equity and violence and abuse against women receive particular attention. The commission aims to inform the public about gender equality through education projects. Laws are monitored. These are laws passed by the local, provincial and national government to ensure that gender equality is promoted. It also recommends new laws. The government's adherence to international agreements such as the Convention for the Elimination of All Forms of Discrimination Against Women are consistently monitored (Parliamentary Working Group, 2019).

Apartheid enforced both racial and gender inequality (Bozzoli, 1987). Section 9(3) specifically deals with gender discrimination. Section 9 in the Bill of Rights addresses equality. Gender-based discrimination brought decades of unequal economic opportunities for women. While apartheid enforced gender-based discrimination, it also discriminated between white and black women in South Africa. Economically, white women earned more; yet between genders, they themselves were discriminated against (Lodge, 1983; Currie & De Waal, 2013; Bozzoli, 1987). The Constitution ties equality to human dignity. Women have the same rights and are allowed to participate equally in the economy. This equal participation enhances social development in that all people are participants in the economy, politics and social life. Women have had to take the back row with regard to equal participation in the labour market. Gender inequality promoted specific labour roles for men and women. This implied a level of inferiority which was never the case (Bozzoli, 1987). Due to the apartheid past, the Constitution recognises that women were neglected with regard to economic participation and, as such, there are gender empowerment programmes.

South Africa has signed various international conventions and declarations to achieve gender equality. There is an abundance of legislation, but women are still not advanced as

rapidly in terms of socio-economic empowerment and gender equality. Women remain the most affected by inequality and poverty. In 2014, the Department for Women was established with a mandate for advancing women and the promotion of gender equality. In 2015, the department finalised its strategic plan. The promotion of gender equality and the empowerment of women is central to the mandate of the UN Development Programme (UNDP). It is, therefore, imperative for the UNDP to support the government's agenda on gender equality and women's empowerment (UNDP, 2020).

4.8   Auditor-General

The functions of the Auditor-General are given in Section 188 of Chapter 9 in the Constitution:

(1)   The Auditor-General audits the accounts and all financial matters of –

   (a)   National and provincial government departments;

   (b)   Municipalities; and

   (c)   All other institutions or accounting entities. This is subject to being required by legislation and carried out by the Auditor-General.

(2)   Further duties set out in Subsection 1, the Auditor-General audits, and reports on the financial matters of the accounts of –

   (a)   Institutions financed by the National Treasury; or

   (b)   Institutions that, under the law, get resources for public use.

(3)   The Auditor-General submits audit reports to the legislature that has an interest in such an audit. This applies to any authority set by national legislation. These reports must be available to all citizens.

(4)   The Auditor-General has further powers and functions given by national legislation.

4.8.1   Auditor-General and social development

Motala and Ramaphosa (2002) argue that the Auditor-General has to be a watchdog over government. The focus of the office is on the improper management and use of public money. Section 188 sets out the spectrum of auditing and reporting on the financial management of state entities (Motala & Ramaphosa, 2002: 198). All reports are to be made public. The Auditor-General has to ensure that the state funds are audited and that there are no irregularities concerning spending. The Auditor-General's office must check on the accounts and financial matters of government departments at all levels of government. It is the taxpayers' watchdog,

ensuring that their taxes are well spent. It promotes accountability, helps fight corruption and prevents waste.

4.9 Electoral Commission

The functions of the Electoral Commission appear in Section 190, which states:

(1)   The Electoral Commission has to –

     (a)   Manage elections (national, provincial and municipal) as prescribed in the national legislation;

     (b)   Make sure that those elections are free and fair; and

     (c)   The results of the elections must be made known speedily.

(2)   The Electoral Commission has extra authority provided by law.

4.9.1   Political rights and social development

The Independent Electoral Commission impartially manages elections at all three levels of government to ensure that elections are free and fair. Its goal is to strengthen constitutional democracy through regular free and fair elections in which every voter can vote (Parliamentary Monitoring Group, 2020). Every citizen in South Africa has political rights. These rights are captured in Section 19 of the Bill of Rights.

Section 19 states the following:

(1)   Citizens have the freedom to make political choices; this includes the right –

     (a)   To form political parties;

     (b)   To partake in these activities, to recruit members for these political parties and

     (c)   To promote a political party or cause.

(2)   Citizens have a right to free and fair elections held regularly for any legislative body recognised by the Constitution.

