

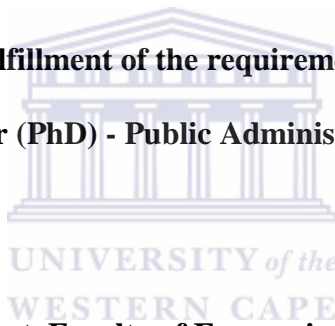
**A CRITICAL EVALUATION OF INSTITUTIONAL ARCHITECTURE FOR  
EFFECTIVE POLICY IMPLEMENTATION, OVERSIGHT AND ACCOUNTABILITY  
IN THE ENERGY SECTOR OF SOUTH AFRICA: A PETROLEUM PERSPECTIVE**

**By**

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**A thesis submitted in partial fulfillment of the requirements for the degree Philosophiae**

**Doctor (PhD) - Public Administration**



**In the School of Government, Faculty of Economic and Management Sciences,**

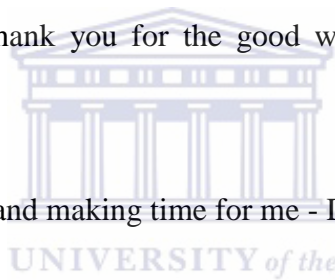
**University of the Western Cape, South Africa**

**SUPERVISOR: PROFESSOR ISIOMA UREGU ILE**

**May 2015**

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- k. To my entire family and friends, I thank you all for the support and for believing in me.



## DECLARATION

I declare that this thesis submitted for the Doctor of Philosophy degree at the School of Government, University of the Western Cape is my work and has never been submitted for any other degree at any other university.

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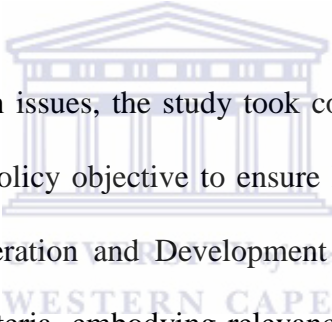
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## ABSTRACT

In an attempt to review the existing management of institutional architecture in the petroleum industry in South Africa, this research measures the effectiveness of three main issues: policy implementation, oversight and accountability with respect to transformation targeted at Historically Disadvantaged South Africans (HDSA). Despite extensive research on institutional architecture, little is known about the extent of effectiveness of policy implementation, oversight and accountability in the petroleum downstream industry, towards the attainment of HDSA transformation.



In the evaluation of the three main issues, the study took cognisance of the history and socio-political context upon which the policy objective to ensure HDSA transformation is built. The Organisation for Economic Cooperation and Development (OECD) Development Assistance Commission (DAC) evaluation criteria, embodying relevance, effectiveness, efficiency, impact and sustainability, are used to authenticate findings related to the effectiveness of policy implementation. Emerging data trends were developed and analysed wherein it was found that, even though the sub-programmes implemented towards ensuring HDSA transformation shows relevance for the specific sector they, in actual fact do not translate into HDSA transformation. When it comes to effectiveness, the researcher validated the effectiveness of sub-programme for policy implementation, through a comparison of expected versus achieved results. The finding was that at this stage policy implementation is not effective, because many sub-programmes only partially met their intended purposes. Efficiency was also assessed according to the relationship between resources and results. In this regard, lack of critical resources such as funding,

infrastructure and critical skills, impeded efficiency in the petroleum industry. With respect to impact, the researcher concluded that at this stage, the impact of policy implementation is minimal. Regarding sustainability, the researcher concludes that the sub-programmes are only sustainable if input challenges are addressed. The facilitation model: *Communication, Coordination, Collaboration, and Cooperation, (C0<sub>4</sub>); Community (C0<sub>1</sub>) Driven Development (D<sub>2</sub>) minus Historical Institutionalisation (HI) is equal to Policy Implementation Effectiveness (PIE)*, is recommended by the researcher to improve results.

Trends in compiled data were analysed with regards to legislative oversight and accountability in the petroleum industry, using the OECD/ DAC evaluation criteria. In terms of relevance, effectiveness, and efficiency, the researcher discovered a partial link between the activities performed by parliamentarians representing the petroleum industry where HDSA transformation is concerned. It was concluded that electrical energy generation and distribution throughout the five-year period drew more focus in terms of oversight than on other sectors. It was further noted that oversight and accountability could have been applied more efficiently if input were linked to policy objectives and activities. This resulted in only partial or limited HDSA transformation in the petroleum industry. When it comes to sustainability the researcher argued that despite the apparent long-term stability of parliamentary activities, such stability may not translate to sufficient oversight and accountability to ensure sustainable transformation in the petroleum industry. It was concluded that while oversight and accountability was being applied to one specific arena, other areas in need of transformation did not receive sufficient, or indeed any, legislative oversight. The facilitation model: *Communication, Coordination, Collaboration, and Cooperation, (C0<sub>4</sub>); and Community (C0<sub>1</sub>) Driven Oversight and Accountability (D<sub>1</sub>OA)* is

