

The Performance of South African public entities is a barometer for constitutional democracy – P.M. Buthelezi MSc. MCRP, Prof. Dr. J. Bossert

Abstract

The dawn of constitutional democracy in 1994 brought about many expectations. The majority of South Africans was expecting to see a country that has completely shut off its ugly past and open a new horizon of hope. The new horizon of hope was to be characterized by *inter alia.*, an improved service delivery culture to the general public and that the material living conditions of the citizenry will be taken to the zenith point. For example, it was never imagined that there will be energy challenges, water challenges, housing challenges and an ever increasing rate of unemployment. Whilst the expectations' coefficient curve took an upward trend little was ever mentioned that the demands of the South African public exceed the affordability levels and institutional capacity of the state.

The inability of the state to meet and exceed all the expectations seems to be an obstacle in strengthening constitutional democracy. In order to strengthen constitutional democracy, South Africa needs to invest in and rely on its public institutions / entities. The argument is that public entities are the main vehicles propelling the state's performance. In other words, South Africa has to do the following: evaluate the general performance of its public entities, utilize systems thinking as an integral part of strategic management as an enabler in strategy formulation and strategic management, improve strategic management both as a practice and discipline in the public sector institutions and finally formulate a practical business model that will add value to the performance of public entities as an enabler for sound policy formulation as well as performance.

There is no doubt that so much has been achieved since the dawn of constitutional democracy in the country. Equally, there are still areas for improvement. The argument is that public institutions / public entities are better placed to strengthen constitutional democracy and are instruments for the implementation of the National Development Plan. This argument becomes very relevant when South Africa intends addressing all major socio-economic challenges. Thus, the power to address those challenges is largely dependent on the readiness and capacity of public entities to complement the role of the state. Public entities are generally regarded as institutional instruments that encourage participatory democracy and avenues that bring the state closer to the people through their simple decision-making mechanism. Hence, it is worthwhile to continuously evaluate their existence as part of the system that supports constitutional democracy.

1. Introduction

It is often stated that the South African Constitution is one of the best in the world. What is often not asked or said is to what extent does SA Constitutional Democracy improve and enhance the wellbeing of the citizenry? According to Sibisi¹ a complete wellbeing of human beings is when their material conditions are fully met and the state of being human is in line with their aspiration to a healthy living characterized by improved standard of living. Therefore, the Constitution being the supreme law of the country is an instructive enabler that propels the state towards meeting the material living conditions of the public. Whilst there is no scholarly or common definition of the material living conditions definition, it is normally accepted that it refers to a situation whereby an individual has access to things like shelter, security, freedom of movement and the right to life. In short, these rights provide an enabling character to the Constitution.

The authors' argument is that the essence of the Constitution revolves around these fundamentals presented as the Bill of Rights and without them there can be no value in having a constitution. By its existence the constitution provides a set of rules that the State must at all cost protect and promote for the wellbeing of the public. In order to do so the State has created public entities to deliver services to the public. When services are delivered well, it will create public value that enhances citizens wellbeing. This view suggests that the South African Constitutional Democracy will be strengthened when public entities are performing well.

¹ cited in Pityana *et al.*, (1991:131)