(3)   All adult citizens have the right –

     (a)   To vote in secret for legislative bodies established under the Constitution; and

     (b)   To avail themselves for public office and to hold that office should they be elected.

These freedoms are embedded in the constitutional principles of South Africa's Constitution. Elsewhere in this study, Motala and Ramaphosa (2002) were referred to where they discuss

constitutional principles. They have discussed the certification process (Constitutional Court, 1996) which alludes to how the Constitution itself was subjected to these principles (Motala & Ramaphosa, 2002: 6-8, 189, 198, 304). Political freedom ensures that the individual takes responsibility for those elected to govern. It ensures that each person's rights are a matter of personal conviction and discipline.

4.10   Independent Authority to Regulate Broadcasting

Section 192 requires that the national legislature has to establish an independent authority that regulates broadcasting which is in the interest of the citizens. It must ensure objectivity and a multiplicity of views that represents the entire South African society.

The Independent Authority to Regulate Broadcasting has to ensure that the South African people have access to entertainment, but a fundamental element is that it should ensure that all South Africans have access to information. The information needs to be balanced and reflect the diversity of views of the diverse South African society. Through fair and unbiased reporting, society has access to information that ensures a nation is informed about what matters. Such broadcasting should never provide one-sided or opinionated reporting. Information should be relevant and truthful.

4.11   General provisions regarding the Chapter 9 institutions

The six Chapter 9 institutions are subject to a set of general provisions per Section 193 of the Constitution, which are as follows:

(1)   The Public Protector and members of Commissions authorised by this Chapter must be women or men who –

    (a)   Must be South African citizens;

    (b)   Are fit and proper people who are capable of holding these offices; and

    (c)   Should meet the requirements set by national legislation.

(2)   Commissions created by this chapter must be reflective of the race and gender configuration of South Africa.

(3)   The Auditor-General must be a person who is a South African citizen. They must be fit and proper people to hold such office. Core knowledge of, or experience in auditing has to be given consideration when appointing an Auditor-General.

(4)   The President appoints the Public Protector, the Auditor-General and the members of –

(a)   The South African Human Rights Commission;

(b)   The Commission for Gender Equality; and

(c)   The Electoral Commission. (These appointments are based upon recommendations by the National Assembly).

(5)   The National Assembly has to recommend people –

(a)   Who have been nominated by a committee of the Assembly; and

(b)   Approved by the Assembly through a supporting vote –

(i)   This vote must carry a minimum of 60% of the members of the Assembly, for the appointment of the Public Protector or the Auditor-General; or

(ii)   For a member of a commission there has to be a majority vote from the members of the Assembly

(6)   Section 59(1)(a) provides for the inclusion of civil society in a recommendation process.

4.12   South Africa's constitutionalism

The certification process of the Constitution (1996) required the Constitutional Court to evaluate whether the final Constitution passed muster (Motala & Ramaphosa, 2002: 11). The certification process also enhanced the confidence of minority parties that the solemn pact agreed to under the interim Constitution and the ground rules required under Schedule 4 would be adhered to (Motala & Ramaphosa, 2002: 8).

The elements of constitutionalism can be seen in the aforementioned. Chapter 9 institutions have to enhance or protect the democracy of South Africa and, as such, there has to be a fair amount of trust in these institutions. These institutions are created and empowered by the Constitution to fulfil a protective role.

Pienaar (2000) argues the role of the Public Protector in fighting corruption. Pienaar raises the question, "*Quis custodiet ipsos custodies"?* Who watches the watchmen? It is in light of this that the role of Chapter 9 institutions is highlighted. It also alludes to the role of an active citizenry that has an appreciation and understanding of the power of their Constitution.

4.13   Conclusion

This chapter discussed what Chapter 9 institutions do and how they have been mandated by the Constitution to perform their functions. This chapter focused on the importance of these institutions and how they empower South African citizens as well as all who live in the country.

The idea of this study is to highlight the importance of each citizen protecting their constitution. The reader should note that in this study it is maintained that constitutions by themselves have no real power (Currie & De Waal, 2013). The power behind a constitution is its citizens who ensure the enforcement of what is stated in the constitution. Motala and Ramaphosa (2002) argue that the constitution is a living document. Here Motala and Ramaphosa refer to Brandeis, when he says that the Constitution is not a straitjacket but a living organism (Motala & Ramaphosa, 2002: 28). Citizens are the life of the "paper" constitution and determine its strength and force with which the constitutional principles and various laws are enforceable in society. Chapter 9 institutions represent these elements of constitutionality and are thus able to support democracy.