recommended by the researcher to improve effective oversight and accountability. Thus, Effective (A + O) = C0<sub>4</sub> + C0<sub>1</sub> / D<sub>1</sub>OA equals to (A + O)<sup>e</sup> = C<sup>2</sup>0<sup>5</sup> / D<sub>1</sub>OA.



## KEY WORDS

Accountability

Oversight

Institutional Architecture

Governance

Transformation

Historical Disadvantaged

Petroleum industry

Evaluation

Policy implementation

Policy objective



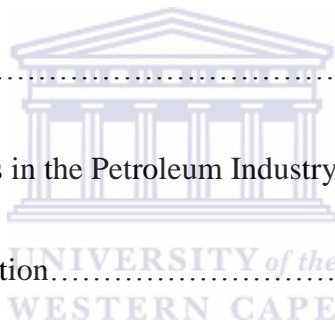
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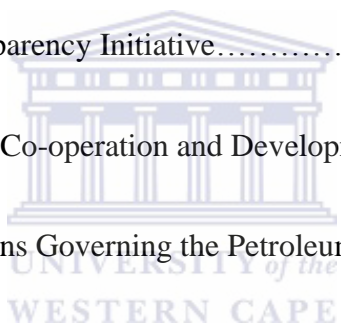
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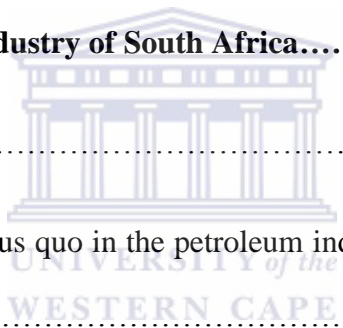




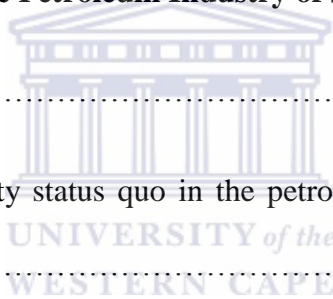
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## CLARIFICATION OF ACRONYMS

AAA	Affirmative Action Act
ANC	African National Congress
AG	Auditor General
B-BBEE	Broad-Based Black Economic Empowerment
BFP	Basic Fuel Price
CTRSA	Competition Tribunal of the Republic of South Africa
DAC	Development Assistance Commission
DMEA	Department of Mineral and Energy Affairs
DOE	Department of Energy
EITI	Extractive Industries Transparency Initiative
EPWA	Energy Policy White Paper
ESMP	Energy Security Master Plan
HDSA	Historically Disadvantaged South Africans
HDI	Historical Disadvantaged Individuals
IDPs	Integrated Development Plans
IeCs	Integrated Energy Centres



IEA	International Energy Agency
LFEC	Liquid Fuels Empowerment Charter
MPs	Parliamentarians
MSA	Main Supply Agreement
NEC	National Energy Council
NDP	National Development Plan
NEPAD	New Partnership for Africa's Development
NERSA	National Energy Regulator of South Africa
OECD	Organisation for Economic Cooperation and Development
OPEC	Organisation of the Petroleum Exporting Countries
PetroSA	Petroleum Oil and Gas Corporation of South Africa
PLFC	Petroleum Liquid Fuel Charter
PPCE	Parliamentary Portfolio Committee on Energy
PPPs	Public-Private-Partnership
RAS	Regulatory Accounting System
SADC	Southern African Development Community
SAPIA	South African Industry Association

SCOPA	Standing Committee on Public Accounts
SLPs	Social Labour Plans
SMME	Small-Medium Enterprises
SOE	State Owned Companies



## CHAPTER ONE: LANDSCAPE OF THE STUDY

### 1.1 Introduction

Transformation targeted at Historically Disadvantaged South Africans (HDSA) has been a government mandate since the dawn of democracy in 1994. In order to ensure cooperation in addressing this challenge, all government sectors and relevant stakeholders are compelled to demonstrate progress in transformation, in particular the economic empowerment of HDSAs. In this study, the researcher conducted an empirical investigation of the petroleum industry of South Africa, mainly its downstream sector, to gauge the extent to which this mandate has been achieved to date. The study is grounded on the philosophy that policy implementation, oversight and accountability, among other things, must be robust in order to ensure full realisation of the level of transformation desired. The hypothesis put forward is that in South Africa, transformation in the petroleum industry has been approached from an historical perspective, whereby the institutional paradigm existing long ago has been used as a foundation on which to build policies to address the challenges of the present. In particular, the principles governing transformation have not benefited sufficiently from the input of the target of the transformation objective, the HDSAs themselves. Consequently, policy implementation, oversight and accountability have made only a partial impact towards empowering HDSAs in the petroleum industry.