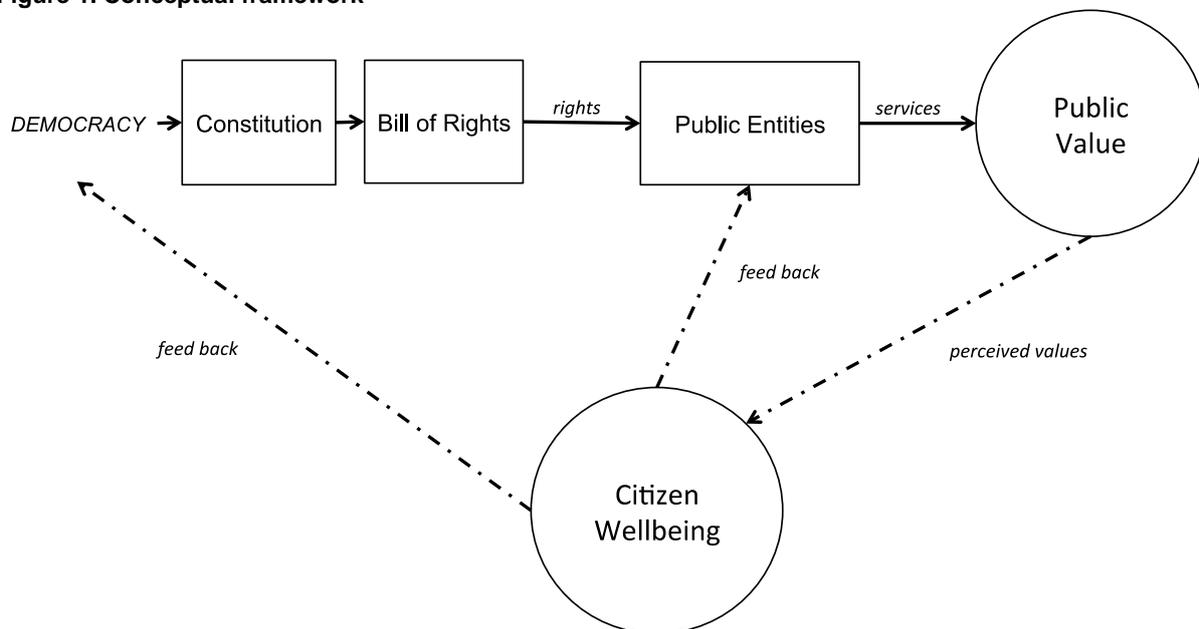
2. Concepts and theoretical notions

According to Section 1 of the Constitution the sovereign democratic state is founded on the following values (Constitution, 1996:3):

- *Human dignity, the achievement of equality and the advancement of human rights and freedoms.*
- *Non-racialism and non-sexism.*
- *Supremacy of the constitution and the rule of law.*
- *Universal adult suffrage, a national common voters roll, regular elections and multi-party system of democratic government to ensure accountability, responsiveness and openness.*

These are directly responding to the Bill of Rights as contained in the South African constitution. The Bill of Rights are as follows: equality; human dignity; life; freedom and security of the person; slavery, servitude and forced labor; privacy; freedom of religion, belief and opinion; freedom of expression; assembly, demonstration picket and petition; freedom of association; political rights; citizenship; freedom of movement and residence; freedom of trade, occupation and profession; labor relations; environment; property; housing; health care, food, water and social security; children; education; language and culture; cultural, religious and linguistic communities; access to information; just administrative action; access to courts; and arrested, detained and accused persons. From the above-mentioned values it is clear that the constitution is about people and their advancement. It would be myopic to isolate a people from their surrounding environment. Hence, the constitution connects the human existence to his / her environment. In order to give more meaning to such a Constitution's instructive enabling character, one needs to look into how public entities and citizen wellbeing are related to the Constitution. In order to understand these relations a conceptual model has been developed as it is shown in the following figure.

Figure 1. Conceptual framework



A complete human being would function better if his / her needs regardless of the order of those needs are duly met by the state and its organs. By implication, the state ought to create a facilitative environment whereby human beings are able to derive comfort and their dignity to life is realized. The Constitution then becomes a facilitative mechanism that ensures accountability to the general public. In essence the Constitution makes it obligatory that the State guarantees the realization of the Bill of Rights as enshrined in the Constitution of the Republic of South Africa. Should such rights are tempered with any member or a body

can take the State to a competent court. It illustrates that at the core of constitutional democracy is the “complete liberty of the individual” (Mogoeng, 2013:7) either as a member of collective group or as unique being that enjoys the basic rights such as the one contained in the Bill of Rights.

Generally the State meets its obligations through public entities. However, there are various ways and means the State meets its obligation. Perhaps, one needs to look into the following diagrammatic roles and responsibilities.