Chapter 9 institutions and particularly those who head these institutions must be of substance and integrity. These institutions have to be infused with the values of constitutionalism and democratic values as espoused in the Constitution. The Constitution provides for the independence of these institutions and they are required to be impartial. Pienaar (2000) alludes to the fact that an office like that of the Public Protector should be free of any biases and its head must not show political and social biases. These offices must be pillars of integrity in order to be trusted by the citizens. These institutions are as strong as those who head them. Trust can be lost if these institutions are considered as powerless paper entities that bring no value to society and the constitutional democracy at large.

The next chapter in this study will be a contextual analysis of this study. It will be a discussion of the study with reference to the objectives and questions that are articulated in Chapter 1 of the study. Conclusions will be drawn with recommendations being made. This study set out to look at the conditions under the apartheid-era constitutions. These constitutions were contrasted with a democratic constitution and a Bill of Rights which protects every South African citizen. Social development and human rights were disregarded by the apartheid-era constitutions and this study set out to explore this. The next chapter concludes this study.

CHAPTER 5: CONTEXTUAL ANALYSIS

5.1   Introduction

Chapter 4 gave the reader insight into the functions of the institutions which support democracy and how these institutions tie to constitutionalism. Constitutionalism provides a building block essential to social stability and security. Chapter 5 is the closing chapter of this study. Here the reader will find a summary of the chapters contained in this study. This chapter will discuss the findings of the study, the limitations of the study as well as recommendations from the researcher regarding future related studies. This study is concluded with a brief recap of the findings. The reader is reminded about the title, the research statement and the objectives and research questions which are set out below.

The title of this study is: The Constitution of the Republic of South Africa and Social Development: An exploratory study of the link between the Bill of Rights and Social Development.

The research statement (problem) of this study reads as follows:

> The year 1996 ushered in an era of true constitutionalism in South Africa. Prior to this, there were apartheid-era constitutions. These were steeped in racial segregation and tolerated human rights violations through the sacrosanct position of parliament. In comparison with constitutionalism, these apartheid-era constitutions were void of constitutional principles. Constitutionalism supports and promotes equal social development and human rights through legislation and elected political leaders aimed at improving the quality of life and living conditions of all citizens. This study explores constitutionalism and the conditions which exist both in its presence and absence.

The objectives of the study are as follows:
- To explore the conditions in South Africa under the apartheid-era constitutions (1910, 1960 and 1983).
- To examine the apartheid-era constitutions for elements of constitutionalism.
- To contrast the democratic Constitution (1996) against the apartheid-era constitutions.

- To explore the link between the Constitution (1996) and social development and the influences that shaped this Constitution.

The study aims to answer the following questions:

- What conditions (social, political and economic) did apartheid-era constitutions create?
- What is constitutionalism and did the apartheid-era constitutions pass the muster of constitutionalism?
- What differences exist between the apartheid-era constitutions and the democratic Constitution?
- Does the democratic Constitution (1996) promote social development?

The research objectives and questions have been commensurately weighted; each corresponding objective is supported by a question. The following section provides a summary of each of the chapters.

5.2   Summaries of Chapters (1 – 5)

5.2.1   Chapter 1 – Introduction

Chapter 1 outlines the study. It describes the research methodology of the study. Chapter 1 gives the scope of the study setting out the length, depth and breadth of the study. The rationale of the study is explained and the study is positioned as a qualitative study that used secondary data. It provides some detail of the study, giving the reader insight into why the specific methodology was chosen, the research statement, the objectives and the research questions. The reader is taken through the chapters with a brief overview of what to expect.

5.2.2   Chapter 2 – Historical perspective

Chapter 2 gives the historical perspective of constitutionalism in South Africa. Three constitutions represent the apartheid-era constitutions. The first constitution (1910) was tied to the formation of the Union. The 1960 constitution was referendum-based and saw South Africa becoming a republic and leaving the Commonwealth. In 1983, another referendum was held to allow Indians and coloured people to vote, which led to the formation of a new constitution. Yet Indians and coloured people did not have any real say in parliament and this allocation of

the vote was but mere tokenism, which created further division among South African citizens. These three constitutions lacked democratic principles essential to constitutionalism.

