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Exploring the Implications of SPLUMA' (16: 2013) Municipal Planning Tribunal in South African Local Government: The Case of the City of Johannesburg Metropolitan Municipality, Johannesburg

Sibiya, Zwelibanzi

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UNIVERSITY OF THE WITWATERSRAND
SCHOOL OF ARCHITECTURE AND PLANNING

EXPLORING THE IMPLICATIONS OF SPLUMA' (16: 2013) MUNICIPAL PLANNING TRIBUNAL IN SOUTH AFRICAN LOCAL GOVERNMENT: THE CASE OF THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY, JOHANNESBURG

ZWELIBANZI PASCAL SIBIYA

Research report submitted to the School of Architecture and Planning, Faculty of Engineering and the Built Environment, University of the Witwatersrand, in partial fulfilment of the requirements for the Bachelor of Science with Honours in Urban and Regional Planning. Supervised by Neil Klug.

Johannesburg 2015

DECLARATION

I, Zwelibanzi Sibiya, declare that this research report is my own unaided work. It is being submitted for Bachelor of Science with Honours Degree in Urban and Regional Planning at the University of the Witwatersrand, Johannesburg.

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Zwelibanzi Sibiya

11 November 2015

ABSTRACT

Together with the enactment of a new legislature in the form of SPLUMA (16: 2013), the change from a provincial based DFA Tribunal to a local based SPLUMA Tribunal raised many implications and issues for the local government sector. The objective of the research was to explore the implications of adopting a local government based tribunal. The purpose was mainly focused on the operations of a tribunal. A qualitative method was used in the research and it included analysing contents as well as conducting interviews. International case studies were used to analyse the findings. It was found that the CJMM will use its planning committee as a temporary tribunal. The implementation of the tribunal has uncovered capacity, resource and governance issues that exist within the CJMM. Therefore, the implication of adopting and implementing a tribunal for the CJMM include having to increase resources and capacity as well finding ways to maintain the transparency within the tribunal.

DEDICATION

This research report is dedicated to my loving mother Ms R.G Sibiya who has ensured a good education and support for me and my siblings. I will forever love her.

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To the Lord Jesus Christ my saviour, you died for me.

“Be strong and courageous. Do not be afraid or terrified because of them, for the LORD your God goes with you; he will never leave you nor forsake you."
(Deutoronomy 31:8)

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ACRONYMS

Act	An Act of the South African Parliament
Appeal Tribunal	An appeal tribunal in terms of SPLUMA (16: 2013)
CBO	Community Based Organisation
CCT	Conditional Cash Transfer
CJMM	City of Johannesburg Metropolitan Municipality
CoGTA	Cooperative Governance & Traditional Affairs
CoJ	City of Johannesburg Metropolitan Municipality
Council	The municipal council of the CJMM
CSO	Civil Society Organisation
DFA	Development Facilitation Act (67: 1995)
DRDLR	Department of Rural Development and Land Reform
EU	European Union
GDT	Gauteng Development Tribunal
LEFTEA	Less Formal Townships Establishment Act (113: 1991)
MOE	Municipal Owned Entities
MPT	Municipal Planning Tribunal
NGO	Non-Governmental Organisation
Ordinance	Town-Planning and Townships Ordinance No.15 of 1986
PC	Planning Committee
SACPLAN	South African Council of Planners
SALGA	South African Local Government Association
SAPI	South African Planning Institute
SCA	Supreme Court of Appeal
SDF	Spatial Development Frameworks
SPLUMA	Spatial Planning and Land Use Management Act (16: 2013)
The City	City of Johannesburg Metropolitan Municipality
Treasury	The National Treasury department of the South African government
Tribunal	A tribunal as established in terms of SPLUMA (16: 2013)
UN ESCAP	United Nations Economic and Social Commission for Asia and the Pacific
USAID	United States Agency for International Development

CHAPTER ONE: INTRODUCTORY CHAPTER

1.1 Setting the Scene

At the writing of this research, South Africa was awaiting implementation of the already-enacted Spatial Planning and Land Use Management Act (16: 2013), simply SPLUMA, a national planning tool entailed with municipalities in mind. Therefore, in the advent of intergovernmental relations; politics of autonomy and independency and; resource capacity, the changing face of municipal planning is challenged with issues that seek political clarity and re-institutionalization wherewith it operates. The government legislated/enacted this Act (16: 2013) as a nation-wide framework that it is to be orchestrated at local government due to the immediate impact and responsibilities that the municipalities carry.

The South African local government has inherited multiple service delivery backlogs from the apartheid era and it is continually developing to reach mandates that will benefit the people. In this developmental mandate, the Act (16: 2013) has re-introduced tribunals (Municipal Planning Tribunals), as the key board or institutional body to dispose of land development and development planning applications as they pertain to municipal planning. The South African context is of import here, in that the duality of urban and rural setting in South Africa is entangled with all forms of convolutions, politics and a plethora of old order planning laws that still apply to date. This entanglement proves to be a thorn in the face of (municipal) planning.

1.1.1 Background

Since 1994, South Africa has tried to change (planning) legislation. This is because up until 1995, the South African planning system was based on different laws applying in white and black areas with different authorities responsible for planning at different spheres of government. The system was influenced by land acts of 1913 and 1936 (Native Trust and Land Act (18: 1936)); by the colonial heritage of four Provincial Ordinances (still largely in effect today); by legislation applying at 'independent homelands' and 'self-governing territories' and; the Black Communities Development Act (4: 1984), which came later with the acceptance of African urbanisation new laws. In 1991, LEFTEA (Less Formal Township Establishment Act (113: 1991) was introduced and was applied nationally, due to a land reform process that acknowledged the need to fast-track land development.

The idea to fast-track development was taken into the National Housing Forum, still in the early 1990s, and developed further in the quest for a unitary legislation. This is because much of the abovementioned legislation still applied, therefore, work began on became the Development Facilitation Act (67: 1995), commonly known as the DFA. The DFA (67: 1995) was summoned to remedy gaps left by the historical planning system. It was there to 'formulate extraordinary ways that can facilitate and speed up the implementation of development programmes and applications as they relate to land' (preamble). It introduced planning principles and development objectives yet most significantly is the introduction and implementation of planning tribunals (Tribunals).

The Tribunals were independent decision-making bodies, under the provincial level of government, which had extraordinary powers to cut through red tape and dispose of land development and town planning applications within the provincial borders. So the DFA (67: 1995) operated from 1995 until 2010 when the constitutional court decided that parts of it (chapters 5 and 6) were unconstitutional. These chapters authorised the very provincial development tribunals that were established in terms of the Act (67: 1995) to determine rezoning and township establishment (development planning) applications within a municipal area. However, according to the Constitution (1996), the determination of applications on rezoning and township establishment falls within 'municipal planning' functions whereby municipalities have exclusive authority.

A certain Gauteng Development Tribunal (GDT) was sent to court because the City of Johannesburg (CoJ) attested that the Tribunal approved town planning applications within their area of jurisdiction and in doing so, it failed to consider CoJ' development planning tools and had a lenient hand than its own stringent criteria (CCT 89/09, 2010). This, according to CoJ, undermined the City's municipal planning instruments and allowed for 'forum-shopping', which the CoJ is against.

On the SCA (Supreme Court of Appeal) decision, it was decided that 'municipal planning' encompasses the disposal of town planning applications, township establishment and land rezoning and that 'planning' refers to the regulation and control of land use (CCT 89/09, 2010). These were seen as functions reserved for exercise by the local government and not any other sphere of government. Thus, the powers conferred on development tribunals, when cross-referenced with the Constitution (1996), were also unconstitutional.

A reprieve was required to amend the DFA (67: 1995) findings or a new legislature enacted as replacement. And so, SPLUMA (16: 2013) was introduced. SPLUMA (16: 2013) provides for a standard, efficient, effective and integrated planning regulatory framework for land use and land use management. It also establishes land use tribunals (Tribunal) and appeal tribunals (Appeal Tribunal) while establishing Land Use Regulators in all spheres throughout the entire country. The Department of Rural Development and Land Reform (2013) viewed the Act (16: 2013) as framework legislation because it cannot be utilised in solitary but can only be fully effective as a suite of laws per government sphere, inclusive and in cooperation with Provincial Planning Acts and municipal planning by laws. The main elements of the Act (16: 2013) were premised upon Spatial Development Frameworks (SDFs) (5 years to implement); Tribunals and Appeal Tribunals; Land Use Schemes (to cover the whole municipal area) and; it also made provision for applications of national interest (have to be approved by municipality as first authority).

1.2 The Research Problem

However, the introduction of SPLUMA (16: 2013) raised certain questions. The main problem was the implementation of adopting the Municipal Planning Tribunal because of governance (accountability and public justice), autonomy and independence, power and interest issues as well as the politicisation of issues together with monitoring and evaluation. The first one was the issue of governance. The issue of governance rises because of the state of local government (metropolitan municipalities) in South Africa.

According to the National Treasury Report (2013), a total of 5 metros, including the City of Johannesburg (CoJ), are in contradiction with section 56 of the Municipal Financial Management Act (56: 2003) and this has a great impact on the general governance and operation of the local government. While CoJ has improved its financial state from 2009, it has continued to pose risks that stretch far into its very MOEs (Municipal Owned Entities). The National Treasury reported service delivery, fiscal risks and political interventions as the main issues that make good governance an obstacle for many metropolitan municipalities and other local government institutions. On political intervention, the report states that top-heavy political officials give general advice on administrative issues thereby making the role of administrative officers difficult. Secondly, it was due to this political interference on daily governing matters of the metropolitan municipalities that administrative decision making was closely linked to voting communities, and acquainted political officials.

The lack of skills and management experience were seen as factors that threaten the financial strength, and thus governance, for many municipalities (Ratings Afrika Municipal Financial Stability Index, 2012). In direct relation to the issue of governance was power and interest, which raised the issue of clientelism. The issue of clientelism rises because tribunals are historically non-departmental bodies that are established to settle disputes, and the SPLUMA Tribunal is one such institution that is to settle and dispose of land development applications and disputes within the local sphere of government. As such, the 2010 court between the previous Gauteng Development Tribunal (GDT) and CoJ elaborated on the concerns that power-holding decision makers can raise. The court case revealed that the GDT, in approving some of the land development applications, allowed for 'forum-shopping' (CCT 89/09, 2010), which is an injustice to those whom normal application criteria is applied to. Secondly, governance is a power tool and that enables those in power to place their interests forward before others.

Chapter 6 Part B of SPLUMA (16: 2013) provides for requirement for the establishment of Municipal Planning Tribunals (Tribunal) and Appeal Tribunals. It was noted that such a tribunal is to comprise of current municipal officials and the appeal tribunal is to include the municipal manager. Political intervention in matters of the Tribunal would promote injustice to the general public (the communities, development consultants) and could potentially create a new wave of forum-shopping and nepotism-led developments.

At the heart of Institutional governance, power and interest was the next issue, the relationships between the Tribunal and the municipal council, and this is concerning matters of transparency as well as the politicisation of issues within local government. The same National Treasury report (2009; 2013) cited political interference as an issue and went on to say that the deterioration in the management of municipal finances was a result of correct procedures being undermined. The level of transparency, if there exists something of that sort, within most municipalities was linked to over spending on operation and thus increasing service delivery backlog and performance standards. If issues are politicised, there was a strong correlation between service delivery mandates and political agendas, as the two then intertwine. While the CoJ is one of the most resourceful municipalities, it also is one of the most watched upon local governments when it comes to governance, transparency and accountability to its citizens.

1.3 Research Question

What are the implications of the SPLUMA' Municipal Planning Tribunal's decision-making processes on development planning applications?

1.3.1 Research Sub-Questions

How will municipalities implement the adopting of the SPLUMA Tribunal?

In what way will the locational factors (the geographical relationship between the municipality and the tribunal) affect or not affect the tribunal?

In what way will the effect or possibility of clientelism in government and the tribunal be alleviated?

There is a link between patrimonialism and clientelism, in what way will municipalities monitor and evaluate the Tribunal?

In what way will the tribunal be guaranteed autonomy and independence from the municipal council or any other outside influence?

In democratic society, all parties are involved in the decision-making. There are certain factions of the society that feel that the SPLUMA tribunal is exclusive to the political representatives. How will the issue of politicisation be dealt with? (Potential politics to impede or intervene)

1.4 The Purpose of the Study

The research is exploratory because SPLUMA' (16: 2013) Tribunal had not been instituted and, therefore, it was exploring the implications. The study intended to explore how SPLUMA will affect the setting up of and the implementation of the Tribunal. In exploring these, the focus of the study was on locational factors (in terms of the actual locational relationship between the Tribunal institution and the municipality); it was on implementation of the tribunal institution; it was on the aspect of power (and interest) and the politicisation of issues as well as; issues on the relationship between the Tribunal and the municipal council (autonomy, independence, and politicisation of issues).

1.5 The Objectives of the Study

The study centrally endeavours to explore and understand the implications of the SPLUMA Tribunal in the context of local government (City of Johannesburg). Below are more specific objectives which also grant a directional framework to the study.

To explore the link between patrimonialism and clientelism in institutions and how it impacts on governance

Understand whether planning interventions are in place to implement the incumbent Tribunal and provisions for evaluating and monitoring the Tribunal.

Understand the effect of locational factors on governance and tribunals.
Understand how the Tribunal will act independently and autonomous from the political leadership and the municipality's vision.

Understand how the separation of powers between the Tribunal and the political-driven mandates of the municipal council will occur.

The Tribunal in SPLUMA (16: 2013) is an institution that is set within local government parameters. As such, there is ample research and debates related to institutions, government and governance. The focus of this research was to explore and illuminate the implications of creating and adoption of the Tribunal in SPLUMA within local government. The study will be very instrumental in uncovering the strengths and weaknesses of the Tribunal in local government and it will better aid in understanding the mechanisms and dominant complexities around (development-planning) service delivery and politics as they relate to the Tribunals. The study provides a better read, a first-hand account of studying and exploring the implementations of SPLUMA (16: 2013).

1.6 The Limitations of the Study

In undertaking this research, the study posited its own challenges. Below I outline the limitations of the study.

As a newly enacted Act (16: 2013), literature on SPLUMA is very limited.

The research is an explorative study, because the tribunals in question alongside SPLUMA are were not yet implemented at the writing of this research.

The research was looking through historical lens and has included evidence from national reports (National Development Plan; CoGTA, SALGA and the Treasury local government reports).

The utilisation of national sources means I am withdrawing away from the municipal source thus there is lack of information of direct (the case study).

The research was undertaken in a short period of time, through a window of opportunity and thus the level of bias and subjectivity cannot be controlled.

The research lacks statistical validity yet has information validity. Moreover, the thesis is not representative of everyone.

The research relied extensively on reflections of the provincial tribunal than the old planning committee functions due to access and other factors.

1.7 Ethical Considerations

The research typically included participants as it explored the implications of the SPLUMA Tribunal in the context of local government (City of Johannesburg). People were informed about the study so they were aware of the objective and respondents have responded voluntarily. All procedures were followed to utilise council (CoJ) minutes (with this I tried my utmost best to be politically sensitive). In analysing the content, I engaged directly with the Act (16: 2013), the reports as well as any publications gathered and, at all costs, I represented information without prejudice, or giving integrity to the research. The names of the interviewed people in this research are not their real. This is to protect their views and identities. The use of any intellectual property in facilitating this research was credited to the proprietor and was never used to reflect my own personal mandate or deduction.

1.8 Outline of Chapters

The research report consists of 6 chapters. The first chapter (Setting the Scene) is the introductory chapter and provides the introduction, background and set the scene for the research. The chapter also provides the research topic; the research questions; the study purpose as well as the main or key concepts that are utilized in the study. The second chapter comprises of the literature review for the wide variety of literature that relates to the study. It provides emerging debates, perspectives and arguments around the research topic as well as how they are used to unpack and understand the study. The chapter also includes the conceptual framework as a tool to analyse research data collection.

The third chapter is the research methods used in the research, thus research methodology. These are the various instruments utilised to undertake the research, from content analysis to interviews. The fourth chapter is a case study introduction, the City of Johannesburg Metropolitan Municipality. The chapter introduces the local government, its history and socio-economic context as well as some of its interventions and proposals for its regions. The fifth chapter briefly looked into the specific development of the SPLUMA Tribunal as an institution. It has unpacked the background behind the SPLUMA Tribunal. The chapter also provided a detailed account of the findings obtained during the research, analyse and interpret them.

The chapter also provides the interview responses as well as document analyses. The sixth chapter is the closing chapter that summarises the essence of the study and its findings. The chapter also makes recommendations on the implementation of the SPLUMA Tribunal.

2 CHAPTER TWO: GOVERNANCE AND CLIENTELISM IN GOVERNMENT: AUTONOMY, POWER AND POLITICS

2.1 Section A: Literature Review

2.1.1 Introduction

According to Boote and Beile (2005: 3) reviewing literature is necessary precondition for doing thorough, substantive an sophisticated and this is because "to be useful and meaningful, education research must be cumulative; it must build on and learn from prior research and scholarship on the topic". The chapter is a theoretical section which discusses some of the literature, which relate to the study/research topic. This is done through tracing governance and institutional theories in creating institutions and how those institutions manifest themselves. The chapter continues to further unpack and understand how the concepts of power and interest, autonomy, independence and transparency are translated in terms of institutions. The theories, governance and institutional, were chosen because they provide a solid ground and basis on which to understand institutions, especially within government.

2.1.2 Governance tenements

The basis of all governance theory has been collective decision and thus the term government. While Chhotray and Stoker (2009:3) have defined governance to be about "rules of collective decision-making in settings where there are a plurality of actors or organisations and where no formal control system an dictate the terms of the relationship between these actors and organisations" it is also crucial to note that decision-making and its expressions can amount to procedures which eventually become the norm to which the actors and organisations adapt to. This is what Ostrom defines as 'rules-in-use' (1999:38) and purports that governance is self and public administration in the realms of politics in the both formal and informal arrangements. The very arrangements also exist to structure procedures and decisions as they have become a formality and thus 'rules-in-use'.

The scope of governance is in both the informal and informal institutions (Chhotray and Stoker, 2009) that influence the way community determines its livelihood, its daily contentions and decision-making about needs and wants. Therefore, governance is first and foremost about rules, being it formal or informal, that influence decision-making through structural arrangements.

Another element of governance is the democratic concept of 'collective' in decision making (Chhotray and Stoker, 2009). This element involves matters of mutual control and influence. What is most crucial is that in such a mechanisation and institution as in governance, decisions are not guaranteed as majority voting rules and certain prior-agreed procedures could be imposed in order to veto individual decisions. As Chhotray and Stoker (2009) state, the third element of governance is decision-making. Decision-making is also similar to rules and collective concepts in that it can be both strategic and an everyday practice because a decision will have rules about who is to decide and how they are to do so but so too they might be accustomed to making the decisions regardless.

The last element of governance is the "idea that in governance 'no formal control system can dictate' the relationships and outcomes" (Chhotray and Stoker, 2009:5). It is through governance theories that one is able to understand and better frame the failures and successes, in our societies, of collective decision making-based institutions. Therefore, all institutions of governance should at least possess all four of these basic elements of governance, which is collective government.

2.1.3 In theory and practice: governance, power and politics

The idea of the hollowing out of the state is the starting point for governance in politics and public administration. Rhodes (1997: ch5) supports this view stating that this comes a result of managerial changes. He views the local level of government as being fragmented because of such changes as the introduction of semi-independent government institutions, parastatals and public-private state partnerships to deliver various programmes, policies and services. The idea of the devolution of the state in order to promote the plurality of decision making in various state institutions has further propelled the fragmentation. Therefore, governance appears in various macro-level and micro-level state apparatuses such as the different level of government. In the EU, governance has been utilised as an analytical tool in the realms of political science to determine patterns of general rule (Bulmer, 1998). It is used to organise decision making and develop policies and programmes and as such, it is utilised to advocate for new institutionalism in order to better understand the European government system.

In such states as in the EU, governance is preferred as a tool to usher in collective and plural decision making among state institutions in the formation of policies. It is seen as focusing on 'deliberative, non-hierarchical, multi-level and apolitical' government systems than a traditional structure that views governance as involving the politics of interest (Hix, 1998:54). However, Chhotray and Stoker (1998) argue differently, they state that the dynamics of policy making and governance policies cannot be without power or be apolitical and as such it would be a great mistake to consider governance as being tied purely to social interaction. It is because of such views and varying perspectives on governance that the term should be understood in application to a context, such as in the EU. There are various schools of thought that stem from rationalist, socialist and cultural institutionalist that reveal the politics of control and interest within governance. Through these theories, one is able to understand the idea of governance

Chhotray and Stoker (1998) dwell on the some main branch theories that governance theory draws. They state that while governance is about the network between actors and organisations (network management theory), it is also about delegation where with the very networks need to be managed effectively (theories of delegation). It is because of such ties that governance is a political sphere in the eyes of public interest, due to the various delegation processes that occur within government, its partnering semi-independent institutions, actors and organisations. They state that if delegation theory assumes that people respond to naturally and rationally to set procedures and incentives created by institutions then social interpretative theory disputes that view. Social interpretative theory finds that political and social communication is a complex process and people view things differently and that governance is power-interest challenge to the public society. In support of the social interpretative theory is the cultural institutional theory.