Figure 2. State hierarchy



The figure indicates that the State ought to continue improving and searching for solutions in meeting the material living conditions of the public. Concurrently, the public must ensure that the State does offer what it is obligated to and remains accountable both to the public and the constitution. The crux of the argument is that improving the material living conditions of the people is the lifeblood of the constitution. Thus, various spheres of the state are obliged to create public value. Public entities are a common feature throughout all spheres of government in South Africa. Like in most countries in the world, South Africa’s public entities are created by their founding legislation to accelerate effective and efficient delivery of services. Service delivery has become a buzzword, which tends to be used when the public demonstrates either a slow pace of services or lack thereof. In actual fact, this is not about service delivery protest per se, it is more about a strategic problem or challenge on how the state co-ordinates its delivery and distribution of services to the public. Primarily, it is to ensure that the Constitution is cascaded downwards in a more tangible and visible ways, such as improving the living conditions of the people.

There are two types of public entities in South Africa, namely Constitutional or Chapter 9 public entities and what can be regarded as general public entities. Irrespective of their form and content both types are to factor the meaning and implementation of the Constitution. The afore-mentioned are the only Constitutional public entities created to ensure that the South African democracy is factored throughout the organs of the State. General public entities are either established by a national legislation, provincial legislation or municipal byelaws. For the purpose of this paper, the discussion is largely premised on national public entities. The Public Finance Management Act regulates their financial and fiduciary affairs. These public entities by virtue of their existence have a duty to the State and must collaborate with the Chapter 9 Constitutional public entities in advancing the constitution. There are quite a number of them but the main essence as per Section 182 (3) must through relevant legislations and other measures assist and protect all Chapter 9 institutions. This is

a clarion call for the organs of State to co-ordinate and promotes integration as they advance the Constitutional pronouncements.

From the afore-mentioned discussion, it suggests that for the State to implement the Bill of Rights as per the enabling character of the Constitution; it has to function as a composite system of the whole part. For example, the State cannot offer security without shelter or health without a clean environment. In other words the State ought to operate in a coordinated and integrative fashion in advancing Constitutional Democracy. Therefore, any model that is being adopted must ensure that all spheres and supporting organizations such as public entities operate in unison. To argue the point further, the Chapter 9 and general public entities are mutually inclusive and connected in the advancement of democracy. They are all elements of the whole system. The best way for one to understand the inclusivity and connectivity is through a systems thinking perspective. Briefly, a systems thinking perspective is about synthesizing all separate activities into a coherent whole that provides a coordinated strategy in solving a problem (Gharajedaghi, 2006:108). The Chapter 9 institutions will be unable to affect constitutional democracy without integrating their mandates into the workings of other public entities. They ought to collaborate to advance democracy in the country. All of them ought to see each other including the State as part of the overall system that delivers a service to the people and vice versa advance.

3. The case of the Water Boards

3.1 Background

However, recent demonstrations which are incorrectly referred to as “*service delivery protests*” suggest that there is a lack of or inadequate application of systems thinking in the delivery of services to the general public. There is evidence that in certain situations Chapter 9 public entities do not proactively coordinate with the other general public entities. It does appear that it is entities like the Auditor-General that works with all the elements of the public sector system by conducting annual audits. In terms of the Public Audit Act the Auditor-General Office subjects all spheres of government and public entities to the annual audits. Although these audits are in terms of the established International / Domestic Accounting Standards by implication there are done to ensure that all the financial and internal control systems support responsible public spending that supports the State’s constitutional obligation. Thus, financial resources must be spent to improve the living conditions of the public and the Auditor-General evaluates the extent into which that is realized. There is no evidence that others do develop their national audit plans that will ensure that there is advancement of the constitution whilst carrying out their mandates. Such an omission suggests that there is a lack of or inadequate application of systems thinking which seems to be the root cause that prevents an accelerated advancement of constitutional democracy in South Africa. This compromises the importance of the Bill of Rights as a bridge to the advancement of Constitutional Democracy. This point will further be discussed in the following section 3 through a very close look of the water boards as the providers of water services to the general public. The discussion of the water boards is informed by the recent spate of protests over the provision of water services in certain municipalities. Also, for a complete wellbeing water is central towards meeting some of the material living conditions.