The timeline of the apartheid-era constitutions runs concurrently with liberation efforts to address the exclusion of black South Africans from economic and political participation. The 1913 and 1936 Land Acts deprived the majority of South African citizens of owning and developing land. Much of the apartheid-era legislation was designed to create poverty and to keep black South Africans marginalised. Chapter 2 shows that the apartheid-era constitutions (1910, 1960 and 1983) were void of constitutionalism.

5.2.3   Chapter 3 – Literature review

The literature review in Chapter 3 reflects on constitutionalism and looks at the democratic Constitution of South Africa, which was certified and adopted in 1996. This was the dawn of true constitutionalism in South Africa. Constitutionalism embodies the principles of democracy and limited government power. The Enlightenment era (1685-1815) provided for the rule of law, the separation of powers and limited government as opposed to absolutism. These elements came to form the fundamentals of modern-day democratic constitutions. The democratic Constitution guarantees the rights and freedoms of all citizens as outlined by the Bill of Rights. The Bill of Rights is tied to social development, which seeks to ensure that the lives and the quality of life of all South Africans are improved. The Constitution and, more specifically, the Bill of Rights places a mandamus on the democratically elected government to provide and take care of all citizens. This is in sharp contrast to the apartheid-era constitutions, which were selective. Social development is guaranteed through the Bill of Rights and addresses all the aspects required to improve the lives of South Africans. Constitutionalism rests upon democratic principles and equality which are inclusive and non-divisive. This chapter highlights the absence of constitutionalism in the 1910, 1960 and 1983 constitutions while showing the presence in the 1996 Constitution.

5.2.4   Chapter 4 – Institutions in support of democracy

Chapter 4 looks at the functions of Chapter 9 institutions. These institutions must be beyond reproach and yet they have been found wanting under the democratic dispensation. The apartheid-era constitutions gave the parliament total authority and the courts were subject to political power. Chapter 9 institutions are vital in ensuring accountability and protecting the

human rights of all South Africans, while ensuring that citizens do not lose faith in the democracy project. These institutions are created and empowered through the Constitution (1996) and should ensure that the notion of separations of powers is adhered to. Human rights should not be negotiable. Under apartheid, human dignity was trampled on and human rights violations were prevalent. The Chapter 9 institutions must protect the rights of all citizens as set out in the Bill of Rights. Constitutionalism ensures that citizens can hold the most powerful office bearers to account by accessing the Chapter 9 institutions.

5.2.5 Chapter 5 – Contextual analysis

Chapter 5 presents summaries of the chapters. It gives the reader the findings, conclusions and recommendations of this study. The reader will note the correlation between the findings and the objectives and the questions. The findings point to some of the limitations of the study and how this same study could be improved by addressing components of the study such as the research methodology, and the formulation of different research questions and objectives. The limitations show where these improvements in the study are possible. This alludes to possible further areas of study and could mitigate a recurrence of similar deficiencies. The next section will provide the findings of this study.

5.3 Findings

The fourfold objectives and questions of this study have been listed under the introduction to this chapter. The research statement surmises that the apartheid-era constitutions negated the social development of black South Africans, while the democratic Constitution appears to support and promote equal social development and human rights through legislation aimed at improving the quality of life and living conditions of all South Africans. The Constitution is tied to constitutionalism, as this Constitution has proven to stand up to the muster of constitutionalism.

Three dates denote the apartheid-era constitutions: 1910, 1960 and 1983. This study showed the path from apartheid to a constitutional democracy, with the first democratic elections being held in 1994. In 1996, after receiving certification, the first democratic Constitution of South Africa was adopted. The certification process required the Constitution to satisfy the constitutional principles set out in the interim constitution of 1993. The Bill of Rights contains the rights and freedoms of all South Africans and ensures that all South Africans are equal with

a single national identity guaranteed by their citizenship. The findings in the following sections are linked to the objectives and questions.