The school of governance argues that people are creative in their thinking yet they are affected by the social context and as such are over powered by not only the social principles but by social relations that constrain or permit their choices (Chhotray and Stoker, 1998). The school recognises responsibilities and the blurred boundaries for addressing social and economic issues that are drawn from beyond government. The school further argues that only compatible, certain, cultures of social relations make the institution sustainable; Wildavsky (1987: 6) also supports that view when he states that "what makes order possible is that only a few conjunctions of shared values and their corresponding social relations are viable in that they are socially liveable.

2.1.4 Governance debates: Accountability and Politicisation

While institutions are a form of government and governance, there are multiple debates around governance because of its political and public administration implications. The three main ones include: the government role in governance; government failure and; democracy and accountability in the practice of governance. Theorists such as Sorensen and Torfing (2007) and Rhodes (1997) could be viewed as the proponents of the government-less governance perspective. Rhodes (1997) refers to such a governance model, one that is without government, to be reflective of the continuous changes of practices and processes in governance. He establishes that governing does not rely on internal actors and organisations but those from beyond government as well. Therefore, through these various changes and continued networks, governing becomes a complex model that is based only on facilitation, bargaining and accommodation (Chhotray and Stoker, 1998).

Sorensen and Torfing (2007) state that the emerging network patterns in governance are relatively facilitated by autonomous and ever changing actors who are society-based. Both theorists see governance as being steered and framed by government actors and political representatives. Yet, it is also possible to argue that these writers still give credit to an existing government as affording a role to those societal-based actors in their various turns. However, one could suggest that there is rise of more complex models of governance and approaches that do not only include government officials and political actors only but they are co-influenced by societal actors. It is within these new forms of government that a hierarchy is created and the main government is responsible for overseeing everything. While the above writers see no government, others also see a shadow government that controls from hindsight. Both views are two sides of a coin than conflicting perspectives.

Governance theory also aids in understanding why institutions and government fails. The second debate provides strictly the view on the nature of governance failure. Bob Jessop (2000) has an essential view to be noted when he states that “failure is a central feature of all social relations” (p.30). Governance failure is dependent on the level of governance because of the various objectives and capacity of differing state-level institutions. Chhotray and Stoker (1998) noted that since government relies on networks on varied political and social processes then it is in the nature of governance to fail.

This is because developing networks and partnerships have high transaction costs as well as that some of the networks that are in charge of immediate delivery could lack the capacity, thereby diminishing the supply to the main network. Because of the various levels (local, regional, national and international) at which actors partake in the network communication, it almost seems impossible to reconcile these various responsibilities.

The failures of government can also breed in the hierarchical system of job positions and other differences within an organisation. These differences– manager and junior or demographic difference – can result in endless conflicts and thus inefficiency. That is characteristic of market-related governance models and institutions. It is such kind of conflicts that lead to bargaining and, as such, clientelism. Therefore, such complicated and continuous conflicts suggest the need to assess and reassess institutional and organisational mechanisms, to find if the achieve the desired output (Chhotray and Stoker, 1998).

The third debate dwells on the issues of democracy and accountability. March and Olsen (1995) state that the democratic and political systems of governance that are now in place have made it the norm to place accountability on individual political personalities, and it captures well the essence and dilemma of the contemporary governance model which relies on various actors. In such a governance model, accountability requires an active actor to hold office in order to both justify and be accountable to their actions. While democratic theory suggests a leadership role that undertakes the proposal of actions as well as being accountable to the enforced actions. The governance model of this form makes it more challenging to take up office in such demanding conditions (Bovens, 1998).

The difficulty with failing institutions is because a model of political accountability has not been developed but the actors who hold office need to be accountable for their actions (Pierre and Peters, 2005). It is because of such lack of development that there have been issues about institutional democratic accountability in governance and this is also because accountability is not institution specific but it must be flexible for various institutions and their assorted policies. Pierre and Peters (2005), in opposition to Rhodes (1997) and others, argue that accountability requires a focus on state institutions. They argue that the only way the state can be brought back to guarantee public interest and legitimise democratic institution is through a focus on state institutions themselves. This is an assumption that accountability can be guaranteed by simply imposing state control governance on the public.

The fundamental problem, as Chhotray and Stoker (1998: 50) argue, is that the "… state is the state. An institution defined by its monopoly of institutional coercion may learn new techniques but cannot disguise from citizens its essential core". While the state and its institutions are agents of collective agency but it is also a tool of control and coercion. Therefore, it is a rigid tool that is understood by various social, political and business stakeholders (business, civil society, social group, etc.) as a control motor. In order to better understand accountability in institutions, Bovens (1998) and Rhodes (1997) agree that there is a persistent need to understand the basic tenements of accountability so to be able to configure better solutions.

While accountability may about monitoring and evaluation governing processes (Bovens, 1998), a test that many writers feel governance is failing so much, Rhodes (1997) has actually suggested that governance can actually offer some accountability in the policy area through the interaction between non-state and state actors. The challenges in governing and governance that are faced by contemporary institutions have found a deeper complexity in the public administration and political science fields.

The various views that propose ways in which institutional democracy and good governance could be achieved range from general political science literature of rationalist thinking to that of governance and institutional theory as cultural institutionalism. The debates showed how varied perspectives can be utilised to understand governance in different contexts. This is because, while politics and public administration may be the home of governance, other literature exists that proves otherwise. As such, it is important to understand how governance and institutional theory unpack and frame state institutions such as tribunals, especially when it comes to the politicisation of issues and accountability of actors who hold office.

2.1.5 Social notions: Power and Autonomy

In order to explore and understand politics and institutions, Bevir (1999) used a Foucauldian approach to understanding power and government and how they re-create political institutions from basic traditional structuralism. Literature on traditional structuralism rejects the notion that a society is understood by its functional and institutional setup but rather that every social arrangement is based on some source of power, a conceptual structure of sorts.

Therefore, from a Foucauldian perspective, institutions should not be understood from their rational-legal status but rather from their normative ideas, values, principles and practices on daily operations (Bevir, 1999).

The author states that the particular informal interactions between actors inform and guide individual behaviour and acts a framework for the implementation and evaluation of initiatives. Therefore, institutional policymaking and decision-making is borne out less formal structures and procedures but simple interactions and social relations (Bevir, 1999). If one carries a longitudinal study on government institutions, they would be able to understand that they change from when they were created and that they are modified by the actors which operate in them. This meant that the study of institutions, of politics, of power and influence, from a Foucauldian perspective, would be the study of people, processes and their activities (Bevir, 1999). The focus shifts more to the actors which shape, implement policies, thereby those who hold power.

An essential part to the evolution of institutions is their re-creation or re-institution, because the addition of certain actors within the institutions would influence the power relations and the way in which such an institution operates. Institutions are forever in a state of flux, and are a consequence of multiple re-creations through various processes and activities (Bevir, 1999).

According to Hexmoor (2002), the accountability of actors within an institution is also influenced through interaction of actors in a “sub-field of multi-agent systems” (p.323) and thus embeds such social notions as autonomy, control, power and dependence. Government officials are agents and as such, there are power relations within institutions of government. Hexmoor (2002) says that there exists a complimentary relationship between power and autonomy, especially within institutions. This is because actors or agents can influence and command one another because of the power bestowed on them through their roles within the institution. The interaction of various actors or agents within an organisation creates and further nourishes the organised autonomy-power relationship and culture.

He further states that autonomy can be both relative and absolute. The relatively autonomous actor is one who has an option to choose the manner at which to be influenced while an absolute one would have the preference and choice to deny the influence. In a group situation such as large organisation, societies and institutions, lack of autonomy can shift to dependence. Yet, the individual actor’s dependence or lack of autonomy could be linked to general dependence on the larger group than that of a few powerful actors within the group.

Therefore, in any setting of large groups, absolute autonomy and power cannot exist because all actors have relative power over one another.

2.1.6 Institutional theory

In political science, institutions were framed around constitutional law and moral philosophy. In creating institutions, the focus is more on the arrangement and the legal framework of such governance structures and agencies. As depicted by Bill & Hardgrave (1981), institutional theorists at the turn of the 19th century had characterized institutions in a similar way. They were all concerned with the formal structure and the legal framework. Secondly, they emphasized the arrangement of political systems against the administrative background. Lastly, they were concerned about the completeness of an institution as a structure with all its actors and legal system intact.

According to Scott (2001), these types of institutions had not apparent future because they were seen as complete. However, they would be followed by institutions that focused more on moral philosophy than structure alone, institutions that prioritised principles and values. In the realm of political science, students and authors focused on how these different institutions affected political party formation, voting behaviour and public opinion (Scott, 2001). The work of Herbert Spencer ushered in a new way of sociological institutions. Many sociologists studied institutions through his ideas. In sociology, institutions required to adapt to their own context than be framed purely by legal systems and the completeness of its actors.

They saw an institution as comprising of an idea and a structure whereby the concept represents the function of the institution and the structure personifies it. More importantly, while many sociologists would later detach the early explanations of what institutions were, they all embraced the idea that institutions should serve the society (Scott, 2001). Therefore, in the last few decades, the writings on institutions have reflected on the hierarchy of actors in an organisation (individuals, communities, business, societies, groups, etc.) and also on the functions of such actors in the social sphere as governed by multiple systems of life.

According to Cooley (1956), great institutions such as churches, courts, the government and family customs may seem independent but they are not. He states that they developed through interactions among the institutions' actors and, as such, there is a certain level of interdependence between self (individual) and structure (institution). These ideas agree to the notion that institutions only exist to be carried by social beings.

According to Scott (2001), creating institutions will give rise to new practices and rules as derived from the process and conditions of creating it. Therefore, there is a persistent need to change regulatory procedures because of the new requirement to align the institution and the society's needs. This is largely because in order to create productive institutions, the government needs to provide social and employee benefits that do no harm economic growth but also not promote patriotism.

2.1.7 Bureaucracy: Power and Influence in Institutions

Over the past 2 decades, there was a development of key debates around who controls the United States bureaucracy. There were different perspectives from all angles with some theorist arguing that the president presides over the bureaucracy, some stating that the Congress has control, others emphasised the law (legal arm and courts) has power yet some still found that the bureaucracy had a certain level of autonomy over all of the above. According to Hammond & Knott (1996: 119), there's a "formal model of multi-institutional policy-making that illuminates several key aspects of this debate. The model shows that there are conditions under which an agency will have considerable autonomy and conditions under which it will have virtually none. The model also shows that when an agency lacks autonomy, control of the agency usually cannot be attributed to just one institution."

To use this American example, the control of a bureaucracy could be fought over for by Congress, the Republic and the president. If such a situation occurs, a secretary that is employed for office by the president could be fired by the president. Such a situation would mean the secretary owes their loyalty to the president. Hammond & Knott (1996) state that power relationships that occur in institutions are always interdependent and arranged in a bureaucratically fashion. Congress provides authority for the security of administrative staff, and such authority could only be extracted through a concession to various demands as set by the bureaucracy. Although, meeting the requirements to extract such an authority meant bowing to the president's initial needs (Hammond & Knott, 1996).

The literature on bureaucratic control presents various and varied arguments. There are authors who argue for bureaucratic autonomy, those who are for Congress domination, those who state the presidential supremacy, those who regard law (the courts) as the supreme body and those who argue that the bureaucracy is jointly controlled by all of the above.

In the quest for bureaucratic autonomy, an agency is stated to be an autonomous policy-making body because of three main reasons: the president' and Congress' attitude toward the agency; information sharing between the agency and its control centre and; differences and conflicts among various principals in control centre who control the agency. It is argued that the president lacks interest in regulatory agencies and as such, his influence in such kind of agencies is very low (Wilson, 1980; Weingast, 1981). These arguments and their observations are paralleled by those of the Congress as well. On the part of the Congress, it is argued that it does not partake on regular policy reviews over the policy making agencies and this is because the policies have little effect on the electoral stance.

On information sharing, Hammond & Knott (1996), through a Weberian view, find that the political economy of institutional information sharing depends largely on the relationship between the interested actors. It is because of such lack of interest from the president and the Congress that there will be hidden information (whereby the institution controls secret information or has technical knowledge which the Congress or president does not have) and there will also be hidden movements (where by an institution takes action and decisions that are not easily traceable by the Congress and the president (Hammond & Knott, 1996).

The literature on institutions and agencies suggests that institutions can assume independence from both the Congress and the president by balancing out their interest. While this does not suggest that institutions can be immune from politics, it does however recommend that there is a way of balancing acts such that power and control by Congress and the president over the institution is minimised albeit competing demands and continued conflict of ideas.

On the contrary, there is an argument that opposes the idea that bureaucratic or institutional control is about legislative indifference to policy agencies. Fiorina (1979) states that the elected political leadership controls government and gives us the kind of government it wants. As such, the political leadership maintain a type of government status that is deliberately made to be susceptible to political intervention, not only to the entire membership but sub-committees and individuals as well (Fiorina, 1979). The argument here is that political leadership, or Congress in the American case, can get their ideal policies in place by imposing control mechanisms on policy-making institutions (Weingast, 1981). These mechanisms include budget increases to those institutions if they perform accordingly or as desired as well sanctions, budget cuts or organizational restrictions if they do not perform well. On the same tune as those that argue for Congress control over government are those who notice administrative procedures as a control mechanism.

As Hammond & Knott (1996) noted, there are procedures that force institutions to reveal information to the elected officials or congressmen. These procedures can be in the form of public hearings prior to adoption of various policies or regulations on decision-making processes and who can participate in them. This is one way of reducing an institutions independence and its ability to make own decisions without political interference.

In a more inclusive perspective, McCubbins (1985), Noll and Weingast (1987) state that such kind of procedures does not serve only the elected political leadership but the president, yet it is without a doubt that the agency or institution lacks autonomy in both cases. The argument that supports political leadership to be in control is not enough to argue that institutions lack autonomy because institutions are subservient to the set procedures but Congress is dominant as described. The other view is that of the president controlling government.

This view continues to exist alongside the views that there is political dominance over the government and those that see the institution as independent. Although there exists an argument that political leadership controls the government, authors such as Moe (1987), Hammond & Ishiyama (1995) oppose that argument.

According to Moe (1987), presidents have always had the upper hand in deciding the appointed personnel into their executive council and this gives the president the right to build their own administration. Hammond & Ishiyama (1995) have noted, at least in the US from 1945 to 1974, especially for the Federal Trade and Communications Commissions, that presidents had more control over government appointees than any other actor within government. This is supported by multiple studies on agency and Congress movements within government. Hammond & Knott (1996) have also noted that many decisions in government had to be made against a budget estimates that is finalised by the president. The authors also cite divisions within the political leadership in governance, that when the leadership is in conflict, their power against the president weakens there by granting him/her the power to govern and control institutions and policies to his favour.

The president, ultimately, is able to manipulate procedures even when political leadership may block some of his initiatives. A fourth view, literature body, has seen courts as controlling government and not that the government is independent or being controlled by the elected political leadership or the president. According to proponents of this body of literature, there are procedural and substantive constraints to governance and, as such, no human is above the law. As Hammond & Knott (1996) noted, judicial doctrine and administrative law create procedures that are to be followed by institutions.

It is these very procedures that will ultimately direct policy choices. Courts, through administrative law, tend to require public hearings and that decisions should be made in fairness. This tendency, while it provides for participation of interested parties in decision-making, creates the perception that courts control the bureaucracy. The courts are also able to make judgments against the president, the political leadership or institutions based solely on the Constitution.

Lastly, the literature on who controls the government or bureaucracy, have seen a joint control mechanism that is hidden in the daily operation of the bureaucracy. This is because the literature differs from various perspectives and the evidence posited could be interpreted differently. Empirically, the president, Congress and institutions all have joint control over the government yet it varies from matter to matter.

These efforts, when looked at collectively, highlight important aspects of control on policy making in government and how power could be shared among various actors and be interpreted differently. It highlights important tools of power and influence that each actor, be it the president or the institution or the elected political leadership or the courts, can utilise.

The literature also suggests that there is a complex relationship between these various actors within government, and that the very complexity might have given rise to the different views on who actually controls the government. Therefore, one could conclude that the complex relationship makes it difficult to develop a theory around the control of government. The lack of such a theory has, therefore, created a greater difficulty to understand the complex relations in policy and decision-making processes in governance. It has made it difficult to interpret any study or evidence that tries to understand who controls the government.

The studies, the view and the different bodies of literature that argue for and against government control from various perspectives, have specified that the nature of government is a complex process which cannot be understand from general body of literature based on different case studies and experiences. In summation of this section and in response to the question “Who controls the government?” the control of government or the bureaucracy is a sum of the interactions of all those who take part in governing. That is, it is the function of the president, the members of parliament (or congress) and the civil society. For some institutions, these interactions can lead to far more transparency and greater autonomy and to others it can lead to far less autonomy.

Autonomy and control, therefore, are contingent matters, and there is no justification to expect all institutions or agencies to be compelled to the same degree. However, one cannot point out any one actor or group of actors or agency that takes primary responsibility for the control of government.

2.1.8 Governance in Norway: On transparency and Independence

Norges Bank, in Norway, is one many institutions that are kept independent from elected political leadership, and Professor Andreas Follesdal writes on this political independence. The institutions that are kept away from political influence include the international courts, the Supreme Court, researchers and free media (Follesdal, 2010). The body of literature that writes on political intervention is faced against arguments against super transparency and lack of information sharing. According to Follesdal (2010), Norges Bank, as a specific case, combines both independence and transparency in creation of its decision-making bias.

Norway is a democratic country and all citizens are equal yet in government, some parties are shielded from political control. Is it really possible to be both transparent and protected from political interference and control? Follesdal has noted various arguments that are pro-independence and that that are pro-transparency, and uses these to understand why the Norges Bank is reflective of both. In arguing for political independence, Follesdal (2010) states that independent institutions are a critical requirement to watch out for and prevent abuse of power by either the law, the parliament or the government.

This is to ensure that all parties act within their allowed powers. In fulfilling a watchdog role, there is a persistent need to have a free media and allow rigorous free research that is independent from the control and power of the government. Norges Bank, as such, cannot be justified simply by that watchdog role but also there is a need to supervise central banks (Follesdal, 2010). Secondly, independent institutions are seen as equal supervisors to other bodies. While the independent institutions do not necessitate the need for independence, they are required to keep check of other institutions. Therefore, it is argued, the general community will have greater confidence in not only themselves, but institutions and the independent bodies as well.

The argument is in favour of independent institutions because they believe that decisions that impact on citizens need to be made with confidence and the well-being of mind (Follesdal, 2010). Therefore, it justifies the need to have the free media, free research and multiple other bodies, including the Norges Bank, to be independent.

The Norges Bank justifies its transparency and independence because it seeks such independent bodies with common knowledge and confidence-building strategies to be able to function properly (Follesdal, 2010).

Thirdly, it is argued that some tasks require keen expertise and specialist skills that other citizens do not have. Therefore, in order to have an effective solution to governance matters, there is special need to protect those very specialists that possess such expertise as required by government (Majone, 1994). The argument justifies the need to protect such skilled specialists as - only they can undertake such specialized tasks as reaching inflation target – economists (Follesdal, 2010).

It is such specialized tasks that require specialists that have been used to defend the need for the Norges Bank to be independent from political control in Norway. A fourth point of view that argues for political independence is that the society requires a long-term perspective than the political-term elected representatives (Follesdal, 2010). This argument is justified by the long-term needs of the citizens and not on the related power abuse. Therefore, Norges Bank, free research, and free media necessitate their independence from political control because of supervision, expertise, confidence-building and long-term planning (Follesdal, 2010). In a democratic setting, these arguments are a limitation on democratic autonomy, one must be aware of the effect on the general democracy of the country. While the above might be in favour of such independent bodies or institutions, there are, at the same time, arguments that point toward transparency, especially of Norges Bank (central bank).

According to Steigum (2005), Norges Bank, as an independent institution, needs to transparent because it needs to be maintain confidence within the society, it needs to be a long-term expert and it has to be effective. Because it is such an independent institution, it has other non-independent institutions as agenda setters but it has to clearly communicate its plans and procedures to the public as the central bank. Secondly, in order to be more democratic, the Bank's transparency can increase communication and thus democratic governance. Thirdly, in order to safeguard confidence and eliminate doubt, the bank is required to be clear about its operation activities, about its appointments, about its direction to target financial matters and everything else (Follesdal, 2010).

However, there are those who are against the need for Norges Bank and other institutions' independence. As Follesdal (2010) continues, the need for independence and transparency does not place the Bank in any better financial status or cutting government budgets. However, he states that taxes could always be raised from the politicians end.

In defence against the argument to require expertise that only certain individuals or institutions have, Follesdal (2010) states that these type of appointments and decisions should be taken by elected officials of whom can be held accountable and responsible. In a democratic setting, decision-making is finalised only through hearing all sides of the story and as such the people should not have confidence in the political independence of the central bank (Norges Bank). This is because it is necessary to pick out controversy and ensure a broad consensus after all (Follesdal, 2010).