The adoption of the South African Constitution, which is primarily premised on the Bill of Rights, transformed the Apartheid State into being a constitutional one. The transformation of the State meant that the existence of the Government and its public entities is to advance the meaning of the constitution. Thus, the constitution becomes both the supreme law and the national strategic legal framework that will be used to monitor the State’s performance in relation to the implementation of the Constitution. As stated, the performance of the South African public entities is a barometer for constitutional democracy. The underlying interpretation is to use the constitution as the yardstick for performance and the instrument for accountability. As previously discussed, there are many general public entities offering a wide range of services amongst those is the water board. The water boards are established

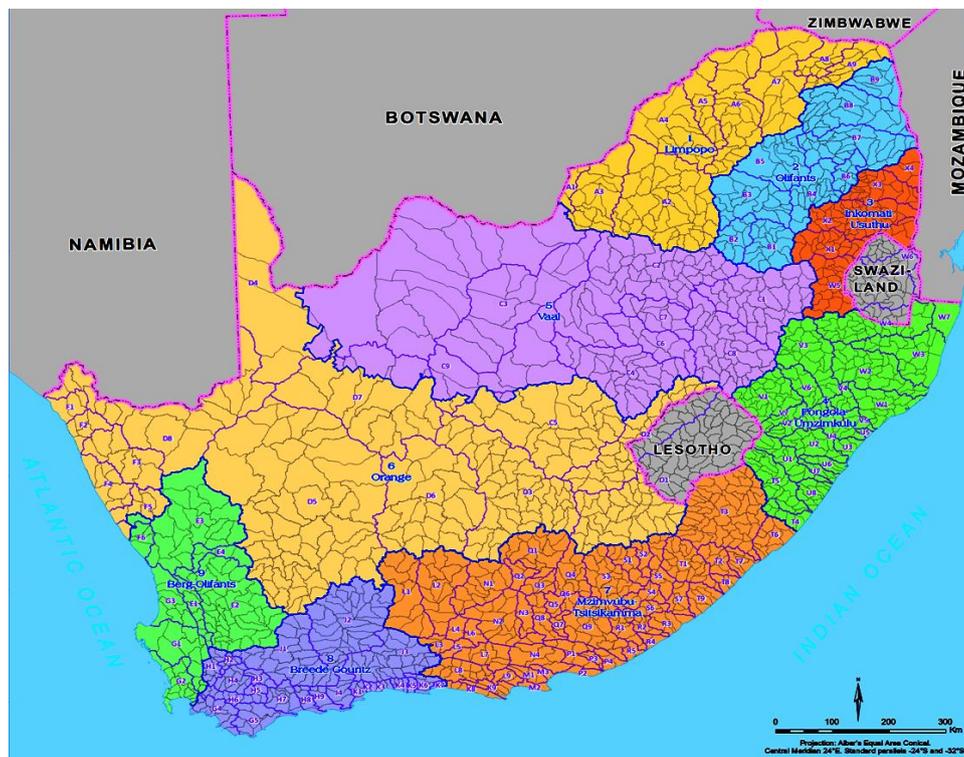
under the Water Services Act and are accountable to the Minister of Water and Sanitation. It is important to study their form and content in relation to their role as appendages of constitutional democracy.

The ever increasing spate of public dissatisfaction with the performance of municipalities insofar as water services such as the wastewater treatment works and water supplies is concerned, the Department of Water and Sanitation (DWS) had to intervene even in areas whereby municipalities provide water directly not through the water boards. One area of intervention was to reconfigure the composition of the water boards through the creation of the New Water Policy of 2014. The number was reduced from 12 to 9 as shown in figure 4.

3.2 Water Governance and management

The Department of Water and Sanitation manages and regulates the entire water sector. It provides leadership to policy development, strategy formulation and provides support to the sector. The water sector in South Africa is primarily governed by the Constitution and two pieces of water legislation under the Department of Water and Sanitation. These pieces of legislation are: the National Water Act (1998) and the Water Service Act of 1997 and “...with national strategic objectives, governance and regulatory frameworks, provides an enabling environment for effective water use and management” (DWS, 2013:1).