5.3.1 Exploration of conditions in South Africa under the apartheid-era constitutions

The first apartheid-era constitution was adopted in 1910 when the Union was formed after the South African War (1899-1902). After the signing of the Peace Treaty of Vereeniging (1902), South Africa was politically and economically controlled by two white groups, the British and the Boers, who vied over South Africa, while black South Africans were seen as slaves and later a cheap source of labour which could be easily accessed through the reserves and homelands. The apartheid-era constitutions were void of constitutionalism and enforced segregation and discrimination. The human rights of black South Africans were non-existent under the apartheid-era constitutions. The living conditions of black South Africans can be described as impoverished and inhumane. Black South Africans held no freedoms to live and work where they chose.

The apartheid-era constitutions guaranteed that black South Africans had no access to resources or land which would have allowed them to be self-sustaining, as was the case before the arrival of the first settlers. Apartheid was a legalised form of racial segregation which, along with political and economic discrimination, created a cycle of poverty for black South Africans. The apartheid-era constitutions ensured that black South Africans were viewed as inferior to white South Africans. Apartheid was similar to Hitler's Nazism in that one race was considered superior to another. Black South Africans had to live in homelands, which this study submits was similar to concentration camps. This was reminiscent of the British and Nazi concentration camps. This implies that black South Africans were twice captives.

The apartheid government and apartheid-era constitutions did little to improve the quality of the lives of black South Africans. This is reflected in the situation that prevailed in the homelands and reserves, which were economically unviable and were not able to generate any economic prosperity. The human rights and dignity of black South Africans were violated and disregarded. The provision of basic needs and services was non-existent for this group. Social development was severely impeded insofar as black South Africans were concerned. The apartheid government did little to develop the meagre pieces of land to which black South Africans were confined. Under the apartheid-era constitutions, poverty was the birth right of

black South Africans. Apartheid further stripped black South Africans of any possessions that could ensure economic and social development.

5.3.2 Examining the apartheid-era constitutions for elements of constitutionalism

Constitutionalism is a set of constitutional principles that guide and direct the contents of a constitution. Good, wholesome constitutions serve all citizens and strive towards unity and social harmony. Apartheid-era constitutions were divisive and discriminatory. These constitutions served a single race and were designed to dehumanise black South Africans. Constitutions can be considered as a higher law. A higher law implies that leaders are subject to this law which did not apply to the apartheid-era leadership. Constitutionalism supports the rule of law and democratic principles. Apartheid-era constitutions were void of any of these principles.

Human rights and dignity are strong elements of constitutionalism which the apartheid-era constitutions were oblivious to, insofar as these rights pertained to black South Africans. Racial segregation and political and economic discrimination were key policies under apartheid-era constitutions. This study argues that the presence of a constitution does not necessarily lend itself to constitutionalism. The notion of "sham" constitutions is tied to this argument and aptly describes the apartheid-era constitutions. These constitutions were clearly and severely lacking constitutionalism. The apartheid-era constitutions were mere legal documents that did not reflect the will and aspirations of the majority of South Africans. These constitutions gave artificial legitimacy to the apartheid regimes who curried favour with international entities such as the Commonwealth and the UN.

5.3.3 Contrasting the democratic Constitution (1996) against the apartheid-era constitutions

The apartheid-era constitutions ensured that economic and political control and power were vested in the hands of white South Africans. The mining sector was controlled by the British and the agricultural sector was dominated by the Afrikaners. The Land Acts (1913 and 1936) ensured that black South Africans could not own land; this exacerbated their exclusion from the economy. Politically, black South Africans were excluded and had no political voice. Any such voice was violently suppressed, supported by apartheid legislation.

The apartheid economy created poverty and landlessness for black South Africans. This created a condition of statelessness, as black South Africans did not have the rights coupled to citizenship in the country where they were born. The homelands and reserves were not owned by black South Africans. The apartheid regime could at any stage impose taxes on this land and evict anyone.

The Constitution (1996) is in sharp contrast to the divisive apartheid-era constitutions, which held no Bill of Rights which guaranteed human rights and freedoms. The Bill of Rights (1996) ensures that all citizens are equal. Political and economic participation is open to all South Africans. Racial segregation and all forms of racial discrimination have been outlawed under the Democratic Constitution. The presence of a Bill of Rights which recognises all South Africans sharply contradicts that which was called constitutions under the apartheid era. This study found these striking differences (chapters 2 and 3 of this study), which supports the notion that the apartheid-era constitutions were unconstitutional or sham constitutions.