While transparency is an essential tool to ensure that the bank is more farsighted than the political views, it is also important to consider the possibility that the Bank's executives may take decisions that may warrant mixed motives and not consensus. Therefore, it is important that the bank represents varied views, albeit not being political. In conclusion, with an independent bank, a free media and free research, there is a certain level of credibility and an increased possibility of holding politicians accountable for their acts. However, there are many other actors (social groups) that should play a necessary role in enabling an active democratic state in Norway to maintain an accountable and independent central bank.

The very politicians and the courts also play a vital role. The literature of Norwegian central has allowed and shed light on institutions that are politically independent and how the can be open to public scrutiny for not being democratic. It thus enables an understanding and assessment of institutions with political interference, intervention or control and those without.

2.1.9 Good Governance: Rule of Law, Transparency and Accountability

While governance is a thorn in many an institution, because of the assumed issues it brings with, there is a body of literature with ample studies of what good governance is. In order to achieve such a feat, the rule of law, transparency and accountability are the required ingredients. According to this body of literature, there are certain goals to be achieved, certain key obstacles to be overcome and they all include institutions and participation. According to Johnston (2002), the goals identified include transparency; vertical and horizontal accountability; incentives and embedded autonomy. However, on the challenges, there is a need to supervise administrative and political representatives (checks and balances) and provide a place for politics within the good governance system. Good governance has always been threatened by excessive regulation and legislation; by short-term policies as well as the lack to assess public opinion.

Therefore, there is a persistent need for full participation, a broad spectrum representation of all stakeholders including social groups, civil society and businesses (Johnston, 2002). For institutions, there is a need to have clear and understandable procedures and information in order to facilitate better public hearings and consultations. Participation is a key process of good governance because it is a form of information-sharing (public education) but it is also a measure of responsibility through continued communication with the citizens. Therefore, the emphasis is not so much on procedures and processes yet on the common goal of being accountable and responsibility for the better of the public good. In a democratic setup, good governance becomes a less tedious path because the state is not an omnipotent structure and the political leadership is not the rule of law.

However, the rule of law, accountability and transparency become outcomes of a democratic process that is driven by committed partnership of groups and interests within the society (Johnston, 2002). Therefore, good governance is a tool in which both the state and the society frame a partnership, one that is lasting because of strong institutions. According to Johnston (2002), where the rule of law is strong, people will uphold its virtues because also they have a stake in its effectiveness. The author supports the need of a free yet responsible press as well as an informed and active society. As a co-efficient of transparency, government should be clear about its operations, procedures and decisions but that may slow down administrative processes due to lengthy consultations.

It is also of great import to note that transparency has its own deep limitations, because it increases the security issues as well as the issues around the privacy of its own citizens. Yet, without transparency, good governance means nothing (Johnston, 2002). According to this body of literature, accountability is a formal matter that is instilled in the institutional setup of any institutions. It is a form of procedure, checks and balances that are built into the setup of institutions from the creation yet they require an active citizenry. Accountable institutions are the ideal product of commitment from all stakeholders, including the free media, the courts and opposition parties.

This is because a responsible institution will be required to follow mandates and will have pressure from all those it governs with or for. The answer to good governance, have to fundamentally do with justice and democratization. However, while democracy was sought as a means to an end of justice, it is of great import to understand that competitive politics and administrative transparency are necessary tools to good governance (Johnston, 2002).

Therefore, it is ultimately about the participation of all those involved than protection of some (i.e. the media or research) that is essential in maintaining the healthy competition between politics and economy and, as such, good governance. Johnston (2002) sums it up well in his statement that "State and society must be able to influence each other, within limits: policies must respond to social realities and demands, just as participation must be subject to the rule of law." (p5).

According to United Nations ESCAP (2007), establishing a good governance structure requires an analysis of the formal and informal actors that involved in the decision-making processes and the process by which those decisions are implemented. As with Johnston (2002), UN ESCAP states that the actors involved include the government and others will depend on the type of government involved in such a situation. The basic tenements of good governance are it is accountable, transparent, responsive, efficient and effective, participatory, collaborative, inclusive and that it is based on the rule of law. When a structure has all the tenements they can minimise corruption, involve the minority as well as the poor in the society (UN ESCAP, 2007).

Good governance is an achievement all institutions should strive for in order to cater for all stakeholders in a state. The urban poor play a critical role because not only are they organised but they may be exploited and could be suffering the most. The middle class people have potential to bring about change in the status quo of government and governance however disorganized, less informed and educated they may be. The elite people shape communities in both informal and formal through relationships and business structures. They are well organised to partake in matters concerning governance of an area.

However, these groups or social classes are not to participate alone in achieving good governance, they require a committed and transparent relationship from the upper echelons of government (key decision-makers); from elected political representatives; the media; the groups of interest; the informal sector; the small-scale entrepreneurs and everyone else (NGOs, CBOs, CSOs, private sector) in the society. In governance, participation should be of both men and women, to increase gender equality, and can be done through representatives or institutions of certain interests. In order for an institution to achieve good governance, it needs to be both collaborative and inclusive. Secondly, the rule of law, unlike law and formal legislations, is enforced impartially and informally. Therefore, the rule of law is a fair legal framework that can be a backbone to governance (UN ESCAP, 2007). The third tenement is transparency, and this should means that procedures are followed in decision-making and that information from the state and its institutions is freely accessible (and understandable) to all those will be affected.

Another characteristic is responsiveness, and this means that institutions should be responsive to all stakeholders within a respectable timeframe. While being collaborative, especially about public consultations, institutions need to be consensus oriented. Therefore, despite the multitudes of interested actors and their views, institutions need to mediate those varied interests and arrive at possible conclusion that fits all stakeholders. Being consensus oriented also means that an institution of good governance will see in both short- and long-term perspectives and how to achieve its set goals. In order to achieve its set goals, good governance requires that an institutions and its controlling actors understand the context for such a given society in which it governs (UN ESCAP, 2007).

In order to be inclusive, all members of a society must feel to have a stake in the operations of a society, its government and institutions. This means an opportunity must be given to all in developing a society, be it through public forums or development programs.

In good governance, institutions will only be effective if all procedures followed meet the needs of its citizens with all the resources at their disposal, there by being sustainable and efficient. Accountability, like transparency, is good measure and a requirement of good governance in institutions. Not only in the government but almost any and every organization should accountable to its stakeholders. Generally for institutions, accountability is owed to the general public and all those who will be affected by the decisions taken. Therefore, "accountability cannot be enforced without transparency and the rule of law" (UN ESCAP, 2007: 3).

Despite all the basic tenements or characteristics of good governance as described by both the United Nations ESCAP (2007) and Johnston (2002), it is very clear that good governance is a notion which is almost impossible to achieve in its totality. Because there are some countries in which democracy is still futile, some of which are communist, socialist, capitalist and so forth. It is because of these differences and other financial, social and political complexities that appear from one state to another that good governance becomes a difficult ideal. However, it is also clear that in order to be better, the state and its institutions should strive toward good governance.

2.1.10 Clientelism in Social Programs: the case of *Balsa Familia* in Brazil

Good governance falls part of a greater literature on politics and development studies, and this is mainly because it is a great challenge for developing countries to provide services to the poor without patron-client systematic networks.

According to Sugiyama & Hunter (2013), it is especially difficult because in many countries, the national authority has oversight over local programmes and also because some of the programs that are created to promote the poor's autonomy often strengthen the patron-client relationship, thus the poor's dependence on those programs. As a cornerstone of development, it is an important goal of good governance to develop ways in which the society can benefit from social, economic and other development programs without clientelism.

The literature on social science provides examples of social programs and institutions that conform to governmental policies than those of patron-client politics "where by voters trade political support for particularistic goods and services" (Sugiyama & Hunter, 2013: 43). Clientele relationships are normally a by-product of government programs that are entailed with municipal co-operation and political intervention in mind.

From 1889 to 1930, Brazil was a formal constitutional democracy. The country's status then changed to Republican Constitution from the year 1891. Between 1983-1926, the Brazilian government was in hands of several movements, including the military and the civilians. The control by the army and the public society led to the development of the country's industrial and agricultural sector. It was then taken under military dictatorship from the year 1964 until 1985 but has been undergoing a phase of democratization ever since. One of the most significant problems in the country has been unequal distribution of income and wealth. This problem is closely tied to the President Lula da Silva's term. This is because the president has been accused of corruption and the abuse of power but has been kept in power due to his term's achievements, including fighting unemployment.

One of his achievements is the poverty reduction initiative through such social programs as the Balsa Familia. The import in the history of Brazil is because South Africa is also a constitutional democracy and has continued to have such similar issues that are linked to political constituencies. This makes the application of such literature on institutions and governance from Brazil to be compatible and comparable with that of South Africa. Moreover, the model of governance between South Africa and Brazil is also similar. While Lula was succeeded by Dilma Rousseff, the Balsa Familia social program continues to operate in many communities of Brazil as a method of job creation, poverty reduction, and social inclusion amid reports of corruption and social injustice.

The case of Balsa Familia is one of many national government programs in Brazil (and many other developing countries) that has been created to serve the public and has been successful in doing without any major pitfalls.

Research was undertaken to determine whether Balsa Familia was indeed clear of clientelism. This is also because Balsa Familia occurs in a country where there are over 5000 municipalities that are not properly organised or capacitated either (Sugiyama & Hunter, 2013). The researcher initially posited that good governance is not an impossible achievement because they believed that solid government commitment, transparent policy design and implementation as well as a strong technical capacity to roll out programs were the necessary tools required. As the largest CCT (conditional cash transfer) program in the world, the Balsa Familia program aimed at improving the health and education of low-income youth as well as alleviating poverty (Hall, 2008).

The program falls as part of a band of the Brazil national government's initiatives that aid citizens with below living wage incomes and offers all the basic needs and services for free. While most research on CCT programs usually studies their relationship with political elections, some studies have already noted the positive relationship between the Balsa Familia program and the associated presidential candidate Luiz Silva (Fried, 2012). This positive correlation is embedded in local municipal politics as the local officials are the ones aiding the poor to apply and gain access to the program, there by granting client-patron relationships possible.

The majority of direct interactions in the Balsa Familia program occur at the local level of government and as such a survey was taken in areas whereby the people would most likely be exposed to political manipulation (low income people and residential location – socioeconomic status). This is because if it occurs that there was some manipulation then all efforts at good governance would be defeated as clientelism destroys participation and transparency. The report on that research showed very high levels of vote buying by local officials yet such evidence could not be released on the general Balsa Familia report because not many citizens were willing to verbal report such instances (Sugiyama & Hunter, 2013).

Secondly, in correlation to local conditions, most offers for votes in exchange for goods and other services have been reported, and this is largely because of a trend of negative responses from previous client-patron relationships. However, the research results also showed signs of no clientelism, where by the respondents stated that the Balsa Familia program was not utilised for buying votes or any political manipulation, therefore it is clean (Sugiyama & Hunter, 2013). Given that client-patron relationships can be widespread in such kind of programs, it is important that the Balsa Familia program was received differently by different people.

The reality of the program is that vote buying is evident in many yet they do not acknowledge it and most of the respondents did not agree to vote buying because they felt they would be withdrawn from the program (Women's Group, 2009). There was clear sense and knowledge of what the officials can deliver and therefore it was easier for the local respondents to notice when services got to others earlier than they did to them.

However, the client-patron relationships in Brazil's Balsa Familia program are well-organized because not solid evidence can be concluded upon the program's clientelism. Drawing on experiences of cases like the one of Balsa Familia one is able to conclude that well-operated initiatives that do not enhance clientelism are really hard to find in the developing world. This is also because the poor generally lacks understanding of what client-patron relationships are like and some have such kind of networks as a way of life.

The Balsa Familia is one of many government-initiate social programs that continue to give politicians an opportunity to strengthen their clientele. The program is huge and impacts on a great popular, therefore it becomes difficult to track its operations, especially in a country with 5000 municipalities that are not well capacitated (Sugiyama & Hunter, 2013). Moreover, while the study was not a full-scale and rigorous to be able to detect all variables that expose programs to clientelism, it was able to suggest some preliminary ideas around clientelism. The case study reveals that national government control over such kind of programs would fare better at avoiding clientelism. There is a need for a central role in rolling out these kinds of programs.

2.1.11 Clientelism, Patrimonialism and Democratic Governance

On a paper prepared for the USAID (United States Agency for International Development), authors Brinkerhoff and Goldsmith (2002) provide an analysis of clientelism and patrimonialism as well as strategies to tackling, especially in institutions that roll out government-assisted and capacity programs. Developing countries continue reform yet much focus has been on formal institutionary processes and procedures, which is different to ground operations and how those formal rules are received by the societies. In many cases, there are informal systems of patrimonialism and clientelism that distort public service delivery, stifle development and public participation, undermine economic progress, discourage investment, subvert the rule of law, and encourage corruption (Brinkerhoff & Goldsmith, 2002).

In order to understand governance and the relationship between its formal and informal systems, the authors examine the concepts of clientelism, patrimonialism, democratic governance and rational-legal government systems. Firstly, while the formal notions governance involve procedures, public administration and public decision-making, it is crucial to note that the informal systems cannot be easily documented as they heavily include the socioeconomic, sociocultural and socio-historical interactions between the people their government. The informal systems are not easily noticed because they appear to the natural civilian's view as helping one another, an often practiced norm in any society.

Every government, and governance, has dual character whereby the formal meets the informal. It is because of this dual character that patrimonialism and clientelism are born. The behaviour of helping each other is unlawful when it takes place within formal, organised institutional structures of government because everything is supposed to happen on merit (McCourt, 2000). According to Brinkerhoff & Goldsmith (2002) the term clientelism, "a complex chain of bonds between political patrons or bosses and their individual clients or followers" (p2.), can take a variety of forms and is applicable in both urban and rural settings.

Clientelism follows a problem-solving notion and logic because it is usually for those with limited access to resources and it flourishes as a power relationship in environments which are politically or economically insecure. Typical, the needy are driven into these client-patron relations as a way of finding a solution for the livelihoods.

According Kaufman's (1974: 285), clientelism has certain characteristics:

a) the relationship occurs between actors of unequal power and status;
b) it is based on the principle of reciprocity; that is, it is a self-regulating form of interpersonal exchange, the maintenance of which depends on the return that each actor expects to obtain by rendering goods and services to each other and which ceases once the expected rewards fail to materialize;
c) the relationship is particularistic and private, anchored only loosely in public law or community norms.

Clientelistic relationships, therefore, rest more rational economics than plain loyalty, a type of an uneven mutually beneficial relationship between the patron and the client. Clientele relations are used in studies to understand general politics of governance.

In an ideal democratic society, institutions adhere to all procedures and political power is fairly contested through regular and just processes. This is a transparent process wherewith client-patron relations do not exists and policy making is focused on transparent and accountable delivery of services. However, the difference between an ideal democratic society and a clientelistic are very large because clientelism can manifest itself informally within a democratic setting (Brinkerhoff & Goldsmith, 2002), as shown in the table below.

Table 1.1: Continuum of Political decision making systems (Brinkerhoff & Goldsmith, 2002: 5).

Clientelistic	Democratic
Authority is personal, resides with individuals	Authority is institutional, resides with official roles
Personal enrichment and aggrandizement are core values	Rule of law, fair elections and majority rule are core values
Leaders tend to monopolize power and are unaccountable for their actions	Leaders share power with others and are accountable for actions
Leaders hold onto power by providing personal favours that secure loyalty of key followers	Leaders share power with others and are accountable for actions
Policy decisions are taken in secret without public discussion or involvement	Policy decisions are taken in the open after public discussion and review
Political parties are organized around personalities	Political parties are organized around stated programs
Civil society is fragmented and characterized by vertical links	Civil society is deep and characterized by horizontal links
Decision making standards are tacit and procedures are impossible to follow from outside	Decision making standards are explicit and procedures are transparent
Supporters' interests guide decisions	Public interest guides decisions
Extensive scope exists for patronage appointments	Limited exists scope for patronage appointments
No regular procedures exist regarding leaders' replacement	Regular procedures exist regarding leaders' replacement

A democracy does not imply strict rules and procedures or authoritarianism yet allows for freedom of various rights and, as such, the rules and procedures that apply to democratic institutions do not mean there is a strict rule to be followed about candidate politicians can communicate or interact with the general public.

Therefore, legislators are able to lure government programs into their own communities in exchange for political votes, and this is the most common form of clientelism. At the engine of clientelism is patrimonialism, where with the patrons practice nepotism by giving out jobs to those they prefer (Brinkerhoff & Goldsmith, 2002). This is termed patrimonial administration. Many developing countries have set constitution and/or legislation on public administration yet many continue to operate on deep-rooted foundations of patrimonialism. In administration, there exists neopatrimonialism, a continued culture of patrimonialism that co-exists with rational-legal systems (Brinkerhoff & Goldsmith, 2002).

According to Brinkerhoff & Goldsmith (2002), the five socioeconomic phenomena that are associated with patrimonialism and clientelism are: corruption, weak implementation, perpetuation of poverty, social exclusion and rent-seeking. Rent-seeking when patrons alter public policy and systematic procedures in order to continue benefitting themselves. This is a prevalent disease in politics as people utilise their inside contacts to serve themselves. This is common for business people and their political contacts in government where they want to share the economic pie of a society including subsidies, tax rebates, permits and tariff rebates.

Procurement in government institutions can also be a form of rent because officials may overcharge whatever items being bought and accumulate the extra charged amount. This leaves a bad economic situation, and promotes government initiatives that are not best for society simply because they offer economic rent for those in charge. Closely related with rent-seeking is corruption, which is the condition that occurs when public positions are being abused in the quest for private gain. The activity involves taking advantage of the power inherited (be it electoral or administrative) to advance private interests (Brinkerhoff & Goldsmith, 2002). Similar to rent, it often takes an official to embezzle money or utilise office infrastructure in order to generate personal extra income. A by-product of corruption in government activities hurts the economic system of a society, the confidence of the public as well as discourages international investments because investors know that they won't see their projects being implemented.

Clientelism and patrimonialism continue to lead the economic downfall of many aided developing countries because of the failure to complete projects or follow on policies. This has generally led to weak implementation of public administration projects, initiatives and other economic opportunities. Economic reforms in developing countries usually face an impossible situation because of certain administrative and technical capacity issues, but, more than that has been the influence of institutional and political factors (Brinkerhoff & Goldsmith, 2002).

Some internationally-supported reforms often have their own measures on how to be implemented, thereby reducing rent seeking or patron-client relations. Such kind of donor-supported reform processes tend to be reversed or take too long to implement because politicians and their institutional counterparts want to keep the clientelistic relationships. Thus, patrimonialism is deeply embedded in institutional operations because even when government is committed to pursuing reform, they sometimes cannot resist the demands from the clientelistic relations. Patrimonialism and clientelism are often linked to ethnic class grouping, whereby people see themselves as sharing certain common features (historic, language, religion, culture, or other customs).

Brinkerhoff & Goldsmith (2002) see this as an easy criterion in which to channel resources to certain areas and people. Ethnicity serves the client-patron very well because the patron is able build a followership by simply singling out people who share the same ethnic criteria. Therefore, the needy may be able to organise themselves into ethnic groupings in order to increase their chances and alliances with a certain prominent political figure (Chandra, 2001).

2.1.12 Conclusion

The main reason that patron-client relationships continue to thrive is because they play an essential role in providing for the poor, however it also breeds social exclusion for those with no contacts or affiliation. In order to prevent clientelism and patrimonialism, strategies should employ the concept of client-patron relationships as a foundation for organizing reforms. In order to have a more accountable and transparent governance system, strategies should mobilize domestic support. Evaluation and monitoring should always be ready to counter the results in case they become counterproductive to the quest of defeating clientelistic relations.

While economic actors of clientelism rely on large state legal and regulatory reforms, if the government gets the prices right or end protectionist policies of trade, the trend of economic rent will disappear and monopolies reduced (Brinkerhoff & Goldsmith, 2002). This way the state will be less exposed to the power elite bait because loosening trade regulations will open the market to economic market competition and such competition will demolish clientelistic connections. Clientelism and patrimonialism thrive when there are plenty of resources, when government is disorganised and when there's public administration uncertainties. Many reform processes reduce but do not eliminate patronage networks.

Clientelism and patrimonialism are not good for governance, democracy or development because they enhance economic downfall and discourage investments. Therefore client-patron are both positive because while some see it as perpetuating poverty, some utilise their clientelistic relationships to counter poverty in their lives. In addition to the literature on clientelism addressing client-patron relations and their associated resource allocation, recent research has focused on the impact of such clientelistic relationships on elections, public administration and democratic governance. The previous authors have analysed clientelism as an obstacle to effective government institutions, to citizenship and to consolidating a government democracy.