Figure 3: Water management areas



Source: DWS, 2014

services” (Water Services Act, 1997:7). The later operating under the approval of the water services authority provides water services directly to the consumers. In terms of the Constitution that function resides with the municipalities and should any of the designated municipalities are unable to offer the services directly the water boards can offer such a service on behalf of a municipality. There is a direct symbiotic relationship between water services and water resources. Any of the water boards abstract water resources from a designated water management area. South Africa is currently divided into nine water management areas, which are the basis for water resources availability. Figure 3 above shows all the water management areas (WMA). The water boards boundaries are defined by the demand from the municipalities and WMA boundaries are determined by the hydrological

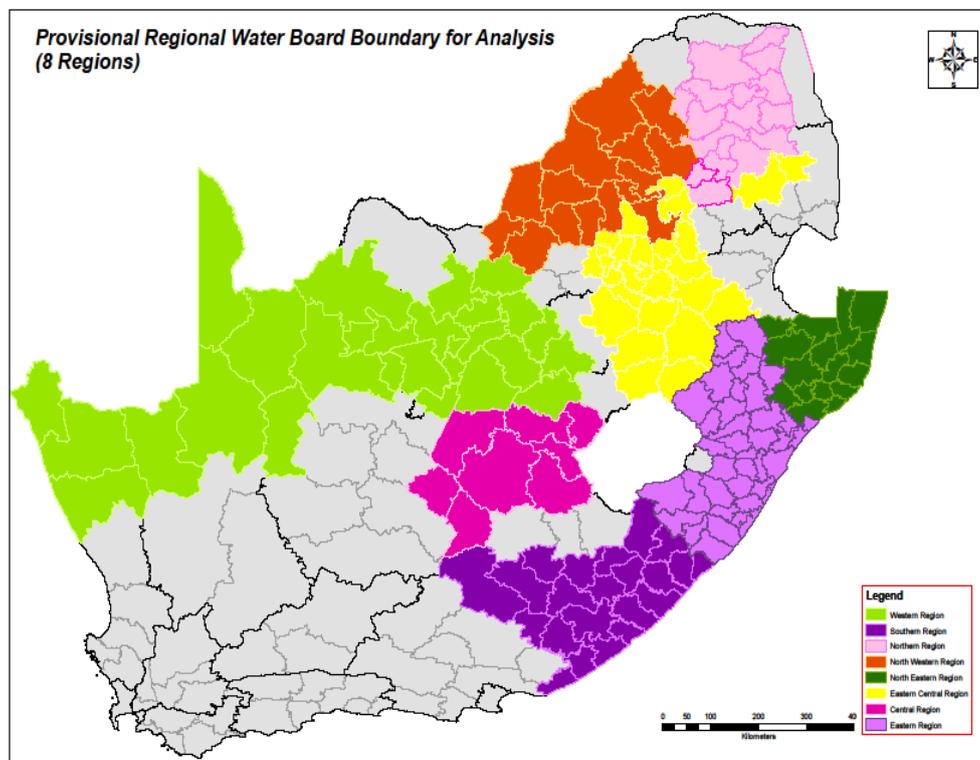
boundaries. The designation of South Africa water management along the hydrological boundaries is in line with the international norms and standards. The hydrological boundaries assist in devising water management systems that are peculiar to that water management area. Such an approach is more important to respond to issues such as the climate change effects. According to the scientific studies, the effects of climate change will vary from one water management area to the other such as having more rain in mountainous area, extreme weather patterns, temperature changes and rising sea levels. Moreover, climate change is likely to accelerate water scarcity in South Africa and if there are no mitigating factors the situation would be worse. The point is that the water management area-based approach is ideal for integrated water resources management.