Chapter 9 institutions, which support democracy and defend the rights and freedoms of South Africans, are another aspect that was not evident in the apartheid-era constitutions. The Constitution (1996) makes provision for the rule of law and the separation of powers. Constitutionalism is about limited government power, allowing the power to rest in the hands of the citizens. The government is given just sufficient power to carry out its duties and functions at the behest of the citizens. Chapter 9 institutions are vital in keeping the government in check and holding the government accountable. This distinguished the democratic Constitution from the apartheid-era constitutions. Under the apartheid-era constitutions, all power was vested in the parliament and the separation of powers became redundant and never applied.

5.3.4 Exploring the link between the Constitution (1996) and social development, and the influences which shaped this Constitution

Societies develop and change continually and thus the needs of the people alter commensurately. This holds true for the values and beliefs of a society. Change is perpetual and so, too, is man's development and needs. As society evolves and changes, so will the needs of the individuals who make up a society. This study found that social development is about

people and people are prone to change. Society is based on the collective and the collective is dependent on each person.

Under the apartheid constitutions, the needs of black South Africans received no consideration. The Constitution (1996) is laden with rights and freedoms that promote robust social development at a physical, spiritual and psychological level. The Constitution and the Bill of Rights seek to provide a better life for all South Africans and promote positive social interaction, conduct and social harmony, which in turn enhance social cohesion. The Bill of Rights (1996) makes provision for socio-economic rights and promotes social development at various levels. The Bill of Rights (sections 26 and 27) provides for the most fundamental elements required for social development. The provision of food, water, housing, healthcare and social security are stated as rights for every citizen. Further, the Bill of Rights allows for a host of "social" freedoms such as religion, cultural and linguistic freedoms and practices that collectively ensure social development.

Under the apartheid-era constitutions, inequality was legalised to the point where people were compelled to attend separate schools, churches and social gatherings. Mixed marriages were illegal and punishable with imprisonment. Citizenship was reserved for white South Africans; only this group enjoyed the rights tied to citizenship. Social interaction among the different race groups was met with fierce and brutal intervention by the apartheid police. Freedom of speech was absolutely not allowed.

The Constitution and the Bill of Rights guarantee citizenship. Citizenship is linked to national pride and promotes the notion of a single nation. National unity is an element which was never evident under the system of apartheid and the apartheid-era constitutions were loath to seek national unity. National pride was the private domain of white South Africans and, under apartheid, white nationalism as opposed to South African nationalism was promoted.

5.4   Limitations of the study

The limitations of the study are the characteristics of the study design or the methodology that affect the findings of the study or the way these findings are interpreted (Ellison 2010; Neuman, 2011). It is important to acknowledge the limitations of a study (Bouma & Atkinson, 1995; Garbers, 1996). The limitations of this study are primarily tied to the methodology, which from

the outset was a qualitative study and did not use primary sources. The limitations assist future studies from incorporating similar design deficiencies.

This study was limited to book and secondary research. It did not incorporate quantitative data, i.e. live data capable of presenting commentary derived first-hand from live participants. The study was confined to the apartheid-era constitutions and the democratic Constitution, focusing on constitutionalism. When looking at the constitutional elements and perspectives, the legal fraternity would debate and each would present a different opinion which would have given a wider yet more balanced set of findings.

This study is restricted by its methodology and design in that published sources (secondary data) were used. Desktop research limits a study to specific sources, solely presenting the views of those resources. The interpretation of the findings of this study is to an extent predetermined by the references and sources, as the data depicts a specific picture. It must be stated that the data and sources that were used are all academically sound and credible. The use of secondary data is an acceptable form of research for academic study, as tested data is used (Neuman, 2011; Garbers, 1996).

This study is a qualitative study and recognises that quantitative data could have given the study a different set of findings. Interviews would have allowed a participatory approach and, at the same time, lived experiences could have been encapsulated in the study. The use of live study participants gives different and divergent perspectives on the same matter.

5.5   Recommendations

From this study, there are elements that emerge that could produce further study and areas of research. The recommendations-of this study talk to the findings and the reader will note that from the four main findings, recommendations emerge.

The conditions in South Africa under the apartheid era were such that economic development favoured one section of the population, while poverty and economic hardship befell the majority of the population. This study noted that South Africa still has very disparate economic development and the government should look at ensuring that the socio-economic rights of

citizens be upheld to ensure economic freedom and upliftment for all citizens. Economic development initiatives are crucial to ensure equal and productive economic participation.