However, one could neglect previous insights on clientelism, especially where the literature equates clientelistic practices to corruption in areas with less government control. Yet, it should be noted that client-patron relations differ from context to context and in some countries it is embedded in society while in others it is purely for rent-seeking than to reduce poverty. A clear shortcoming of clientelism literature has been the pure focus on local-national forms of patrimonialism, where by the connected roles of internal actors (officials) and external actors (politicians, chiefs, etc.) transform a society through resource allocation. It is, therefore, clear that the issue of how clientelism and patrimonialism far extends into even greater transnational structures has not been clearly addressed. That is still unclear given the international literature on clientelism in developing countries.

2.2 Section B: Conceptual Framework

2.2.1 Conceptual Framework

According to Shields & Rangarjan (2013), conceptual frameworks are an organization of ideas that is used to achieve the purpose of a research project. A conceptual framework is used to analyse research data and arrange into easy ways to remember. They are abstract concepts that are connected to the research project work in order to direct data collection and data analysis. In this research report a working hypothesis will be utilised a method and type of conceptual framework because of the nature of the study. The study is exploring the implications and, as such, a working conceptual framework sets the lens with which to view and/or explore the implications as yet to occur.

2.2.2 The basic elements of an institution

As depicted by Ostrom (1999) and Chhotray and Stoker (2009), here the reader is asked to understand that institutions are a form of government and, as such, they will be shaped and developed by the actors in them – ‘rules-in-use’.

The reader should understand that governance is initially about the law, systems and procedures. The reader should also understand that the society is about values, principles, and the rule of law. In such society as one's that strives to leap out of poverty, the priorities will be needs and service delivery. Therefore, the research will be framed by Chhotray and Stoker's basic elements of governance in defining institutions. Firstly, institutions are about both the formal and informal rules that influence decision-making.

Secondly, especially in democratic countries, institutions comprise of mutual control and influence because collective decision-making mechanisms. Thirdly, decision-making in institutions should be both strategic and an everyday practice. Therefore, decisions will be based on procedures, by the collective, and actors will get used to the hierarchical systems in an institution. Lastly, the relationships and outcomes in governance cannot be formally controlled as the actors shape the institutions not the other way, especially not through formal rules and procedures.

2.2.3 Models of Governance

As depicted by Hammond & Knott (1996), there are four models of governance. The models are: Parliament or Congress as a key decision maker in government; President as a key decision maker and has dominant influence over the government; The courts and their legal power as controlling and influencing the government and; that government and/or governance is a joint control by all three including the society and that the government has a certain amount of autonomy from the three.

In this research, the reader should understand that the fourth and last model is hereby utilised because of its applicability in the South African constitutional democracy. This is because South Africa has a constitution (including bill of rights) as the supreme law, has a president, a parliament, an independent judiciary, and a well-represented civil society and interest groups. The government has a certain level of autonomy from each of these except the constitution but governance is a joint control and responsibility.

2.2.4 Governance in institutions

The reader should understand that governance should be understood simultaneously with power because of the great political interest in the benefits that the society holds. This view is different from, and opposes Hix (1998), that governance is apolitical and that it should focus on non-hierarchical and deliberative multi-level systems.

Governance, as similar to institutions, is about the relation between actors and institutions, yet the relationship needs to be managed effectively. In order to better analyse research data collected, the reader should understand that people do not naturally respond to procedures and what occurs is that socio-political communication is power challenge to the society, a supply-and-demand cycle. Therefore, what seems as irrational is a natural response to the effects of social life and social relations.

On governance in government, the reader should understand institutions and their associated public administration are created to serve the society. However, there are other actors than the political representatives and internal staff. In this view, governance should be understood relatively as an ever-evolving state mechanism that is facilitated by semi-autonomous actors who are society based and are linked to their own client-patron networks that are full of expectations. Good governance and service delivery, therefore, is a by-product of the continued relationship between the internal actors, the external actors, the political representatives and the clientelistic networks created. The research adapts to the views of UN ESCAP (2007) that there is no accountability without transparency and that good governance can never be fully achieved because of the deep rooted clientelistic networks that exists.

2.2.5 Clientelism and Patrimonialism

Above and beyond governance and institutional theory, the research is also framed by the concepts of clientelism and patrimonialism. The reader here should look at clientelism as a complex process that emerges from government programs that are entailed to aid the society. These are networks of aid between the supplier and those who use the services, because the client has needs and the patron provides. In poverty-stricken local governments, the national government is faced with issues of service delivery, poor financial management and corruption.

These issues arise because of such clientelistic and patrimony relations. There are high political benefits for the elected political representatives of wards or sections of the society and, as such, client-patron relations prevail because the politicians keep on offering benefits to their own communities in return for political votes and constituency. It is human to aid one another, yet when it occurs within formal government structures it is unlawful. However, the client-patron networks continue to prevail because of the society's expectations from their patrons as well as the continued need to maintain clientelistic networks.

2.2.6 Power, Autonomy and Interest

While the research is also framed by concepts of power, autonomy, and interest, it is from the basis of governance and its associated client-patron networks that these develop. Clientelism breeds power relations of unequal power and status, it is also based interpersonal exchange (a high maintenance for patrons who carry too much expectations), and it is purely anchored by community norms and public law. Therefore, one is never fully autonomous because they fall within power hierarchies. All actors within institutions have power relationship over one another because of the rank in which they are placed and this is translated into the daily practice of decision-making and thus of social networks. The framework provides an analysis tool to which data collected will be analysed through.

2.3 Section C: Concepts

This section outlines the major concepts and the underlying theories that are central to the thesis in order to guide and frame the study. The concepts that the research analysed are autonomy, independence, transparency, power and interest. The theories that underpin the study, and engaging of the concepts above, are governance and institutional theories. These concepts and theory will be better detailed in the second chapter on literature review.

2.3.1 Autonomy

Autonomy is defined as "institutionalized separation (within the state)" (p.230, 2005) by Weller and Wolff. In this way autonomy is measured through organizational and structural disconnection; as well as, through an effective assurance for maintaining the unity of states and institutions threatened by ethnic and political strife (Weller and Wolff, 2005). John Christman asserts the view that autonomy is only in relation to a particular context and states that "'relational autonomy' is the label given, a conception of what it means to be free, self-governing and defines one's own basic value commitments in terms of interpersonal relations and mutual dependencies" (pg.2, 2004). According to Chirkov *et al* (2003), autonomy is when behaviour is experienced as willing enacted and when the actions engaged and the values expressed are fully endorsed.

People, therefore, are autonomous when in tune with their integrated values and desires or authentic interests (Deci & Ryan, 1985). deCharms (1968) defined autonomy as origin of behaviour, because, when autonomous, one is firm behind one's own decision and they feel the initiative. Autonomy is also seen as having a double meaning; one is the "issue of devolution or decentralization in the institutional fabric of a country", while the other is comprised of "protection to

minority groups in society" through explicit means (Suksi, 1998, p.1) In light of the definitions above, autonomy in the study is defined as a state of self-governing wherewith the interaction and interrelation with other actors does not influence the value commitment that one has made.

Autonomy relates to the next concept, independence, in that institutions such as the Tribunal ought to be independent in decision making as they greatly affect development as well as the communities within which they serve.

2.3.2 Independence

The notion of independence will be used in the study as relative to specific contexts. Independence is conventionally explained as freedom from the influence of control of others (Marchesani, 2005). If 'dependence' is the 'reliance on others' (Ryan & Lynch, 1989) then independence is the opposite. In this view, independence, as varying from the more inclusive autonomy, is a necessary condition for autonomy but not sufficient and shall be measured through external influence of other parties (person, people, organisation, etc.). Independence is hereby defined as the total lack of dependence on something or someone, a level of autonomy, and a general self-governance and self-influenced. The concepts of autonomy and independence falls in the debate about the role of politics in local government, because this debate reflects how patrimony and trifling autonomy may guide ultimate decisions (direct development or impact on performance as it relates to service delivery).

While reflecting on Ghana as well, Natalini (2010) stated that 'South Africa happens to be the only African country wherewith opposition parties have control over some of the local governments'. This reflects on how partisan politics affect local government institutions and the impact that those relationships might have on public participation and service delivery. The government's institutions, such as the Tribunal, are accountable to the public through service delivery and, as such, transparency is a pillar of good governance, a precondition that is necessary to benchmark and exercise accountability.

2.3.3 Transparency

Claudio Mesaros, in his book on *Knowledge Communication: Transparency, Democracy, Global Governance* (2011), posited that transparency is information oriented and as such, varied definitions persist. He defined it as a "clear convergence of information in the process of communication" and also stated that "if knowledge is power, then transparency provides power to all members of the society". Through this, it must be understood that the concept of transparency has no dominant meaning and is applicable relative to information and communication.

Bianchi and Peters (2013) understood the dispersion of the meaning or definition of transparency when they stated that it influences values of participation and accountability. In this way, transparency is measured through the access to information and how that information influences action and participation in activities. In this study, transparency, as a broadly defined concept, is explained as the availing of information to all suitable people in a way that can foster participation and accountability through communication.

2.3.4 Power and Interest

2.3.4.1 Power

Michel Foucault (1982) described power as a tool "which is exerted" and "gives the ability to modify, use, consume or destroy". In this way, he saw power as being deeply embedded in aptitudes strictly related with the body or through external means. In Dennis Wrong's *Power: Its Forms, Bases, and Uses* (1979) Thomas Hobbes defines power as the "man's present means to any apparent future good" (p.2). This definition of power sees power as being directive to achieve certain objectives as deemed necessary, good, or better by the one that exerts it.

In a similar fashion, this depicts on how the public good of which the government's institutions are ought to serve for might be swayed by interests of power-holding individuals, groups or organisations, leading to unjust ways. In the same Wrong's book, power is defined by Bertrand Russell as the "production of intended effects" (1979, p.2). In this view, power is identified with mastery and potency because if effects are intended, those who exert power disregarded the autonomy, independence and interest of those whom they are exerting it to. However, Russell's definition might be too general if one is to view power in terms of social relations. Power is strongly related to interest because when one is accountable to power measures they are serving the interest of those who exerted the power on them.

2.3.4.2 Interest

As it concerns a nation or a state, interest is defined an aggregation of goals and visions of the ruling entities, be it of financial prosperity and economic growth or equal services to all its citizens or of development to reach aspired targets as set out by the government (Trubowitz, 1998). Henri & Pudelko (2003), view interest as a shared passion of a view or an ideology where people participate in information sharing as it relates to their personal problems, in order to improve an understanding of the subject at hand. Interest, therefore, should be understood in terms of social sciences and not economics. Interest, in this study, is defined as a

shared ideology, one that orchestrates information sharing and participation in activities as being accountable to that shared ideology.

'Democratic local governance' is a local government system where actors interact within the broader guidelines of the country's political framework in order to manage the public matters of the communities they are accountable to (Olowu & Wunsch, 2004, p.1). In some contexts, such as that of Ghana and South Africa, when exploring local government autonomy dynamics, one is faced with the 'overlapping identities' in the interaction and interrelation between traditional leaders and local governments. As such government institutions are great instruments of research if one is to understand the concepts mentioned above. It is now possible to understand the study, the implementation and adoption of an institution (a government institution), as being also frame by institutional and governance theories.

2.3.5 Institutional Theory

In order to understand the organizational structure and behaviour of institutions such as the Tribunal the use of institutional theory proves to be of assistance (Dunn, 2010). This is because institutional theory utilises a sociological perspective and draws attention from cultural, economic, political and social factors that influence organizational structures and their decision-making (Scott, 2001). It draws attention, in particular, to "how rationalized meanings or myths are adopted by organizations" (Dunn, 2010, p.5) and have been easily adapted to and followed in a rule-like fashion, especially when making decisions. Through institutional theory, one is able to unpack the implementation of adopting a government institution such as the Tribunal, against the backdrop of normalized political processes and legalised organizational structures.

The approaches to be adopted by the Tribunal will be weighed against the politicised nature of local government and its institutionalized logic that governs the organizational behaviour and general decision-making. Institutional theory allows for an understanding of the SPLUMA Tribunal through its various explanations of institutions and their behaviour. Institutional theory posits that certain meanings and myths are rationalized and have led to the identification of social purposes as being technical and "specify in a rule like [sic] way the appropriate means to pursue these technical purposes" (Meyer and Rowan, 1997, pp.343-344). Therefore, through these processes, some professional criteria in service delivery are being legitimately mistaken for other personal, social, and even political responsibility.

Institutional theory also utilises information transparency (the level of honesty and efficiency at which information is shared among actors in an organisation), where with it measures accountability according to an organization's accurate information sharing (Dunn, 2010). The theory also utilises the concept of professional networks, as it posits that not only will institutions that face similar issues adopt similar organizational structures but they will also adopt common measures and approaches as well (Dunn, 2010). Therefore, in government institutions, as Dunn (2010) further asserts, "isomorphism occurs as a result of coercive, mimetic, and normative pressures" (p.7). This suggests that professional networks are a representation of organizations with the same institutional logic. This allows for the use of approaches of governance theory as it relates to institutions.

2.3.6 Governance Theory

According to Stoker (1998), government refers to the "formal and institutional processes which operate at the level of the nation state to maintain public order and facilitate collective action" and is characterized by "its ability to make decisions and its capacity to enforce them" (p.1). Governance is "about the rules of collective decision-making in settings where there are a plurality of actors or organisations and where no formal control system can dictate the terms of the relationship between these actors and organisations" (Chhotray & Stoker, 2010, p.3). Stoker (1998) offers five prepositions that can be utilised to understand governance and government as they pertain to public administration.

He states that the set of actors and institutions (referred to as governance) are drawn from and beyond the government; that governance addresses the misconceptions of responsibilities for tackling economic and social issues; that governance identifies the power dependence among different institutions; that governance is about "autonomous self-governing network of actors"(p.2) and; that governance understands that service delivery does not depend on the government's power command but the ability of the government to utilise new technique to steer action. Through this theory, the Tribunal will be seen as an institution that is draw from and also beyond the government and it will measured against the backdrop of creating institutions in governance theory. The theory will also be utilised to understand power and interest relationships between different organizations, structures and institutions such political parties, social groups of interest, community based structures and the government.

2.3.7 Integration of fields

The concepts of autonomy, independence, transparency, power and interest are all in one way or another, integrated with the adoption and implementation of the Tribunal. As such, the Tribunal is an institution of government, allowing the use of both the institutional and governance to unpack and understand this important organizational structure. The fields detailed above are the various introductions and definitions of the concepts and theory that that is used in the study in order to better understand institutions – the Tribunal.

2.4 Section D: The Conceptual Diagram

Below is a diagram (Figure 1.1) that provides as a conceptual and diagrammatic representation of the main concepts of the research/study. It portrays the relationship in and between the concepts and how the relate to institutions as well as governance. The conceptual diagram further illustrates publicly perceived ideologies that develop from a civilian's view (in the eyes of the general public and/or citizens of City of Johannesburg). These are the initial concepts that frame study and they differ to the conceptual framework.

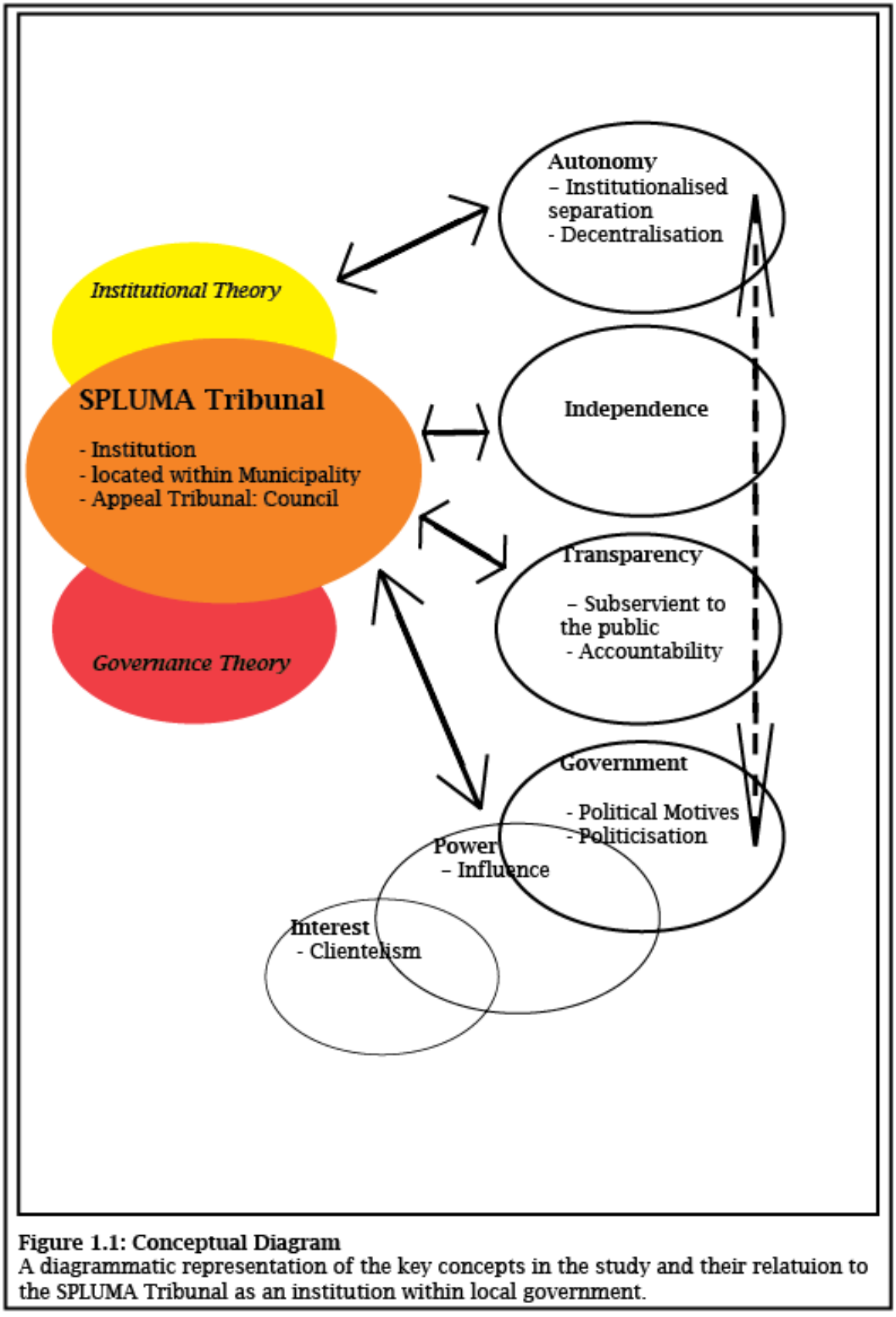


Figure 1.1: Conceptual Diagram
A diagrammatic representation of the key concepts in the study and their relatuion to the SPLUMA Tribunal as an institution within local government.

3 CHAPTER 3: RESEARCH METHODS (METHODOLOGY)

3.1 Research Methods (Research Methodology)

3.1.1 Qualitative Study

Due to the nature of the study, exploratory, the research utilized the qualitative case study methodology. Qualitative methodology explores the Tribunals implications as they relate to the context of local government; it examines how innate experiences can be attributed to experiences and situations. This method also utilises archived and documented information to learn of the existence or potential occurrence of discourse. The use of a case study signifies that the qualitative methodology will focus on a particular research site. The study utilized qualitative methodology because of its nature, exploring implications of a yet-to-be implemented legislature. Its purpose lies in being a closer read to the Act (16: 2013) to gain familiarity and acquire insight in order to formulate precise issues or develop hypotheses about the implications of the legislature (Kumar and Karoli, 2011).

This research took an interpretive approach, arguing that exploration is constructed through interaction with archives, documents and content that relate to the context (SPLUMA Tribunal as to be implemented at and affect the City of Johannesburg), and cannot be deconstructed independently of such. Therefore, it is impossible for an objective process of exploring the implications to exist independent of the various documents to be analysed. The author will explicitly avoid presupposing any theories regarding the Tribunal in advance and can only form theories and judgements from the data analysed (Hesse-Biber & Leavey, 2011), and this too is subject to the implementation of the Tribunal and its implications.

However, the author acknowledges that his own subjectivity can affect implications and information derived from data (Creswell, 2009). As stated, the study is explorative, seeking to look at the implications of the Tribunal in detail. The primary focus is on *what* mechanisms are in place for the Tribunal as well *how* these mechanisms will ensure the realisation of the tasks envisioned for the SPLUMA Tribunal (rather than a *why* question) (Hesse-Biber & Leavey, 2011). The study did not seek to derive a singular unifying theory from the responses or the content analysed, as it is of exploratory nature, and the ideas or implications uncovered might unintentionally shape the implementations.

3.1.2 Case Study

According to Baxter and Jack (2008: 544) “case studies afford researchers opportunities to explore or describe a phenomenon in context using a variety of data sources. It allows the researcher to explore individuals or organizations, simple through complex interventions, relationships, communities, or programs”. It is against the backdrop of the City of Johannesburg’s municipal planning recent history together as it relates to planning legislations, that the case study was utilised to focus as well as attempt to understand the potential manifestation of the Tribunal institution and its implementations. The case study in this instance ensured that the implementation of the Tribunal was explored from various views and sources.