Furthermore, all 264 municipalities are operating within a defined water management area. It further demonstrates that water services and water resources are interdependent. Notably, the services provided by the water boards are not necessarily confined only in one water management area. For example, the Rand Water delivers water in certain Gauteng's municipalities which are largely in the Vaal WMA and Mpumalanga Province in Inkomati-Usuthu WMA. Already it creates a perception that water is not managed as a single system.

3.3 The current scenario

The water boards are established in terms of Section 28 of the Water Services Act and their primary mandate is the provision of water services to other water services institutions within its service area. In terms of the law, water services means potable drinking water supply and sanitation services such as wastewater treatment works. It is important to understand their roles and responsibilities within the constitutional framework. In terms of the Constitution the supply of water services is an exclusive function of the municipalities and the water boards are to provide that function directly to the municipalities or directly to the end-users on behalf of the municipalities concerned.

Figure 4: Water services offered by water boards



Source, DWS (2014)

As it has been mentioned above, the water boards need to operate in alignment with the systems of the water management areas as being managed by the responsible institutions such as the catchment management agencies. The same alignment can also be extended to the municipalities. There are currently nine water boards in South Africa and they are all governed by the Boards appointed by the Minister on a periodically basis. The water boards are the: Rand Water, Umngeni Water, Mhlathuze Water, Overberg Water, Bloem Water, Sedibeng, Magalies Water and Lepelle Water. As discussed, the water boards supply water on a cost-recovery basis which in fact is the sale of water to municipalities and in the case of the Overberg Water, it also provide drinking water to the farmers as well.

There is no doubt that the creation of the water boards has supported municipalities in the provision of water services to the end-users. This has made municipalities to respond to their constitutional obligation for water provision. Equally so, the water boards being the State's appendages have made the State to comply with the Bill of Rights pronouncements insofar as water and related matters are concerned.

It is important to note that water boards provide water services to municipalities and the Department of Cooperative Governance and Traditional Affairs (Cogta) regulates all the activities of municipalities. According to DWS (2013:16) the regulation of municipalities is done by Cogta through the development of policy and legislation. Equally, DWS regulates the water boards through its own policy and legislation. The current scenario suggests that policy and legislation are strategic instruments that shape the form and content of services extended to the public. With the need to live up to the expectations of the Constitution, there is no doubt that services ought to be provided along the systems thinking perspective. For the fact that there are separate regulatory instruments over the responsible bodies creates a lack of or inadequate coordination. There has been a determination to amend both the National Water Act and Water Services Act into a single water act. However, as the situation stands at the moment for the water sector to be managed as a system requires a single policy and legislation. The disjuncture currently prevents the coordination of water management from being regulated as one system. The current separation creates an unnecessary disintegration that is further exacerbated by different regulatory instruments applied by both Cogta and DWS on water services provision. From a system theory point of view as articulated by Amaoh (2008:2), one can argue that the behavior of the municipalities has an effect on the behavior of the water boards which in turn would have an effect on the whole water systems.

4. Observations and discussion

The main essence is that water is the lifeblood for socio-economic development. It responds directly to the constitutional mandate of the State and that requires integration in terms of policy and legislation. It was further argued that the recent demonstration incorrectly referred to as "*service delivery*" protests are actually calling for a strategic intervention for a strategic problem. We therefore like to highlight the following observations and discussion:

I. Challenges

The service delivery protests seem to be taking an upward trend. As previously discussed, these service delivery protests are more to do with a strategic question on how best all the country's institutions can better co-ordinate their services to the public. There is a growing perception that the state through its public entities is unable to aggressively improve the material living conditions of the public. Such perceptions project the State as an organ that is unable to discharge its constitutional duties. Considering the content and formation of all our public entities, the state needs to invest in and rely on its public entities as engines for accelerated performance and supplement the functioning of the Chapter 9 public entities.

II. *Key issue*

What begs the question though why after so much effort there is still perceptions that the State is failing the electorate and by implication the state violates its constitutional obligation. Probably, the perception is due to the lack of co-ordination between Chapter 9 and general public entities. It does appear that the lack of co-ordination / integration is the key issue that fundamentally presents the State as failing the public. To what extent should the state craft its institutional model so that it addresses the constitutional mandate?