The apartheid-era constitutions were void of constitutionalism. This study recommends that the Constitution of South Africa be embraced and protected by all South Africans. Citizens need to defend their Constitution and the right and freedoms therein enshrined. Citizens and the elected leaders must ensure that the rule of law, the democratic principles in the Constitution and the separation of powers must be committed to as well as adhered to. It is recommended that the principles and values espoused in the constitution serve to guide the conduct of all South Africans, irrespective of the office or position held. Every South African can benefit from educational programmes focusing on the Constitution and the Bill of Rights; this could better equip citizens with knowledge of their rights and responsibilities. Society should be "made conscientious" about their roles, duties and responsibilities to imbue the values and principles which are enshrined in the Constitution.

The apartheid-era constitutions are strikingly different from the democratic Constitution and this is evidenced by the constitutionalism which pervades the democratic Constitution. The Bill of Rights must be at the centre of society and the government must ensure that power rests in the hands of the citizens. Elected office bearers need to have a keen understanding that the offices held are not for self-enrichment. When elected and appointed, these officials must recognise that they are the servants of the people and that political office must not be sought for ignoble reasons such as greed and avarice. It is further recommended that the institutions that support democracy should be supported by the citizens but also be held accountable, as the conduct of those heading these offices must reflect the integrity, social values and morality of the society.

Under apartheid, social development was unequal. While the government, under the mandamus of the Constitution has to ensure that the lives of all South Africans are improved, every citizen must contribute to developing themselves, their respective communities and the country. A spirit of collectivism is required to unite all South Africans in a single effort to develop and enhance the country. It is recommended that South African citizenship becomes a revered right and must be guarded jealously. Government should be at the forefront of nation-building initiatives and the development of national pride. Citizens need to direct government in these

initiatives by reflecting conduct that is beyond reproach as reflected in the spirit of the Constitution (1996). There should be social-responsibility initiatives that bring about awareness and a mindset of civil activism.

This study has presented answers to the questions and the objectives have also been satisfied within limits. There are four questions with commensurate objectives. The recommendations above reflect the objectives and talk to the main findings of this study.

5.6   Conclusion

This study looked at apartheid-era constitutions and found that these constitutions were void of constitutionalism. Human rights and dignity were notably absent from these constitutions. This study concluded that human rights were trampled on and the social development of black South Africans was deliberately impeded through the enactment of apartheid legislation. By comparison, the democratic Constitution (1996) hosts a Bill of Rights which promotes social development. Sections 26 and 27 in the Bill of Rights place an obligation on the government to improve the quality of life of all South Africans.

The Bill of Rights guarantees the rights and freedoms of all South Africans. These rights and freedoms were not evident in the apartheid-era constitutions. The Constitution (1996) has been certified, which means that it has satisfied the requirements of constitutionalism. Human rights and dignity are guaranteed rights. South Africa has a robust and sound constitution that is inclusive of all citizens. All citizens are equal and enjoy single citizenship. The Constitution can be viewed as a symbol that could unite and imbue national pride in all South Africans, as they are free to enjoy guaranteed rights and freedoms.

The four recommendations argue that all South Africans should embrace the Constitution and the spirit enshrined therein. Elected leaders need to look at their conduct and the reasons why they seek to be elected as servants of the people. The Constitution can be a rallying point that serves to unite all South Africans and to imbue national pride and unity. Citizens must hold the government to account and at the same time citizens should reflect the conduct which they want to see in their elected officials. Citizens have a responsibility to reflect the conduct which they demand from elected leaders and, therefore, this is a reciprocal relationship between government and citizens.

In closing, this study wanted to show the importance of history and how history can be a valuable teacher. It illustrated how the abuse of law under law exists and existed when the apartheid regime used constitutions for vile and inhumane purposes. If its society embraces good virtues, righteous values and laudable conduct, a country has a better chance to develop as a prosperous social entity.

The Constitution (1996), as it stands, is a document and cannot be corrupted nor manipulated. It is the entrusted people who have to uphold the Constitution who are flawed and with reproach. Medvedev (1989) highlights that it is the people in power and not the ideology or the revolutionary principles or even the Constitution that is at fault. By mere virtue of its composition, the words on paper need the collective force of all citizens and those elected to ensure that the principles contained in the Constitution are brought to life.

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