3.1.2.1 Rationale for the Chosen Case study

The rationale for choosing the City of Johannesburg Metropolitan Municipality as a suitable case study for the study/research is its recent history in relation to planning legislation, the 2010 Constitutional Court case between the City and an institution of its provincial counterpart, the Gauteng Development Tribunal (GDT). It is through the DFA (67: 1995) that land developments needed to be fast-tracked in order to close the gap on housing and development left by the apartheid regime, yet the decision to give such a provincial state apparatus as the GDT (chapter 3 of the DFA) the powers to do so were found unconstitutional and allowed for ‘forum shopping’. According to Jafta J (CoJ v GDT, 2010: 40) “… in granting applications for rezoning or the establishment of townships the development tribunals encroach on the functional area of “municipal planning””.

Secondly, section 40 of the Constitution (1996) defines the government as consisting of three distinct, interdependent and interrelated spheres. Each sphere has the autonomy to carry out its duties within its jurisdictional parameters and must not assume any power or function than the one conferred to in/on it by the Constitution. Section 156 of the Constitution, when read together with Part B of Schedules 4 and 5, provide for legislative authority of municipal councils as well as functional areas of local government. It is these decisions from the court case that provide a relevant background to the case and a rationale of the City as best fit for exploration. While the Tribunal institution is to be set in all municipalities countrywide, it is worth noting that the City provides for a starting point to reflect upon. The City will provide for a better understanding into the Tribunal institution because of the 2010 court case and also because it had already a planning committee.

3.1.3 Library Study

3.1.3.1 Historical Approach

As a qualitative exploratory study, the research utilised a historical approach. The approach offered insight into organizational culture of the local government (the Tribunal *foci*), insight into past events, current occurrences, and prospective events. It is a method, a process of understanding and learning the background and discourse of a discipline, a profession or a filed. Through this process, the author is able to systematically examine an account of the occurrences prior to the implementation of the incumbent Tribunal together with that of the local government as it relates to the Tribunal. The study was an interpretation attempt to recapture, from the implications, the nuances, role players and issues that event. The study explored the implications through communicating past events as they relate to the Tribunal in question. As a scientific method, the historical approach was utilised to compare instances of politics in local government in order to reveal the general and the particular of those situations as they occurred prior to the implementation of the SPLUMA Tribunal.

3.1.3.2 Content Analysis

In adhering to the naturalistic paradigm, the study utilised content analysis as a qualitative research technique. It is regarded as a flexible method for analysing data (Cavanagh, 1997), but also that it is suitable for multiple analytical approaches to research study ranging from intuitive, impressionistic and interpretive analysis to those rigid text-only analysis (Rosengren, 1981). Content analysis, like document analysis, relies on the observation that 'we learn about our discourse by investigating the material items that are produced within it' (Hesse-Biber & Leavey, 2011). For this specific study, the documents produced by varied government departments, state institutions on local government and public and private sector organisations affected by the SPLUMA Tribunal were included in data analysis.

The type of content analysed included the draft SPLUMA regulations, material from various SPLUMA workshops by SACPLAN/SAPI (South African Council of Planners/South African Planning Institute) as well as articles written on SPLUMA (16: 2013). This is because these documents provided a good literature background on technical (SPLUMA Implementation Municipal Change Plan), social and economic (private sector and mining development applications) views. Any publicly available document on SPLUMA (16: 2013), the Tribunal and local government development planning was also considered as they strongly relate to the implementation of the SPLUMA (16: 2013) legislature.

However, while SPLUMA (16: 2013) is the main document, the DFA (67: 1995)' chapter 5 and 6 are also significant. Content analysis, in this regard, is clearly important at looking at the implications of adopting the Tribunal creation in SPLUMA (16: 2013).

Documents such as CoGTA' (Department of Cooperative Governance and Traditional Affairs) State of Local Government in South Africa; the National Treasury' the State of Local Government Finances and Financial Management; the Constitutional Court Case (Case CCT 89/09 [2010] ZACC11) between CoJ and GDT and others; DRDLR (Department of Rural Development and Land Reform) SPLUMA Implementation and SPLUMA Draft Regulations (Notice 526 of 2014, Government Gazette) and; multiple SALGA (South African Local Government Association) comments on SPLUMA as well their own Learning Framework for Local Government are ideally crafted to represent the implications of the SPLUMA Tribunal in local government. These provided a more structured and carefully thought out perspective than the spontaneous responses obtained in an interview (Creswell, 2009), without discrediting its significance.

3.1.4 Interviews

In their own words, the perspectives of different stakeholders or role players are best uncovered through an interview. The observatory technique of a case study will demonstrate the process but not the perspectives and opinions that underpin the reason of that process. The study encompassed members of a Tribunal, the Appeal Tribunal, the council they report to and the members of the Townships Board. The study involved a number of other key role players who would partake in the adoption and implementation of the SPLUMA MPT. The interviewed people include: the planning officials and administrators who will have been involved in the preparation to the creation of the incumbent SPLUMA Tribunal and its required changes. These people are important because of the nature of the Tribunal's daily focus as being municipal planning.

Secondly, the planning heads, these are the administrative heads of the entire municipality's planning department and their significance is based on the institutional preparation (restructuring or re-engineering) in order to suit the SPLUMA requirements (increasing planning capacity) as well as in the monitoring and evaluation of the body in question. Lastly, the planning committee chairperson as the member of the municipal council, his significance was with the separation of powers between that of the Tribunal, the municipality's vision and the political mandates not/impeding with the autonomy and independence of the body and

thus the direction of development. The municipal council is tasked with being an Appeal Tribunal and as such a potential member of that council could be a planning head or development planning director.

The interviews conducted were semi-structured because the focus was on the creation, adoption and implementation of the Tribunal amidst local government challenges, and did not seek to explore other topics based upon interviewee responses (because that possibility exists with unstructured interviews). However, as a qualitative exploratory quest, the interview was not completely structured as the author acknowledged that respondents may have relevant knowledge and information pertaining to the topic that the author did not consider in advance (Hesse-Biber & Leavey, 2011). For the questionnaire, a list of objective-based sub topics relating to the creation of the Tribunal in SPLUMA was prepared, with general questions under each so as to guide the interview. However, the qualitative nature of the study allows for some flexibility to explore further implications as they relate to the topic (Hesse-Biber & Leavey, 2011). The interview guides were not uniform for each interview as the study was exploring the implications in various ways. Therefore, question subtopics or guidelines were slightly tailored to the differing roles of the stakeholders.

3.1.4.1 Sampling: Snowballing

The study utilised a selection method or technique known as snowball sampling. It is a referral system defined as a technique for gathering study or research interviewees or subjects through identifying an initial subject of who is used to provide the names of others (Atkinson & Flint, 2001). These subjects may open channels for an expanding web of contacts and inquiry. It was used in the study due to the difficulty in recruiting the identified potential respondents and thus will aid in data collection. The objective, through this purposive and expedient strategy, was to find one qualifying subject and seek recommendations to several others whom are of value to the study objectives. This is a type of a random sample and although the author has detailed out the potential respondents ideally suited for the study, it does not rule out potential stakeholders who have not been considered in advance.

3.2 Literature Framework: Analysis method

3.2.1 Constant comparative analysis

The study utilised constant comparative analysis as a framework tool for analysing and making sense of data. While this method is developed from the sociological theory of symbolic interactionism (Thorne, 2000), its use for comparing the setting

up of the Tribunal to multiple other (government) institutions nationally and elsewhere is immense. Symbolic interactionism utilises previous stories, cases and events and uses them to compare to other similar stories in such a way as if they were interacting with each other. It uses the term interactionism to mean ways in which cases can and may be familiar to each other as if trying to copy one another in an interactive way. This method allows for conceptualisation about any similarities from data collected with those of similar experience from other institutions and thus should provide a way to benchmark the Tribunal's implications of resources, capacity, autonomy, independence, power and interest, monitoring and evaluation.

Through viewing already-existing institutions, the study was able to draw pathways to understanding how institutions are setup and the different facets that enable them to be independent, autonomous, relevant, trustworthy, resourceful, capacitated among many other traits that shape institutions. It is through this method of analysis that the study was able to delineate differences and similarities in institutions and tries to link and understand the variations together with their meanings for the Tribunal. Scott, Richard and Meyer (1994) define institutions as "symbolic and behavioural systems containing representational, constitutional and normative rules together with regulatory mechanisms that define a common meaning system and give rise to distinctive actors and action routines. Meyer *et al* (1977) define them as "social processes, obligations or actualities that come to take on a rule-like status in social thought or action". The Tribunal is a type of institution, a form of a government structure governed by the Constitution and multiple other legislations pertaining institutions.

3.2.2 Phenomenological Approaches

While the comparative nature of a study might have brought out patterns and commonalities, it was also crucial to understand individual case experience especially since the meaning and use of a Tribunal may prove different to other committee and town planning board elsewhere. The use of this was limited as the Tribunal was not yet implemented. The validity of this method comes with the experience of multiple other South African state institutions that were implemented and have the same issues as those implicated by the incumbent SPLUMA (16: 2013) Tribunal (Municipal Planning Tribunal). The method also allowed for bracketing or setting aside of such preconceptions as would be gathered from comparative cases and work inductively to come up with new formulations (Thorne, 2000).

4 CHAPTER 4: CASE STUDY INTRODUCTION – City of Johannesburg

4.1 The South African Local Government

> "The History: Prior to the Constitution of the Republic of South Africa of 1996 and preceding the transition to democratic local government, local authorities, as they were then known, were mere creatures of statute created by provincial governments. Although the different provincial ordinances led to a variety of procedures, structures and processes, the municipalities, established in terms of the ordinances had a common feature. Because of their lack of constitutional status, they were creatures of statute, and possessed only such rights and powers as was specifically or impliedly granted to them by the legislature. It rendered all their actions, including the passing of by-laws, administrative actions, subject to judicial review. Municipalities, it can be said, thus existed at the mercy of the provinces.
>
> The Transformation process: In 1990, the transformation of local government was directed at removing the racial basis of government and making it a vehicle for the integration of society and the redistribution of municipal services from the well-off to the poor. Local government in South Africa entered a new era with the adoption of the 1996 Constitution. The Constitution introduced, for the first time in our history, a wall-to-wall local government system by providing that municipalities 'be established for the whole of the territory of the Republic'." (South African Local Government Association, 2011[online] Available at: http://www.salga.org.za/pages/Municipalities/About-Municipalities).

4.2 A peak into the Chapter

This chapter provides an introduction and rationale to the chosen case study of the City of Johannesburg Metropolitan Municipality in Johannesburg. It does so by first providing a background into the dynamic history and timeline of Johannesburg over the years. It then provides the history and development of the City of Johannesburg Metropolitan Municipality from over the years as well. The Chapter goes further to outline the planning committees and how they operated in recent years up until the 2010 Gauteng Development Tribunal v City of Johannesburg Constitutional Court case. Lastly, the chapter provides context into the preparations made by SPLUMA Implementation Committees to enable municipal readiness for the new planning legislature.

4.3 Johannesburg: The City of Johannesburg

> *"WE ARE A WORLD CLASS AFRICAN CITY: A city that treats our citizens as partners and co-producers of services, empowering them to be part of the solution; a city that has triumphed over complexity to build strong institutions; a city that joins forces with its citizens to enable better choices on how they live; a city that takes its place on the great stages of the world, amplifying the voices of urban Africa; a city, founded by newcomers, sustained by diversity, reaffirming that it will always be open to the continent and the world"* – Executive Mayor, Cllr Parks Tau (City of Johannesburg' State of the City Address 2015, pp.21-22).

Located in southern part of the Gauteng province in South Africa, Jo'burg or Jozi (as the city of Johannesburg is commonly known as) finds itself as a vibrant, rapidly changing hub of various opportunities. Its local government, the municipality, is also no different. The Local Government Handbook (2015) has described the City/CoJ/CJMM (City of Johannesburg Metropolitan Municipality) as the engine room to Africa's advanced commercial city and Southern African regional economy. With aliases such as 'city of gold' to the 'urban jungle', the city thrives by the multitudes of people it attracts that come looking for 'better' lives. It disguises as a supplier of quality of life, education, housing, health and other economic opportunities. It appeals to both the poor and wealthy, the refugees and residents, the global and local, the learned and the unlearned, young and old and many others from far other where places. It prides itself in being an ethnically large and diverse city.

It is a growing city with a rich historic layer. For such an ideal urban place that is in close proximity to economic opportunities, land and transport, the CoJ Municipality has to frequently administer issues over forced removals, illegal settlements, squatter camps, corruption, basic services among others. It is against this background that the City continues to work toward better development, equipping its citizens with all the right tools for better livelihoods. It continues to launch various projects as interventions to poverty, unemployment, urban management, literacy, and crime and safety issues. In doing so, all state (municipal) institutions provide a crucial role toward the City's accountability to its citizens, a role which need only be transparent and just to all. As more and more people need land either to live in, farm, develop and redevelop, the City is the key role player in ensuring the needs and rights of all people are met in a just and procedural manner. In order to better process its town planning or land development applications, the City relied on various planning legislation in conjunction with the Constitution (1996) as apparatus to grant and manage land use rights to all applicants.

In doing so, it has set aside a committee, which further arranges for land development applications criterion, in order to dispose of such applications. Such a committee is a vital organ of the City as an institution that serves the public interest. The setup, location and relationship of such a committee with other state institutions and public and private organisations then becomes an important cornerstone for transparency, justice, and accountability

Below is a diagram depicting the City of Johannesburg's administrative boundaries.

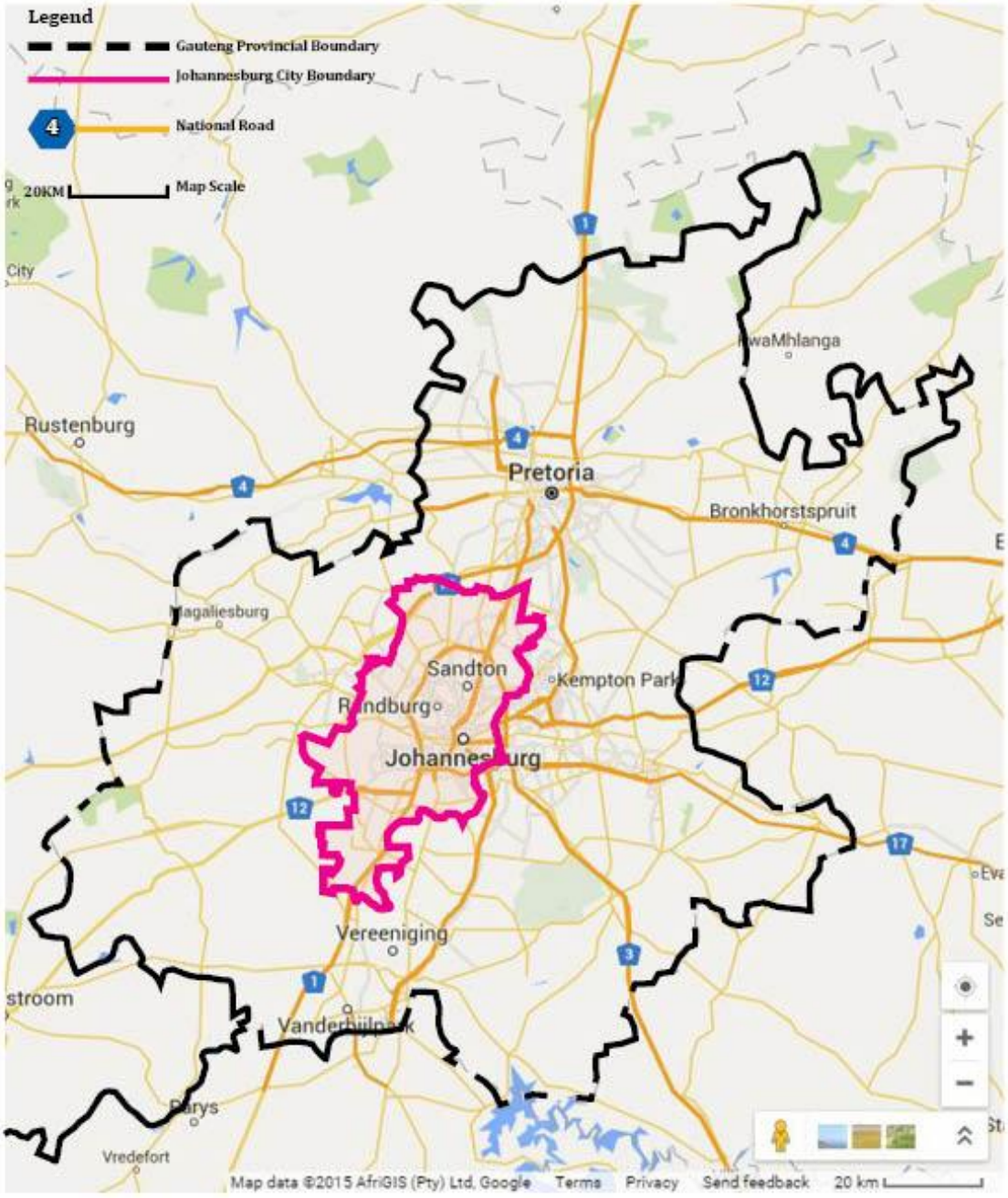


Figure 1.2: Map of City of Johannesburg - City of Johannesburg Metropolitan Municipality's administration boundary. The economic hub of South Africa is here depicted within the context of Guateng.

Map adapted from: City of Johannesburg website (joburg.org.za)

4.4 Johannesburg: The Founding

The area of Johannesburg was initially founded as a proclaimed mining area of eight farms and its land was owned by the then Government of Transvaal. The origin of the name Johannesburg as a name of the area remains a mystery yet many still believe it was named after two officials, namely Messers Christiaan Johannes Joubert and Johann Rissik (Beavon, 2004). Its growth and formation is owed more to the struggles of the miners who worked in the mining camps set out in Johannesburg. The area developed as an urban geography, a diversified footprint of people from all over the country seeking work opportunities and a nearby place of residence. However, its early fortunes arose significantly between 1886 and 1899 when knowledge and confidence about geology and mining reached many investors' ears.

As mining activities grew, many proclaimed land in the Johannesburg area with varying sizes of registered companies intending to make fortunes out the gold that is lying underneath. Much of the small companies had gained experience and confidence from other mining activities elsewhere (Kimberley) and had consolidated into a single large company that was funded by banks. It is during the 1880s that much of the actual mining activities on the ground would be stagnant due to lack of mining tools and equipment as companies had to wait for off shore countries such as England (London) to supply them with material. Yet, Johannesburg as area of opportunity, kept of growing and expanding with multitudes coming in looking for opportunities. By 1894, the area of Johannesburg had expanded and included a central business district. While the following years would represent the economic slump of gold trading and infiltration of the British nationals, the area of Johannesburg remained (Beavon, 2004).

From the 1890s onward, the area was on the process of rejuvenation and mining companies dependent on constant production of gold in order to continue operating. Johannesburg, from that point, improved greatly in infrastructure as mining developments coupled together with almost 40 000 miners and their families required more than carts to traverse the mining Johannesburg area (Beavon, 2004). This saw the introduction of light railway that linked the coal area Boksburg, which successfully transported coal and passengers to and out of the mines and the Johannesburg area at large.

4.5 Johannesburg Local Management: From a Digger's Committee to a Quasi-Municipality

In 1897, the Kruger government declared Johannesburg to be a formal municipality, a town, and a city with many separate townships beside it (Beavon, 2004). The separate townships did not contribute or withdraw from Johannesburg's economic pockets because they were not recognised and did not form a part of Johannesburg. This meant that townships survived on their own attraction base. The area was initially controlled and administered by a mining commissioner, then changed to a nine-member committee of diggers and later by an expanded diggers committee that included non-digging members. While these various committees did not mean that Johannesburg was formally considered, as it was considered a mining camp, their sole purpose was public health and by the 1890s they could not aid and control what was then the largest town.

A sanitary board was elected and it was later followed by a limited municipal government, and this only after the Jameson Raid fiasco in 1895 (Beavon, 2004). It was only after the 1900s, once the British occupied Johannesburg, that a full municipal government had been establishment. Between 1900 and 1906, the new Milner administration was ushered in, as the British conquerors handed over the government to the whites and *Transvaalers* (people of the Transvaal land) and not the non-white community. A plethora of racial laws was to follow, and this subsequently meant the creation of a segregated Johannesburg. Following the Union of South Africa's independence from the British colonisers, a white minority governed and asserted its dominance over the entire Johannesburg land. Having established the history of the City of Johannesburg both as an area with its local governing structures, it is now possible to follow logic and give a contemporary development of the institution up to the current arrangement.

4.6 Uniting a divided Johannesburg: from separate townships and separate substructures to transitional and formalised statuses

Fast forward to the 1990s, there's a realisation that the current status of local government is not much different to the old ones as described above, mainly because municipalities still raise greater proportions of their own revenue. After the 1994 political transitions in South Africa, there was a need to restructure a plethora of old order systems and that included the reorganisation of government structures and institutions. The post-apartheid administrators focused more on the redistribution of rights across the entire Johannesburg landscape, and this meant the inclusion of the formerly excluded townships around the mining town (Beall, Crankshaw and Parnell, 2002).