III. *Moving beyond*

Perhaps, the answer to the above question lies on the system thinking approach as an integral part of strategic management as an enabler to addressing service delivery perceptions. System thinking is likely to put these public entities as “*a set of elements connected together...*” (Checkland, 1981:3). Secondly, systems thinking is likely to assist all public entities to function as a composite that would further enhance the value of the constitution to all South Africans and her inhabitants.

IV. *Public entities co-operation*

In order to continually improve the material living conditions of the people there ought to be a very close interaction between all Chapter 9 public institutions and general public. Fundamentally, the nature of that co-operation should not only be based when there are dissatisfaction complaints on the overall performance of the other public entities. Instead, Chapter 9 entities such as the SA Human Rights Commission need to consider developing the basic minimum standards in relation to the water services provided by the water boards. The same applies to other public entities that are service oriented towards enhancing the constitution. For public entities to reach their ultimate objectives they need to find ways and means of co-operation.

As discussed above, co-operation of public entities is important to foster an approach that promotes integration. There are more benefits for integrating the water resources with the water services so that they work together to form a whole water system of South Africa. The current separation between water services and water resources seem to disallow the water sector to function as a system. Various studies have shown that integration does optimize overall performance and can also positively impact overall costs of delivering the services. Failure to function as a system is likely to have further and unintended consequences on the provision of water and that will negatively affect the constitutional mandate of the state. As previously discussed, public entities such as the water boards their primary role to the constitution is to improve the living material conditions of the citizenry. This role becomes critical as the country strives to promote socio-economic development. Water as a whole is in the forefront of a socio-economic development agenda both in terms of sustaining the biological requirements and growing the economy.

As the country advocates for the advancement of the constitution, policy and legislation plays a major role. Policy is often defined as a course of action that propels the visionary outcome of the statement of intent. Policy by its existence is a strategic intervention that helps organizations to overcome unforeseen obstacles. From the above discussion, it does suggest that policy review primarily by the water sector and by the other public entities is crucial in designing an institutional model that makes the sector to function as a system as well as the state and its public entities to work within the principles of systems thinking. On the other hand, policy on its own may not deliver the required outcome and therefore a legislative review should be considered firstly aligning the water sector as a whole and secondly aligning Chapter 9 and general public entities.

5. Conclusion

There is no doubt that so much has been achieved since the dawn of constitutional democracy in the country. Equally, there still areas for improvement. The argument is that all public entities are better placed to strengthen constitutional democracy and are instruments for the implementation of the National Development Plan. This argument becomes very relevant when South Africa intends addressing all major socio-economic challenges. It is the authors view point that the power to address those challenges is largely dependent on the readiness and capacity of public entities to complement the role of the state. Public entities are generally regarded as institutional instruments that encourage participatory democracy and avenues that bring the state closer to the people through their simple decision-making mechanism. Hence, it is worthwhile to continuously find innovative ways such as the systems thinking that will enhance the living material conditions of the public. Therefore, the following conclusions emerge from our observations:

- Chapter 9 and general public entities co-ordinate their activities in a more proactive manner such as adopting constitutional democracy targets and strategic objectives.
- Chapter 9 public entities devise basic standards and reporting mechanism so that they become part of their annual audits.
- Adopt systems thinking so that various programs and activities are synthesized from being separate elements into a coherent whole that responds to the constitutional imperatives.
- All public entities develop joint strategic and business plans that incorporate performance information that responds to the constitution.

There is no doubt that South Africa is not the only country in the world that has policies and laws that are supposed to be developmental in improving the wellbeing of the citizenry. Whence; a case study that looks into the other countries' modus operandi and their efforts for improving policies and legislation as strategic interventions would need to be conducted to see the value of bringing in a harmonious systems thinking approach between policy and legislation with a specific reference to the water sector. The intention of such a comparative study *inter alia* is to see how other countries such as Kenya and the Netherlands have worked on the integrated of water governance through a strategic management approach. The ultimate objective is to ensure continuous improvements that support the constitutional obligation of the state to its citizenry.

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