Before 1994, there had existed 13 demarcated local government institutions that were racially categorized. These institutions operated under different planning legislations and service delivery levels. Between 1991 and 1995, there were 2 notable Johannesburg structures. The first was the Central Witwatersrand Metropolitan Chamber (CWMC), which was formed after the 1990 Soweto Accord (Beall, Crankshaw and Parnell, 2002) and was meant to resolve service delivery and unite the metropolitan Johannesburg. Secondly, there was the Greater Johannesburg Local Negotiation Forum and this was the same CWMC acting as a decision making forum under the transitional Local Government Act in 1993. This forum proposed to have a single metropolitan government with certain sub-structures.

Between 1995 and 1997, greater powers were assigned to metropolitan local government structures and Johannesburg was a metropolitan with four local councils. However, the Greater Johannesburg Metropolitan Council experience difficulties in the redistribution and management of the entire newly created systems and there was a need for re-institutionalization. As of 2001, legislature on local adopted dominant metropolitan council and local government elections were to follow suit (Beall, Crankshaw and Parnell, 2002). The City of Johannesburg is now a unified large dominant metropolitan municipality and it is no new idea that the planning and development of urban areas is the purview of local government institutions.

Therefore, the decentralisation that has occurred in South Africa since 1994 has meant that areas such as Johannesburg would undergo a phase of integration, absorption of previously excluded townships and communities into one unified metropolitan city government (Beall, Crankshaw & Parnell, 2002). As of 2015, the Johannesburg local council or metropolitan government is made of seven (7) regions (see **Fig 1.2**) and is commonly known as City of Johannesburg (CoJ) or the City of Johannesburg Metropolitan Municipality (CJMM).

The regions are as follows: Region A, which includes former old regions 1 and 2, includes areas such as Diepsloot, Fourways, Sunninghill and Woodmead; Region B, with old regions like 3 and 4, includes such areas Rosebank, Bryanston and Randburg; Region C is the old region 5 and includes areas such as Bram Fischerville, Thulani and Florida; Region D, the biggest region, is a consolidation of former regions 6 and 10 and is comprised of Soweto only; Region E is the former region 7 and includes such areas as Parkwood, Alexandra and Morning side; Region F, which incorporates former regions 8 and 9, has areas as Glenvista, Ormonde and Kensington in its boundaries and; there is Region, which is the former region 11,

and it includes areas such as Lenasia, Eldorado Park and Protea (www.joburg.org.za, 2015).

CJMM has allocated its duties into multiple departments. It has such planning and urban development responsibilities being allocated to such City directories as Development Planning and Urban Management, Development Management, Land Use Management, Development Planning and Facilitation among others. Moreover, and of greater significance to the research report, the City's development planning applications are handled by a planning committee.

5 CHAPTER FIVE: SPLUMA AND THE MUNICIPAL PLANNING TRIBUNAL

5.1 LOCAL PRECEDENCE: From Gauteng Development Tribunal & Planning Committee to Municipal Planning Tribunal

The research report purpose was to explore the implications of the SPLUMA Municipal Planning Tribunal. There have been tribunals in South Africa before, however, in the context of SPLUMA no institution gives good precedence and a direct link to the SPLUMA (16: 2013) legislated tribunal like the Gauteng Development Tribunal (GDT). This was because the Gauteng Development Tribunal's downfall led to the enactment of the SPLUMA Municipal Planning Tribunal (*City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal & others (CCT89/09) [2010] ZACC 11; 2010 (6) SA 182 (CC); 2010 (9) BCLR 859 (CC) (18 June 2010*)). As precedence to the SPLUMA Municipal Planning Tribunal, the 2010 Constitutional court case presented findings that were useful in understanding the operation of a planning tribunal, the use of power, authority and interest as well as politicisation in government institutions. The following is an analysis of the 2010 court case and the initial findings that were useful in order to explore the implications of a SPLUMA Municipal Planning Tribunal.

Background:

The City of Johannesburg is authorised by Section 2 of the Town-planning and Townships Ordinance (15: 1986) to determine applications on the establishment of townships and rezoning of land within its area of jurisdiction. From 1997, the Tribunal (Gauteng Development Tribunal) began to determine land development (rezoning and township establishment) applications. The Gauteng Development Tribunal decided on such applications within the City of Johannesburg's area of control (by jurisdiction). In terms of the Constitution of the Republic of South Africa (1996), the City of Johannesburg Metropolitan Municipality is entitled to dispose of rezoning and township establishment applications within its area of jurisdiction. It is worth noting that the Constitution of South Africa is the supreme law and, as such, there were issues with the DFA-legislated Gauteng Development Tribunal.

Issues;

The main focus of this research report was on how a tribunal works and might work at the local level of government. As provided with the evidence gathered from interviews, the operations of a tribunal at the local level government will can be understood by understanding the Planning Committee of a municipality.

As such, it was crucial to look at the current operations of a Planning Committee. However, while the DFA-led Tribunal was not the main focus, it is important to note that it has led to the SPLUMA (16: 2013) Tribunal. Therefore, the DFA (67: 1995) and its Tribunal have provided precedence to the operations of a Tribunal.

One of the main issues was the constitutionality of chapters 5 and 6 of the Development Facilitation Act (67: 1995). This is because the chapters give authority to provincial development tribunals, such as the Gauteng Development Tribunal, that were established by the very Act to decide on township establishment and rezoning applications. The same authority was given to local government within its area of jurisdiction by a different set of legislature (The Constitution and the Ordinance).

The Gauteng Development Tribunal decided on land development applications in a manner that undermined the City of Johannesburg's development planning principles and the Planning Committee because it did not take into account the City's development planning criteria and also allowed for forum shopping (a practice adopted by people who are involved in lawsuits to have their legal cases heard in courts that are thought likely provide a favourable judgment). This forum shopping practice was used by applicants who had connections with members of the DFA-led Tribunal. The applicants would apply to the City of Johannesburg Metropolitan Municipality for a development but get rejected or disapproval for such a development.

Many an applicant would then forward their applications to the DFA-led Tribunal and get it approved there. Because of such connections they had with members of the DFA-led Tribunal and also because the DFA (67: 1995) was concerned with expediting development, applications would get many of their development applications approved. For those who couldn't get their developments, they utilised whatever means to ensure their Tribunal meetings were held and hosted by a panel that would most likely yield positive results. This was the norm and practice of forum shopping.

The City of Johannesburg Metropolitan Municipality's Planning Committee is a local government structure while the Gauteng Development Tribunal was an organ created under the provincial level of government. On the one hand, municipalities, as the local level of government was known, are provided for by the Ordinances (for Johannesburg, it is the Town-Planning and Townships Ordinance no.15 of 1986) to create planning instruments such a town-planning schemes that will determine how the land within such municipal area will be utilised or zoned. Therefore, this meant that there are authorised officials in the employ of the municipalities that consider and determine development planning applications.

On the other hand, chapters 5 and 6 of the Development Facilitation Act (67: 1995) authorised the provincial development tribunals to undertake the same duties as the authorised local government authorities within the local government area of jurisdiction. This was supposedly done in good faith to speed up development within South Africa. However, the 2010 court decision played in the favour of local government, with Judge Jafta J (Constitutional Court of South Africa, 2010) stating that Schedule 4B and 5B read together with section 156 of the Constitution have authorised municipalities to undertake 'municipal planning' (of which includes rezoning and township establishment) duties within their own area of jurisdiction.

When it was confirmed that chapters 5 and 6 of the DFA (67: 1995) are unconstitutional, it also meant that the enactment of a single comprehensive spatial planning and land use management legislation would have to be implemented in order to remedy the defects of that decision. This remedy came in the form of SPLUMA legislation (16: 2013), of which through it, the local government-based Municipal Planning Tribunals were introduced. Therefore, what is significant in the 2010 court case is the operation of a planning tribunal and its effect on development. The Gauteng development Tribunal gave a good precedence on the contemporary tribunal operations.

5.2 The DFA-led Gauteng Development Tribunal

Since its inception in 1995, the DFA (67: 1995) was used as a tool for large private developments and as such it attracted attention of developers. Therefore, with many small municipalities experiencing capacity and resource backlog coupled with the application of various old order planning legislations, the DFA (67: 1995) created less complex ways to approve developments and therefore the Tribunals under the act had an ever increasing number of large investment development applications (Urban Landmark, 2010).

Within the City of Johannesburg, the DFA-led GDT was responsible for large-scale developments while the in-municipality Planning Committee would deal with low-income housing developments among others, mostly in terms of the Ordinance (15:1986) or the Less Formal Townships Establishment Act no. 113 of 1991 (LEFTEA).

The main issue with this was the developments approved in accordance with the DFA were encouraging of residential urban sprawl on the city outskirts and they had little concern for infrastructure carrying capacity or the related services that go along with that (Urban Landmark, 2010). What remains was that many municipalities still used LEFTEA (113:1991) and many of the DFA-dealt applications were recorded as unknowns because of the backlog and confusion around the DFA (67: 1995) as well the wait on the repeal of provincial legislature. The GDT was seen as an unjust institution to the general public because of the multitudes of private developments that were approved disregarding the needs of the low income population in those areas. Many complaints were the GDT did not consider local economic development applications that would have uplifted poor communities but instead promoted private developments that would include gated communities, industries and other developments that were of either harm or no financial help to the nearby locals.

In not following the City of Johannesburg Metropolitan Municipality's development planning criteria, the GDT did not take into consideration such tools as the town planning schemes (which determines the general land use of an area and its compatible uses), urban development boundaries or development zones. It was to the municipality's knowledge that the GDT's procedures in approving applications might have been unknown but they allowed favouritism and political and financial influence (corrupt practices) in doing so. This was because forum shopping was only one of the few issues that the municipality could prove as fact whereas the corruption concerns or political influence that favoured some applications over others could not be tangibly proven.

The City of Johannesburg, however, stated in the court case that many of the applications that were declined by their own Planning Committee were approved by the GDT, and this was despite the fact that those applications were not in accordance with any legislation and did not have sufficient town planning merits (Constitutional Court of South Africa, 2010).

5.2.1 Issues with DFA-led Tribunals

One of the issues as set out in the 2010 court case was that the GDT never followed the City of Johannesburg Metropolitan Municipality's planning instruments and criteria.

The eThekwini Municipality experienced the same issue as well, wherewith it felt that the provincial tribunals encroached on their mandated (local government) functions (Constitutional Court of South Africa, 1996). This shows that the power or authority that had been given to the provincial tribunals by the DFA (67: 1995) allowed these tribunals to act in any manner that is determined by the tribunal itself without consulting the local government structures.

Other parties in the court case included the property sector council (SAPOA) as well as the council of consulting planners; these parties aligned their interests with the GDT because the DFA (67: 1995) had the interests of the private sector (or large-scale private developments) at heart through its procedures and allowed for an expedient process of development. As stated, some of the practices and decisions by the GDT allowed forum shopping, a preferential court treatment or practice of sort and this is a form of clientelistic relationship in a way because of the bonds shared in between such a tribunal organisation and the applicants.

If clientelism is a practice between a client and patron wherewith they share resources in exchange for benefits then the DFA-led Tribunal was the patron and the development applications were the clients. The client would apply for a development and ensure to have a favourable hearing with a certain set members of the DFA-led Tribunal. The patron, being the Tribunal in this instance, would ensure such a favourable decision is made by approving of developments even when they might have been rejected at the local level of government. This could have also been in exchange of monetary gains. This could also been the result of expediting development as a procedure and mandate of the DFA (67: 1995).

This was because some of the applications that would normally be disapproved would be appealed in a different appeal tribunal and seek a suitable court that would judge in their favour. It is such practices that were envisaged to be removed through the SPLUMA Municipal Planning Tribunal. Also, because the DFA-led GDT was a provincial organ that undertook local government functions without any agreement with the local government, it meant that a certain level of clarity was required around functions, authority as well as the relationship between the different levels of government. It is through SPLUMA that intergovernmental relations as well as functions of local government are better explained as to what

the Municipal Planning Tribunal, and Appeal Tribunal, would be responsible for and what 'municipal planning' means. The DFA (67: 1995) did not clarify the varying functions and legislative or authoritative powers with other government levels because it was merely focused on addressing the lack of development.

The provincial departments that took part in the 2010 court case, making common cause with the tribunal, argued that municipalities were stifling development with their delayed responses to development planning applications and that the tribunals have approved development applications that guarantee economic growth. The tribunals were seen as providing an efficient and effective process of development planning applications yet the power given to the tribunals allowed unfair administrative practices and an increased level of corruption between such officials and private developers (Urban Landmark, 2010). However, the tribunals were seen as instruments used by private developers to escape planning procedures and have their own developments approved (Urban Landmark, 2010), thereby promoting unjust practices in planning. While looking at the efficiency and effectiveness of the GDT, it was important to note in provinces such as Mpumalanga and Limpopo the DFA (67: 1995) was the only land use legislation that applied in the entire provincial boundaries and as such no other tribunal or planning committee.

In such provinces like Mpumalanga and Limpopo the Ordinance (15: 1986) left gaps because it did not cover the entire provincial landscape but was only limited to older areas. The DFA-led provincial Tribunals were the only option for development. Therefore, a natural relationship between the developers and the tribunal would occur. It is because of such expediency that the DFA (67: 1995) legislature brought to development that the Mpumalanga planning departments had an ever increasing number of development applications, only proving further that the DFA (67: 1995) favoured the developers of large-scale private developments than anyone else (Urban Landmark, 2010). Post the declaration of the chapters 5 and 6 of the DFA (67: 1995) to be unconstitutional, issues emerged on and about the proposed SPLUMA tribunal that is to be implemented.

SPLUMA (16: 2013), as a remedial situation for DFA (67: 1995) and many other old order town planning legislation, proposed a municipal tribunal. However, the municipal planning tribunal (Tribunal or MPT) was to be based within the municipal boundaries, be comprised of officials in the employ of the municipality and its subsequent appeal tribunal (Appeal Tribunal) will be comprised of the municipality's council members. This raised issues that have long been insinuated, such that if so much is being said about the local government being corrupt, the locational factors of the tribunal raised doubts over the transparency of government institutions.

Clientelistic relationships build up and go on for long periods of time. Therefore, if such a tribunal was to be comprised of municipal officials the municipality as an entity or a structure of government it will not be seen as representing the public interest because of the belief that it will operate in a corrupt way. The National Treasury Report (2013) stated political intervention and the lack of transparency as issues that promote corruption and the lack of proper governance. The reason being that the DFA-led GDT allowed for large-scale private developments in order to promote economic development and hopefully alleviate poverty but all it did was deviate from the City of Johannesburg Metropolitan Municipality's planning policies, thereby ignoring the public interest that the City had planned for. Secondly, the municipal-based tribunal has put into effect its local government town planning mandates. However, the general public or civilians as well as the private sector negatively were not affected because of the correlation between the internal town planning and the tribunal's relationship.

SPLUMA (16: 2013) for the private sector, which so much depended on the expediency of the DFA (67:1995), meant that the private sector will see much of their client-patron bonds with the provincial tribunal broken and developments delayed or disapproved .

The general public on the other hand will want to see justice, to see the Tribunal as an organ of the local government in the public interest but not corrupt or malfunctioning. The line between clientelism and corruption is very thin and one does not know the difference between helping and stealing. It is against the law to aid with government property or possessions and one should aid from their own coffers yet what transpires in client-patron relations is that government officials would sway developments to specific areas for political gain because of pressure of being fired or replaced be political forces. It is such practices from clientelistic relationships that result in institutional malfunction, corruption, and maladministration (Mr Nkosi, 2015).

Also, the City of Johannesburg Metropolitan Municipality is perhaps an exception here, but the implementation of the SPLUMA MPT requires institutional restructuring for many local governments, some of which did not undertake their own town planning matters. However, what the City of Johannesburg Metropolitan Municipality is not exempt from is that there is more than procedure or the law required to provide justice, to maintain service delivery and public interest and be efficient and effective with its own Tribunal. The City of Johannesburg has already been addressing and dealing with development planning applications through a Planning Committee and its transition to a Tribunal should not be problematic as such.

In order to explore and understand how the City of Johannesburg Metropolitan Municipality's SPLUMA Tribunal, it was important understand the nature and operation of the CJMM Planning Committee.

5.3 The City of Johannesburg Metropolitan Municipality's Planning Committee

After attending the City of Johannesburg's Planning Committee hearings with Kobus Van Wyk (Office of Executive Mayor, Senior Legal Advisor & Member-Chair of the Planning Committee) and Vusi Nkosi (Department of Development Planning, Transformation and Environment & Planning Committee Services Officer), it WAS understood that the Planning Committee has long existed and has been dealing with the development applications for the City of Johannesburg as per various town planning legislature, such as the Ordinance (15: 1986), but not the DFA (67: 1995). However, the city has adapted to the new SPLUMA (16: 2013) regulations and, as such, has now begun implementing a Municipal Planning Tribunal and the Planning Committee is reflective of those new adaptations.

Mr Van Wyk (2015) is one of the legal attorneys that represent the municipality that have been chosen to sit on and chair the Municipal Planning Tribunal. As the chairperson, he has filed a report to the Executive Mayor detailing the transition of the municipality's Planning Committee to a Municipal Planning Tribunal. At the time of the interview, Mr Van Wyk was yet to submit such a report but talked about the temporary arrangements toward the transition and the contents of such a report. The City of Johannesburg Metropolitan Municipality (CJMM) Municipal Planning Tribunal comprises of 5 members of whom are chosen from a pool of 30 officials in the employ of the municipality.

According to Chapter 6 Section 36 (a) (b) of SPLUMA (16: 2013), a Municipal Planning Tribunal must be comprised of full-time municipal officials and; non-officials that have experience and knowledge of land development, spatial planning and land use management. The CJMM's MPT consists of officials only and does not have any external actor appointed to it. When asked about this, Mr Vusi Nkosi (2015) stated that there was a great lack of external persons that are knowledgeable and experienced about the requirements of the MPT that have shown interest. He stated several factors that led to the CJMM MPT being an all-officials only structure. If previous municipal officials with such prerequisite knowledge were to be appointed, it would be procedurally unjust and be biased against the municipality's clients. This was because such previous employees now have companies and are practising as private town planners.

Another reason was also because the municipality believes that the re-employment such ex-employees would cost them dearly and it is no different to utilising the current internal members of staff in the meantime. The CJMM has also considered external town planning associations such as SAPI or experienced actors such as planning professionals but Mr Nkosi (2015) stated that they would consider appointing those persons if they show interest. Another factor is that SPLUMA (16: 2013) and its regulations are fairly recent and that they would slowly implement all other requirements timeously.

The CJMM has, however, followed all protocol in appointing its 5-member panels to sit of the MPT (Van Wyk, 2015). This is because every panel chosen to sit as a MPT in the municipality has at least 3 people that form a quorum in order to make decisions and also that all members of that panel will be specialists that have experience and knowledge of the SPLUMA (16: 2013) requirements. Moreover, the CJMM was, or is until such a report from the Planning Committee is sent to the municipality's Executive Mayor, operating with rotating committee/tribunal chosen from a pool of 30 senior officials in order to better facilitate and administer the development planning applications of the municipality. This was because with their Planning Committee the municipality has always had an ever increasing number of applications of which often include 10 items per week inclusive of site inspections and committee hearings. This has led to having multiple committees/tribunals per week.

In the wake of SPLUMA (16: 2013), the CJMM was planning to increase the current pool of 30 officials to 50 senior officials as there is pressing need for such capacity (Van Wyk, 2015). This was largely because the work of the Planning Committee (or the now Municipal Planning Tribunal) also takes the officials delegated away from their day-to-day duties. Therefore, the CJMM MPT that sits will hopefully be able to deal with the planning applications without having to lag behind with their responsible duties. However, it was also because the local government as an institution was facing public distrust with many claims of corruption and politically-allied favouritism that the CJMM was implementing such measures that ensure not only efficiency but effectiveness as well (Van Wyk, 2015). The CJMM has also acknowledged the heavy burden SPLUMA (16: 2013) places on local government institutions not only on capacity and resources but transparency and good governance as well. The CJMM, therefore, increased the number of tribunal members and hoped that a municipal-based MPT will allow for a transparent and effective process and will aid in aligning the CJMM's planning principles with the needs of the Johannesburg citizens especially with a rotating MPT (Van Wyk, 2015).

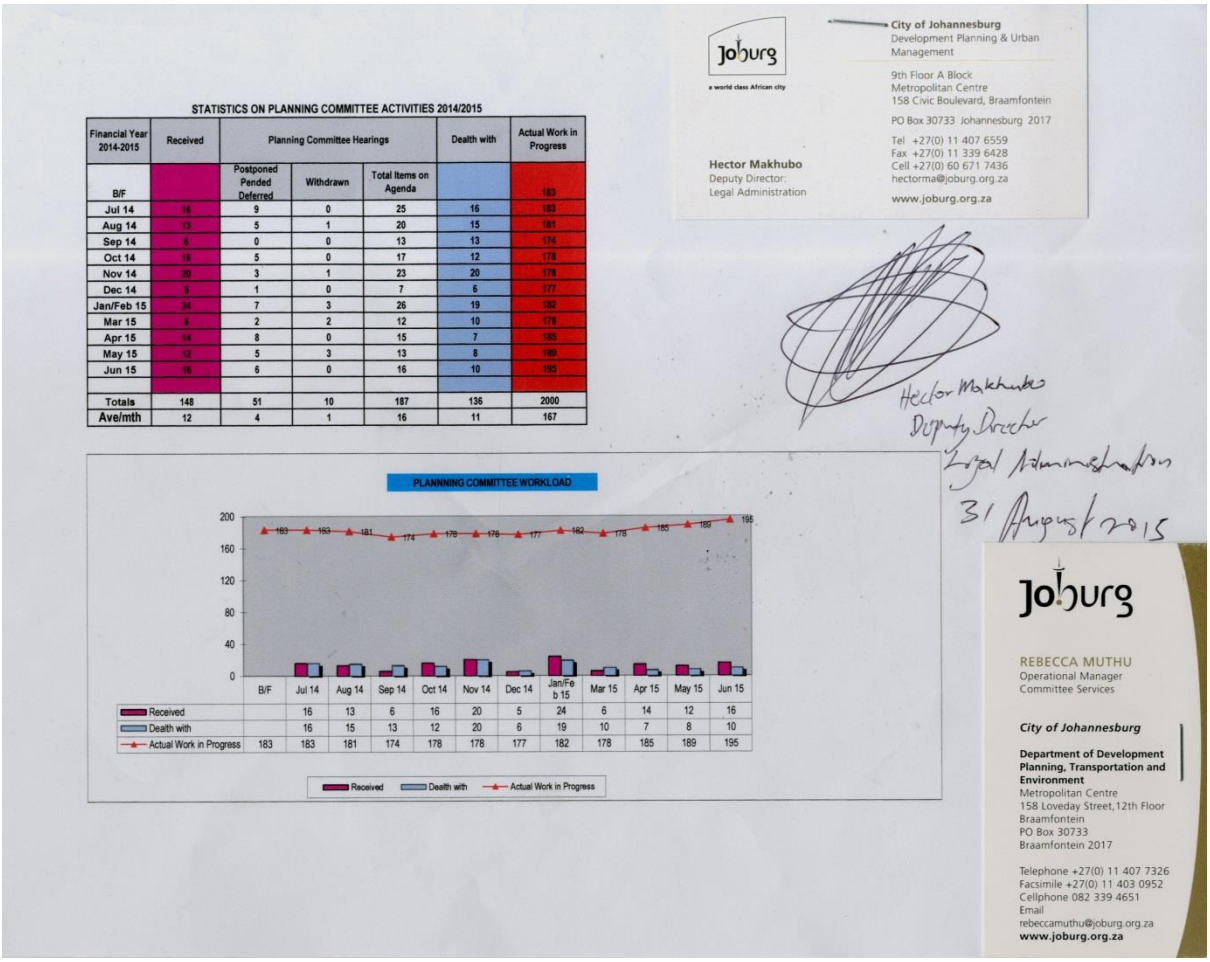
5.3.1 Transparency and Good governance: Claims of corruption, civic apathy and politics

Like any government institution, the CJMM Planning Committee has to abide by certain policies and procedures in their decision making process. In trying to further understand the operations of tribunal, it was important to look at the history behind the very tribunal that is to be implemented. However, other than attending the Planning Committee's meetings, it was also significant to review the council minutes of the Committee and understand reasons behind certain development planning application decisions. Due to certain legal and operational circumstances, only the 2014/2015 Planning Committee statistics were availed by the City of Johannesburg. While it may seem as a limitation to not being able to access the Planning Committee records (council minutes) that date further back in years, the fact that Mr Van Wyk and Mr Nkosi were able to respond to questions based on those records should be seen as a positive.

Therefore, the following statistics (See figure 1.3) were based on the City of Johannesburg Planning Committee's activities of the 2014/2015 financial year. These were personally endorsed by the CJMM Legal Administration's Deputy Director Mr Hector Makhubo through the help of the Committee's Operational Manager Ms Rebecca Muthu. In total there were 148 applications that were received, with many being lodged over the October/November (36) and January/February (24. These applications converted into 187 items for Hearing on the Planning Committee. Of the 187 items, only 136 were dealt with, 51 were deferred, pended or postponed and 10 were withdrawn. But this picture does not reflect much of what the details of the planning committee or planning tribunal are or even how they operate or engage with clients. The CJMM's Planning Committee, however, had about 2000 items that were in progress due to a number of reasons. The main reason that most of these items are a work in progress was because land developments applications were a process themselves and there is much paperwork that needed to be approved even after being granted a go ahead to develop as well as that some of the applications are in courts.

It should be noted that there number of court cases or development applications that turned into court appeals were not disclosed for other undisclosed reasons as well. Mr Nkosi (2015) was also asked about the various applications that were dealt with in courts instead of the Planning Committee. As Mr Nkosi (2015) noted, some applications were forwarded to courts because of the conflicts between communities and the applicant or also because a municipality staff was somehow involved in it as well. He also noted civic apathy on the side of the locals. He responded that generally the locals and the residents association feel and complain that the council decisions, as the Council takes the final decision after a Planning Committee Hearing, are usually unfair and seldom favour politically connected or affluent clients. The municipal officials noted that there is a wide speculation that the local government is corrupt. They stated that this is also because the multiple court cases that are from the Planning Committee exist because of the objections by affected and interested parties and also because of the rivalries between various town planning consultants.

Mr Nkosi (2015) also noted that the Planning Committee does also receive a lot of complaints pertaining to the operations of the tribunal and claims of bias or unjust practices but says that this is all based on assumptions and it is civic apathy. This has led to a negative culture among the various residents associations and town planning consultants. No evidence could be produced to support this claim as such documentation could not be disclosed by the Legal Department within the municipality.



STATISTICS ON PLANNING COMMITTEE ACTIVITIES 2014/2015

Financial Year 2014-2015	Received	Planning Committee Hearings			Dealth with	Actual Work in Progress
		Postponed Pended Deferred	Withdrawn	Total Items on Agenda		
B/F						183
Jul 14	16	9	0	25	16	183
Aug 14	13	5	1	20	15	181
Sep 14	6	0	0	13	13	174
Oct 14	16	5	0	17	12	178
Nov 14	20	3	1	23	20	178
Dec 14	5	1	0	7	6	177
Jan/Feb 15	24	7	3	26	19	182
Mar 15	6	2	2	12	10	178
Apr 15	14	8	0	15	7	185
May 15	12	5	3	13	8	189
Jun 15	16	6	0	16	10	195
Totals	148	51	10	187	136	2000
Ave/mth	12	4	1	16	11	167

Joburg
a world class African city
City of Johannesburg
Development Planning & Urban Management
9th Floor A Block
Metropolitan Centre
158 Civic Boulevard, Braamfontein
PO Box 30733 Johannesburg 2017
Tel +27(0) 11 407 6559
Fax +27(0) 11 339 6428
Cell +27(0) 60 671 7436
hectorma@joburg.org.za
www.joburg.org.za
Hector Makhubo
Deputy Director:
Legal Administration

Hector Makhubo
Deputy Director
Legal Administration
31 August 2015

Joburg
REBECCA MUTHU
Operational Manager
Committee Services
City of Johannesburg
Department of Development Planning, Transportation and Environment
Metropolitan Centre
158 Loveday Street,12th Floor
Braamfontein
PO Box 30733
Braamfontein 2017
Telephone +27(0) 11 407 7326
Facsimile +27(0) 11 403 0952
Cellphone 082 339 4651
Email
rebeccamuthu@joburg.org.za
www.joburg.org.za

Figure 1.3: City of Johannesburg Metropolitan Municipality Planning Committee Statistics for the Year 2014/2015.

As can be seen from the statistics above, certain applications (10) were withdrawn and others (51) pending. The statistics also reveal that many of the applications are still work in progress. This, according to the stats, could have meant anything. It could have meant applications were withdrawn because they did not have all the required documentation or that other methods of proceeding with the developments were sought. The people interviewed were reluctant, and others refused, to respond on why such applications were withdrawn or have been pending. Prior to SPLUMA (16: 2013) promulgation, it was understood that the norm with many applicants and affected parties was to apply for developments without motivating their applications.

The reasons for such behaviour was because many applicants had already lost trust in the capabilities of the Planning Committee and were aggravated because they felt that the Council or the recommending Planning Committee would anyway reject their application. Moreover, many other applicants who felt wronged by the Council also felt that they would not get decisions their way. The lodged complaints by members of the public would get rejected mainly because they lacked any town planning merit. The lodged complaints that were revealed by the CJMM included follow ups from approved/disapproved development applications that were decided through court orders yet the complainants feel that many of those approved were financially or politically motivated.

Therefore, as with Brazil's Balsa Familia social programme, there was a strong correlation between the lodged complaints against the CJMM Council or the Planning Committee and the multitudes of pending development planning applications. This was because some of the applications that are pending are held up by court cases with lodged complaints of financial or political motivation or a certain clientelistic connection somehow. Another view is that a number of applicants who were previously in the employ of the municipality are part of the many that are being taken to court due to assumed client-patron relationships with current municipal officials. The general tone of the lodged complaints either against the Council or the Planning Committee is that external applicants or consultants agree on certain terms with internal actors (planners, officials, council) to process their applications first.

This, as evident from the interview with Ms Zulu, was because the municipality has fired employees before for taking bribes and approving development applications without taking them through the Planning Committee. Another eminent issue was with the lack of staff capacity and the deployment of junior to take on senior roles. The nature of this operation has also led to some believing that applicants seldom copy and paste from previous applications because they get information of already submitted applications from the municipal officials or town planning counterparts (Boyce, 2015). Some of the complaints are also based on the fact there are certain relationships within and among consultants and junior planners that are in the employ of the municipality. These junior planners have often leaked information to fellow planning colleagues at tertiary institutions (3rd Year National Diploma/Final Year B.Sc. students) in their personal capacity.

This was one of the reasons why many believe that the municipal officials are care free about their work and that they often trust their juniors to do the job, thereby resulting in undesired outcomes. Moreover, it was also believed that internal planners cooperate with external consultants in return for money and other things. The clientelistic sequence would be: Client – Internal Planning Recommendation – Favourable/Recommended Positive situation – Internal/External Planner follow-up – Hearing (Planning Committee) – Favourable date and Committee – Favourable decision-making/recommendation – Approval and development go ahead.

It is believed that these kinds of relations or clientelistic relationships drive the corruption in local government and thereby renders the Council and its Planning Committee non-transparent. It was understood, from Mr Van Wyk and Mr Nkosi's responses, that there are already concerns about the power and authority that the SPLUMA (16: 2013) MPT will have because of the lack of experience in daily operations of the Planning Committee and speculations of corruption.

5.3.2 The Planning Committee and its Operations

The main task at hand was to explore the implications of the SPLUMA (16: 2013) Municipal Planning Tribunal' decision-making processes on land development applications within the City of Johannesburg Metropolitan Municipality. In order to understand and explore such a significant institution's decision-making processes, it was important to understand how the CJMM Municipal Planning Tribunal is going to be implemented. As part of this process, the City of Johannesburg Metropolitan Municipality's current Planning Committee was observed and assessed. A certain number of its panel members were chosen to be interviewed on the specifics of the SPLUMA (16: 2013) Municipal Planning Tribunal. The following tasks were at hand:

- Observing and assessing the Planning Committee, its structure and how it is operating.
- Understand how the CJMM is going to implement its own Municipal Planning Tribunal and how that the transition from a Planning Committee to a Tribunal will be implemented
- Understand the CJMM employees' (panel members) understanding of the role of the Municipal Planning Tribunal as well the significance, if any, of the location of such an institution.
- Assess and understand the panel members' views around corruption, clientelism and patrimonialism and the linkages between officials, politicians and communities.

- Assess the panel's ideas about ensuring transparency, independence and accountability within the Planning Committee or the incumbent Municipal Planning Tribunal as well ways in which external influences could be minimised.
- Lastly, it was significant understand how the Appeal Tribunal is going to be set up as well as comments on the exclusion of the political leadership by the SPLUMA (16: 2013).

In order to get a holistic sense around the CJMM's preparations for the SPLUMA (16: 2013) MPT, here the reader is presented with the aggregated responses of the questions posed to the current members of the CJMM Planning Committee. However, the information presented here is not diluted but a rigour analysis of the CJMM's plans regarding the adoption and implementation of a SPLUMA (16: 2013) Tribunal.

The CJMM Planning committee is a 30-member panel that is comprised of five (5) legal advisors as chairpersons as well as 20 members from various departments and professions as development planning, environment, building, traffic and engineering services.

The planning committee members are: Titus Boyce (Manager: Legal Administration, Town Planner); Marie De Beer (Assistant Director: City Transformation, Town Planner); Matimba Ratau (Manager: Environment, Environmentalist); Bheki Sithole (Town Planner: City Transformation, Town Planner); Emely Zulu (Manager: Legal) and Marcy Sekobo (Planning Committee Services, Legal Administrator).

It is important to also note that the SPLUMA (16: 2013) Municipal Planning Tribunal was promulgated along with the Act (16: 2013) on the 1st of July 2015. This is an important factor in reading and understanding the data collected and analysed here. It is now possible to report on the findings of the data collected from the interviews.

From the interviews or in dealing with the CJMM employees, it was found that they are generally aware of such a SPLUMA (16: 2013) Municipal Planning Tribunal yet the study reveals that they do not possess in depth knowledge about how such an institution is supposed to be set up and by whom. When charged with the question about the transition from a Planning Committee to a Municipal Planning Tribunal, the results show that the panel members do not see a change in operations or the set-up of such a Tribunal as envisaged by SPLUMA (16: 2013).

"It is not going to change a lot. We will still have the same members of the Planning Committee sitting on the Municipal Planning Tribunal and the Appeal Tribunal decisions will be taken by the MMC (Development Planning) and the Executive Director."– Titus Boyce (2015)

The panel members, as the study reflects, were concerned about the experience of whoever is going to be on the Tribunal and, as such, believe that the current Planning Committee is going to be the CJMM Municipal Planning Tribunal. In comparison to the Planning Committee, the study reflects that the panel members feel that the Municipal Planning Tribunal has a much greater role to play than the current Planning Committee. The panel members felt that as part of the Municipal Planning Tribunal they will have to do more tasks and also report to the Appeal Tribunal in certain instances. They felt that the Appeal Tribunal will be the senior members of the municipality of whom do not have the required technical experience or if they have, there are only a few that are available to undertake such duties of an Appeal Tribunal. This is better reflected by the statement below:

"The locational factor can be seen as both positive and negative. This is because we have everybody in one place for efficiency and effectiveness sake but that could also mean that the members of the Tribunal will almost always be privy to internal operations of various departments. Although, on the front of it, the location of the Tribunal does not matter, we have capacity problems in this municipality. I can tell you that we need to have 6 ADs (Assistant Directors) but there is only me. We do not have staff and the guys we have are juniors who lack the prerequisite experience for such activities. " - Marie De Beer (2015)

The study showed that the panel members feel better about having a Municipal Planning Tribunal and that it is located in local government. *"It is a positive one for the municipality, as the Tribunal will no longer go against the CJMM's planning procedures anymore."* – Matimba Ratau (2015).

From the question posed about the impact of the Municipal Planning Tribunal geographical location, it can be seen that the panel members did not see any general significance or impact but instead some see it as a positive one for the municipality. Some of these responses followed logically from the fact that the DFA Tribunal, as discussed in the background section of this study, has contradicted the CJMM development planning criteria in undertaking certain decisions. Significantly so, the study also revealed that the panel members feel the same way about that DFA Tribunal as they do about the Townships Board (a statutory planning board created in terms of the Town-planning and Townships Ordinance No. 15 of 1986).

From working with the panel members, it was found that in previous years the Townships Board would take decisions that overlooked the CJMM's planning policies and approve of applications that would normally be disapproved by the local government. It was found, from the interviews, that the employees felt having their own Tribunal would aid such kind of matters.

When charged with the question on allegations of corruption in local government and the possible impact on the Tribunal, the study shows the panel members as not being worried. The study showed that the panel members feel that corruption is everywhere and believe that the laws and codes of conduct are in place to deal with any corruption issues.

"With the right checks and balances in terms of how decisions are made and institutional arrangements informed by SPLUMA (16: 2013), corruption will not be an issue" – Bheki Sithole(2015).

From the study, we learnt that there have been instances where people have been fired for corrupt and non-procedural behaviour. It was also seen that certain favours are exchanged but cannot be proven and therefore, there is a general tone that corruption is everywhere and not simply in local government alone. Of most significance to this data collection for the study was finding out how the SPLUMA (16: 2013) Tribunal can be transparent, independent and accountable in the midst of clientelism and patrimonialism in local government. The questions posed included finding out how the structure of the Appeal Tribunal is to be set out, if people can influence the Tribunal and comments on the politicians feeling excluded from the Tribunal by SPLUMA (16: 2013).

The study revealed that most of the panel members did not know or were yet to be briefed on who is to sit on the Appeal Tribunal yet they have an understanding of the requirements of such a body. While it may not link directly to patrimonialism, the study revealed that the panel members were concerned about capabilities of such chosen members of the municipality because they would make decisions that do not have the proper merits as they do not have an idea of the day-to-day work that underlines such development planning decisions. The study further pointed out to the fact that the panel members are worried about potential influences and corruption if decisions are to be made at a senior level and the work being done at the lower level, leading to a Planning Committee and Townships Board kind of Situation.

On transparency, Independence and accountability, it is learnt from the study that some of the panel members feel that there are procedures in place to take full control of any misconducts while some feel that those very measures have been in

place for a while and yet corruption happens. It was also important to note that when charged with the questions around politicians feeling excluded from the Tribunal, by SPLUMA (16: 2013) the study respondents felt that the politicians could be easily influenced to make biased decisions, that politicians cannot take sides as they are elected by the community but represent the municipality as well and also that the politicians do not have the required town planning knowledge or experience to be able to make those key decisions. The City of Johannesburg Metropolitan Municipality has applied to have a CJMM employee-only Tribunal to their MMC of Development Planning in this regard.

"They deter the image of society and, if it was not for them, we would probably still have a functional DFA Tribunal, one that does not do its own thing or take bribes and approve of things that we disapprove of. I think politicians love too much money. We have filed a report with our MMC to have that sorted out. We would like to be our own Tribunal, only comprised of persons in the employ of the municipality and nobody else.

This is because external persons can be influenced and can also advance their own interests." - Marie De Beer (2015)

However, while the panel responded to the questions posed to them, it should be noted that some of them were reluctant to respond to the questions on corruption, clientelism and patrimonialism after being explained what clientelism and patrimonialism are. It can be attained from the study that there have been numerous cases of employees being fired from work for taking bribes and some of them were linked to politicians. This, however, was blamed more to the hierarchy within the municipality and how many of the low level workers aspire to reach senior positions and therefore will stop at nothing to get promoted. It was also learnt from the study that the panel members felt there was pressure to be corrupt at the local level because of the local interests. The study revealed that the panel members were all concerned if the municipality can handle the duties of the Tribunal because they felt they were already stretched with their current Planning Committee duties adding onto their day-to-day activities.

5.4 Conclusions

SPLUMA (16: 2013) is a fairly new legislature, and it was only promulgated on the 1st of July 2015. On the implementation of such an institution, the study revealed that the City of Johannesburg Metropolitan Municipality would slowly implement it and, as such, the municipality has some issues to overcome in the process.

The National Treasury Report (2013) and the Ratings Afrika Municipal Financial Stability Index (2012) cited the contradiction of the Municipal Finance Management Act (56: 2003), the lack of skills and lack of management experience as factors that affect and threaten the financial strength of local government. Therefore, the general governance and operation would be affected as well. While analysis of the latest Treasury Report (2013) may show that the CJMM as a well capacitated municipality, the study revealed that the City of Johannesburg Metropolitan Municipality has a capacity problem.

This meant that implementing institutions such as the SPLUMA (16: 2013) Municipal Planning Tribunal overburdens the already thinly capacitated municipality.

On assessing the CJMM Planning Committee, the study showed that the respondents felt that they were already short staffed and that the experience required by the SPLUMA (16: 2013) Municipal Planning Tribunal and its Appeal Tribunal might eventually be an issue as they currently lack senior members of staff in their own departments and that they lagging behind with departmental work when attending the Committee meetings. This was seen as a huge factor toward determining or achieving efficiency, effectiveness and good governance in local government.

In comparison to the Balsa La Familia program, the interviews with the CJMM Planning Committee have revealed the thin line between clientelism, patrimonialism and corruption. This was because they do not offer social programs or projects to communities in return for votes but as in the Balsa La Familia. From the interviews, the members of the Planning Committee attested to having had cases of corrupt behaviour yet those were the only few to have been investigated and actually dealt with. Many other cases remain a rumour and speculation without tangible evidence. A significant point noted is that the CJMM' administrative employees do not get direct orders from their political leadership instead they get a to-do list of items through the municipal manager's 'score card'.

In Brazil politicians were at the forefront of implementing local community programs, in the CJMM the task is given to Municipal Owned Entities (MOEs) with the aid of all the municipal departments. What the politicians have then is a claim of having fought for such developments or improvements than being seen doing so. This has, some way or another, been seen as a way to cut ties between patrons and their clients. However, the study also revealed to a certain extent that the City Manager's score card could be a politically influenced decision that is enforced and that the lower level employees are bound to do the items on such a list as urgent as

possible. This could mean more politically influenced decisions could occur in development applications as well.

In essence, the implications of implementing a SPLUMA (16: 2013) Tribunal and Appeal Tribunal for the City of Johannesburg Metropolitan Municipality were mainly on the capacity of the required officials to sit on those Tribunals as well as the measures to promote independent and transparent decision-making that is accountable and ensures good governance within the municipality. The task implied here was not to have the same issues as had with the DFA-led Tribunal or the Townships Board but to have enough capacity to implement such a SPLUMA (16: 2013) Tribunal without negatively affecting the operations and governing of the local municipality.

6 CHAPTER SIX: DISCUSSION, CONCLUSIONS AND RECOMMENDATIONS

6.1 Introduction

This chapter provides the research report's discussion, recommendation and conclusions. The chapter indicates where and how the research objectives have been met. The results of the findings are discussed here hence the research question is answered. All the methodological and theoretical issues or problems associated with the research will also be indicated here.

6.2 Research Purpose

The research report purpose explores the implications of the SPLUMA Municipal Planning Tribunal. The focus was on the workings and/or operations of a tribunal in local government. The study, therefore, utilised the City of Johannesburg Metropolitan Municipality's Planning Committee to gauge that. The study sought to explore how the SPLUMA (16: 2013) Municipal Planning Tribunal will be set up and implemented. In exploring these, the focus of the study was on locational factors (in terms of the actual locational relationship between the Tribunal institution and the municipality); it was on implementation of the tribunal institution; it was on the aspect of power (and interest) and the politicisation of issues as well as; issues on the relationship between the Tribunal and the municipal council (autonomy, independence, and politicisation of issues).

6.3 Methods and Procedures

The research was first and foremost qualitative because of the exploratory nature of it. The exploratory nature of the research was because at the writing of this report SPLUMA (16: 2013) had been enacted but was yet to be implemented to operate. Through the qualitative methodology, here the reader is able to explore the innate experiences of the people interviewed. However, the context of the research is also significant. The study also utilised the case study method. This has allowed the research to be in context and has allowed for use of varied data sources. The case study is of the City of Johannesburg Metropolitan Municipality in the City of Johannesburg. Within the case study method, the study finds a historical approach in order to explore the history and organisational culture of the local government in question. Through the historical approach the author was able to examine and communicate past events as they relate to the Tribunal in question. Content analysis was also used to observe and learn about discourse through the material perused. Through content analysis, various documents allowed for a holistic analytical approach to the research.

As a critical method of research, interviews provided the solid research data that speaks to the documents analysed as well as that recaptures the lived experience of the Tribunal, Township board and Planning Committee members of the City of Johannesburg Metropolitan Municipality. Therefore, the interviews provided the much needed perspectives and opinions that underpin the above mentioned observatory techniques. The selection method or technique used in the study was snowballing. This is because the people interviewed were not all known from the beginning and thus the research worked through a referral system.

6.3.1 Data analysis

Constant comparative analysis was used to analyse the information retrieved. In order to make sense of data, comparative analysis uses previous accounts of a certain Tribunal that existed (the DFA-led Tribunal in this instance was used) to see similar or varied trajectories and benchmarking. Through this method, the author was able to use the DFA-led Tribunal, the Townships Board and the Balsa La Familia program to capture and understand the implications of adopting and implementing a Tribunal at local government level. Lastly, phenomenological approaches are that individual case experiences bring about the different understanding and meaning of a tribunal from all the various perspectives presented.

6.4 Major Findings

The research's main focus was on the adoption, implementation and operation of a SPLUMA (16: 2013) MPT/Tribunal at the local level of government, the City of Johannesburg Metropolitan Municipality. The following is an account of the main findings in this discourse report.

6.4.1 Background

The CJMM is a local government structure in terms of the Municipal Systems Act (32: 2000) and is authorised by the Ordinance (15: 1986) to determine land rezoning and township establishment applications within its municipal boundaries. However, the DFA (67: 1995) Tribunal, from 1997 onward, decided on such applications as the CJMM within the CJMM boundaries. In doing so, it contradicted the CJMM planning instruments and, after being taken to the Constitutional Court to clarify legislative authorities, the DFA-led Tribunal was disbanded. This has led to the introduction of a new SPLUMA (16: 2013) Tribunal at the local level of government. This Tribunal was entrusted with the same tasks as the provincial-based DFA Tribunal. The issues regarding this change have led to the need to explore the implications of a SPLUMA (16: 2013) Tribunal.

6.4.2 Findings

As a precursor to the SPLUMA (16: 2013) Tribunal, the CJMM had a Planning Committee. This was the committee that hears matters regarding development and makes recommendations to the municipal council for final decision making. The Planning Committee has long existed and many a municipality has always been dealing with its development planning applications through such a committee. The CJMM had also started implementing its own tribunal.

First and foremost, the CJMM was, at the time, transitioning between a Planning Committee and a Tribunal. The current tribunal is made up of the same structure as the CJMM's Planning Committee. The tribunal is made of 5 members, 3 of which can form a quorum, who are chosen from a pool of 30 officials in the employ of the municipality. According to SPLUMA (16: 2013) s6, a MPT should also include non-officials who have experience and knowledge. However, the CJMM has an all-official member in its tribunal. From the findings, it was understood the CJMM is yet to have any external people with experience that have shown interest to be part of the tribunal.

One member of the current Planning Committee also stated that they would not be able to appoint ex-officials as it would be seen as unjust because they were once employees of the CJMM. Furthermore, he stated that many of the ex-officials now have practices and therefore there is a conflict of interest with appointing such personnel. Another reason for not appointing non-officials to the tribunal was for financial reasons. The CJMM found it more effective and efficient to utilise its employees than pay someone new. Despite all this, the CJMM has followed protocol in implementing its tribunal. This is because they have a 5-member panel with all the prerequisite experience and knowledge.

One of the major factors in implementing the SPLUMA (16: 2013) Tribunal for the CJMM was capacity. This was noted from the interviews, with almost all of the Planning Committee members stressing that there is great need for capacity. There were plans to increase the 30-man official list to 50 in order to reduce the impact such a tribunal has on the employees' daily activities. Being part of the tribunal takes one away from their duties and as such, the panel members felt that they are lagging behind with the work. This was seen as a problem. Moreover, the CJMM had reported to a lack of senior and more experienced personnel to head departments and ultimately sit on the tribunal because the majority of their stuff is made of junior staff. It was also found that the workload that the tribunal brings with may cause capacity and time lag response issues.

In the quest to be more transparent and for good governance, the CJMM intended to continue operating on a rotating tribunal. That is, not have the same people presiding over the tribunal at all times but rather different. From the findings, it was also understood that the burden on capacity, resources, governance and transparency that SPLUMA (16: 2013) places on local government will be mitigated through not only rotating members of the tribunal but working together with the senior-most employees of the CJMM as well as following procedures.

On transparency and claims of corruption, it was understood that there are measures in place to deal with any non-procedural behaviour. However, it was also understood from the interviews that the CJMM employees acknowledge instances of corrupt that has been dealt with where culprits have been penalised, suspended and even fired at times. The findings also revealed that issues and concerns of corruption do exists and that the CJMM is continually faced with claims that they cannot be proven and deals made with no tangible evidence to link the perpetrators. There was a clear stance among those interviewed that corruption is only corruption if it can be proven and that the wide speculations that are out about local government cannot proven to be true. Furthermore, they stated that there are procedures in place and code of conducts for everybody in the work place coupled with harsh penalties.

It was found that there are court cases (which could not be disclosed) that are pending and some of which had just been initiated that involve officials in the employ of the municipality as well as private planning consultants. These cases, it was found, are part of them many pending development applications that are believed to have some fraudulent matters involved or have been approved without going through the tribunal. This was a concern that many of the interviewed members of the Planning Committee have vocalised when it comes to having the CJMM Tribunal being comprised of external people.

On the wide spread allegations of local government corruption, it was found out that there is civic apathy and that cannot be directed as a legal court case. The findings also skewed toward a general distrust between resident associations and the municipality because of the history between the two. The CJMM was believed to have been acting in favour of developers and approving of developments that do not benefit the residents. Therefore, beyond the court cases that are pending, there was multiple development planning applications that were also pending and have been halted due to objections from the affected parties, including the residents association.

The CJMM Planning Committee also reported on the exclusion of political representatives on the tribunal. It was found that the chairman of the tribunal has filed a report asking to set up a tribunal that has no politicians in it. This was because, as found from the interviews, politicians are believed to lack to lack the prerequisite experience and knowledge about development planning. It was also found that politicians will try to influence decisions in their own without considering the merits of each application. It was also reported that politicians will be most susceptible to corruption because of the voting constituency that comes with public interaction.

On the general implementation of the tribunal, the panel members of the Planning Committee felt that it brought no change to the current set up of how the committee is set up or operates. They also stated that much will remain the same as the committee until such a point they are able to fully implement all the requirements by SPLUMA (16: 2013). The findings also showed a positive response about having a municipal-located tribunal because of the effectiveness and efficiency but as well as no conflict of interest or decisions. This was also based on the experience of some of the panel members who were either in the Townships Board or the DFA-led Tribunal.

In summation, the findings showed a positive response from the interviewed panel members of the Planning Committee when it concerns the tribunal. However, a few issues remained intact. The findings revealed a concern about capacity, knowledge and experience within the work force of the municipality and thus for the tribunal as well. As a measure to prevent political interference, the findings revealed that the CJMM committee has preferred to not have any politicians sit on the tribunal. On independence, transparency and good governance, the findings revealed that there were measures in place in the form of code of conducts and other working legislatures as well as that the tribunal will be a rotating one with multiple personnel utilised to sit on the tribunal. Beyond that, applicants for development are only notified on the day of the tribunal/Planning Committee hearing about the members who sit on it.

While being short staffed is an issue, the findings also revealed then need to increase the number of people selected to sit on the Tribunal in order to mitigate the effects on daily work or activities of all the employees and for greater efficiency of the municipality. It remains a grey matter when it comes to corruption claims, pending development applications or court cases that are linked to either municipal employees or politicians.

6.5 Discussion and Conclusions

This section provides assessment of the results and their meaning by evaluation and interpretation. The section refers to the objectives and questions as outlined in Chapter 1 and respond to them using the results obtained in the study. While the findings may have been detailed already and interpretation given, it is also important to understand, point to point, how such questions have been responded to and how, if so. Therefore, the section cited several studies, including the case studies, to compare and contrast with the findings.

How will municipalities (the City of Johannesburg Metropolitan Municipality) implement the adoption of the SPLUMA (16: 2013) Tribunal?

As found from the results, the City of Johannesburg intends to use the current set up of their own Development Planning Committee as a transitional tribunal. This will consist of a 30-member officials-list. A number of 5 members will be selected from this list to attend to and hear a tribunal. The CJMM intends to utilise the same staff as used on the committee.

In what way will the locational factors (i.e. the geographical relationship between the municipality and the tribunal) affect or not affect the tribunal?

From the findings, it has been noted that the location of the tribunal will not adversely affect its decision on development applications or be impacted anyhow. As seen from the literature, the DFA-led tribunal made decisions that were not in accordance with the local government. However, the location of the tribunal, in terms of SPLUMA (16: 2013), was seen here as not a factor or threat of any kind. In fact, the findings revealed a positive response toward having a locally based tribunal. This was because it was believed that the tribunal would not contradict the planning criteria and would adhere to the development plans of the CJMM.

In what way will the effect or possibility of clientelism in government and the tribunal be alleviated?

From the findings, it was understood that the CJMM intends to operate on a rotating tribunal and that no applicant will get knowledge of the tribunal that will hear their application until the day of their tribunal hearing. Secondly, it was also understood that there are legislations and procedures in place. This was evident from cited court cases that are pending due to fraudulent and corrupt activities, as found from the results.

In what way will municipalities monitor and evaluate the Tribunal?

While the results (findings) did not clearly state how will the tribunal be monitored and evaluated, it was important to note that the findings revealed that a tribunal is a state mechanism that is controlled and legislated by the government laws and institutional procedures. The findings also revealed that there are measures in place to ensure that only qualified and experienced people sit on the tribunal. It was also clear from the findings that the link between patrimonialism and clientelism is a thin line that cannot be interrogated if it is based on wide spread allegations.

In what way will the tribunal be guaranteed autonomy and independence from the municipal council or any other outside influence?

There was no clear response retrieved from the findings about guaranteeing autonomy and independence of the tribunal. The findings revealed that the tribunal will be operating with a better understanding of the municipality's development planning criteria and thus its decisions will not conflict or contradict that of the internal planning departments. This suggests that the municipal planning tribunal will be more in tandem with internal planning instruments or departments. With regard to the influence from the outside or municipal, the findings showed that the current panel members of the planning committee prefer to not have any outside influence. However, the findings also revealed a great concern by the panel members with the knowledge that the council is to be the appeal tribunal. Therefore, this suggests that the tribunal is not an autonomous and independent body because it is subjected to internal town planning criteria and operations as well as the municipal council's decisions.

How will the issue of politicisation be dealt with? (Potential politics to impede or intervene)

It was very clear from the findings that politicians will not form part of the municipal planning tribunal or the appeal tribunal. Beyond that, the current chairperson of the CJMM Planning Committee has also filed a report requesting to not have any politicians (councillors or any other) sit on the tribunal. However, the politicisation of issues remains an issue. The findings showed that there is a lot of pressure being placed on the municipal administrative staff by the Municipal Manager or the Executive Directors. This was believed, as shown from the findings, to be a sort of 'score card' by the political leadership to the City Managers. This, in one way or another, should be seen as some sort of political influence.

In contrast to the Balsa La Familiar cited in Chapter 2, the political influence and intervention within the municipality was fostered through administrative tasks and other daily activities. Secondly, the politicians on the ground have no access or influence to the actual approval and implementation of development applications. However, the senior political leadership has a say somehow on the operations of the municipality and thus on the municipal tribunal or the planning committee. The research report has largely relied on information on and from the old DFA-led Tribunal, the experience of some previous members of the Townships Board as well as on the current Planning Committee. The Brazilian case study was used here to reflect on the potential politics to impede on matters and operations of a tribunal and the case study has proven otherwise due to the lack of direct involvement by the politicians that are linked with the City of Johannesburg Metropolitan Municipality.

The literature on governance stated that no single entity controls the government but that the bureaucracy is controlled by the president, the cabinet, the law and the communities as well. In the context of local government, the CJMM in specific, the municipality was in the hands of both the administrative and political leadership. The latter is elected, is in the driving seat and has control over the operations of the municipality. The former comprises of appointed officials who operate the municipality.

These officials act on behalf of the public and the municipality's interest, bearing in mind that there are political mandates in hindsight that influence ways in which the municipality goes about its business. It was evident from the research that the tribunal is an important institution in terms of driving development within the municipality and, as such, it was susceptible to influences from the private sector, the communities and the municipality, be it in the form of work politics or otherwise. Therefore, one of the generalisations to be made here was that the tribunal will definitely be influenced by the political senior heads within the municipality through the appeal tribunal and this could prove detrimental for the municipality's ratings on good governance and transparency.

Secondly, it was very clear that the administrative leadership of the municipality is doing all it can to exclude the political representatives yet they cannot get rid of the mayors and all other patrimonial linkages between the senior administrative staff and the political appointees due to the structure of government in South Africa. Lastly, and most significant, the tribunal will be implemented in stages and such incremental arrangements include utilising the current CJMM Planning Committee as the tribunal and slowly implementing all the other requirements as envisioned by SPLUMA (16: 2013).

This has required the CJMM to increase capacity, rotate the members of the Planning Committee and seek for more experienced and qualified personnel to implement such a tribunal.

The Spatial Planning and Land Use Management Act (16: 2013) was a new development planning legislature at the time of writing this research and would be implemented in all of the local governments nationwide. As such, some municipalities would be more capable than others to implement it without suffering operational or functional setbacks.

6.6 Recommendations

Since SPLUMA (16: 2013) is newly in operation, there is a need to grasp and understand the SPLUMA (16: 2013) Tribunal when it is in operation and the changes it brings to local government going forth. There is a need to go back and forth, compare and contrast the Tribunals, the planning committees, the Township Board, the DFA tribunals and all the other previous (before 1995) tribunals when the Tribunal has been in place for at least a certain period of time. There is a need to understand the effects and/or impacts of the implementation of the Tribunal once it has been placed into operation. There's a great discovery that lies beneath understanding the differences in municipalities, be it urban and rural or metro and local, and how they have taken the implementation of the Tribunal.

The Tribunal can be implemented in multiple forms, be it a single or joint Tribunal or use a district municipality as a Tribunal. Therefore, there is also a need to understand how in such instances a Tribunal will be implemented. It is also necessary to explore the politicisation of issues and the external influences by grasping an understanding of this Tribunal implementation from a private consultant or a politician's perspective. This research explored and has potential to explore more than the implementation of Municipal Planning Tribunal. Capacity and resources have always been cited as issues in the South African local government. Having to increase local government institutions, such as the introduction of a tribunal, brings with it core issues of resource and capacity. Such institutions require a set level of expertise, knowledge and experience and these are qualities many a municipality do not possess. Therefore, the mere implementation of a tribunal in under capacitated situations could prove a research friendly quest.

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8 ADDENDUM

8.1 Interview Questionnaire

Research Question

What are the implications of the SPLUMA' Municipal Planning Tribunal's decision-making processes on development planning applications?

Sub question 1: **How will the City of Johannesburg Metropolitan Municipality (CJMM) implement the adopting of the SPLUMA (16: 2013) MPT?**

In order to understand and be able to explore the implications of a SPLUMA MPT and its decision-making processes it is important to know and understand how the Tribunal will be implemented as an institution.

Interview questions:

- The transition from a Planning Committee to a Municipal Planning Tribunal is an important one, how will the CJMM adopt the SPLUMA (16: 2013) MPT?
- What do you think about the role of the MPT? How would you look at the MPT in comparison to the existing Planning Committee?
- How do you feel about having an MPT at a local government level?

Sub question 2: **In what way will the locational factors (the geographical relationship between the municipality and the Tribunal) affect or not affect the Tribunal?**

Interview questions:

- Beyond having a MPT at local government, what do you think about such an institution's locational factors, that it is located within the premises of a local government?
- There are wide spread allegations of corruption in local government, what is your view of having such an important institution (Tribunal) being located within local government?

Sub question 3: **How will the effect or possibility of clientelism in government and the Tribunal be alleviated?**

Interview questions:

- *According to Brinkerhoff & Goldsmith (2002) the term clientelism, "a complex chain of bonds between political patrons or bosses and their individual clients or followers" (p2.), it follows a problem-solving notion or logic because it is usually for those with limited access to resources and it flourishes as a power relationship in environments which are politically or economically insecure.*

  In light of the above, what do you think about clientelistic relations between the political and administrative leadership and their subservient communities through institutions like the Tribunal?

Sub question 4: **There is a link between patrimonialism and clientelism, in what way will the municipality monitor and evaluate the Tribunal?**

Interview questions:

- *Patrimony has been the subject and focus of political relations and affiliations in and between people. As such, key institutions in local government such as the Tribunal and its Appeal Tribunal preside over such developments that impact on the communities and its operations are almost tied political terms*.

  How can the Tribunal and the Appeal Tribunal be responsible, transparent and accountable and not be subject to patron-client relationships that have existed over long periods of time in the name of patrimony?

  Given than at local level there are local interests, Do you think this may have greater pressure for corruption?

Sub question 5: **How will the Tribunal be guaranteed autonomy and independence from the municipal council or any other external influence?**

Interview questions:

- Who is going to sit on the Appeal Tribunal?
- How are you going to ensure transparency, independence and autonomy of the MPT? Steps and procedures to be taken.
- In your view, are people able to influence institutions such as Tribunals in advancing their own interests or developments?

- In your view, how would you have implemented such a Tribunal? Where would it be located? Who would it constitute? Why? NB: Dependent on response.

Sub question 6: **How will the issue of politicisation be dealt with?**

*In democratic society, all parties are involved in the decision-making. There are certain factions of the society that feel that the SPLUMA tribunal is exclusive to the political representatives**.***

Interview questions:

- It is a known ideal that political positions in government have their own political terms of office and are tied to voting constituencies. What do you think about the influence of politicians or potential politics to impede and intervene in matters of the Tribunal?
- Secondly, the politicians feel that they are excluded by the SPLUMA (16:2013) legislature to not form part of the Tribunals. This, the political leadership says, is unjust because they are the elected representatives of their communities and, as such, should be a part of the Tribunal.
  What is your view on this statement?