## 1.2 Background to the petroleum industry

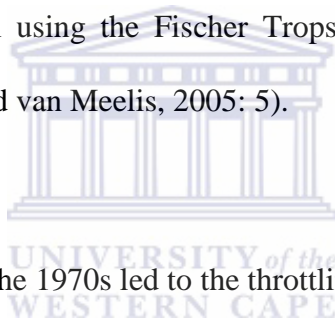
The institutional architecture of the South African petroleum industry is heavily influenced by the state of the global industry. The origins of the petroleum industry can be traced back to the 1928s, in the Scottish highlands, where three forerunners: a Dutchman, Henry Deterding, an American, Walter C. Teagle and an Englishman, Sir John Cadman, met at the Achnacarry Castle (<http://www.aljazeera.com>). These three men formed strategic partnerships specialising in oil wells exploration, transportation, refinery and distribution. From here onwards the demand for oil grew as fast as the demand for petroleum, prompting competition among companies for sources of oil. It is believed that the culture of secrecy and mistrust that characterises the petroleum industry today originates from the high stakes that existed at the dawn of the industry (<http://www.ajazeera.com>). Inevitably, the main protagonists opted to stop fighting and share information, ultimately leading to the rise of a giant cartel whose purpose was to control the world's oil supplies. During this period of agglomeration, four other companies joined the original three, and they together came to be known as the 'Seven Sisters', the biggest oil companies in the world (<http://www.aljazeera.com>; Oxford-Princeton, 2009: 24).

As the main feature of the Seven Sisters is in controlling the balance of power, they brought into being institutions to govern the petroleum industry. These are unveiled through the course of this study. A typical case is the pricing of petroleum. Until the end of the 1960s, the Seven Sisters controlled 85% of the world's oil reserves (<http://www.aljazeera.com>) and were, thus, able to dictate the price of oil, by colluding to limit world supply. Since then, their share of global supply has dwindled to a mere 10% (<http://www.aljazeera.com>), due to declining reserves, resulting in a freer international market today. The focus of oil is now in Sub-Saharan Africa, a

region whose economic growth might well be driven by the petroleum industry, if it were not for political instability, corruption and poverty. Generally, the picture painted of the petroleum industry is that greed, money and power play a major role in the exploitation and distribution of wealth (<http://www.eisourcebook.org>; Yates, 2009: 11). In essence, this means that transparency, robust oversight and accountability should be embraced so that natural resources that come with oil exploration activities can have a way of impacting positively in society at large.

The petroleum industry is usually divided into three major components: *upstream*, which deals with exploration, development and production of crude oil or natural gas, *midstream*, which deals with oil tankers, refiners, and *downstream*, which deals with retailers and consumers (Oxford-Princeton, 2009: 24; Competition Tribunal, 2003: 2). This is the structure adopted by companies such as Sasol, and is also referred to as a merging of horizontal as well as vertical business activity (Competition Tribunal, 2003: 2). For example, Sasol is involved in the refining of petroleum products in the upstream market, as well as in the marketing and distribution of liquid fuels. However, in some companies, midstream operations are usually included in the downstream category. For example, the oil company, Exel, is active in the downstream market, in the marketing and distribution of the petroleum products, and does not have any refining capacity (Competition Tribunal, 2003: 3) such as has Sasol. The main activities in the petroleum industry include exploration, extraction, refining, transporting through oil tankers and pipelines, and marketing petroleum products (Competition Tribunal, 2003). The researcher is of the view that effective policy implementation, oversight and accountability remain critical for execution of these activities in a coordinated manner.

In South Africa the petroleum industry has been shaped by different periods. In the apartheid era “the petroleum industry was characterised by secrecy, a high degree of state regulation, the national imperative that demanded self-sufficiency, as well as various military imperatives” (Miller and van Meelis, 2005: 5). Miller and van Meelis (2005) confer that installations such as oil refineries were designated National Key Points under the National Key Points Act of 1980 and access to them, as is still the case now, was strictly controlled. Before 1954, South Africa imported all petroleum products from Iran because it had no refining capability. It was only after 1954 that South Africa developed refining capabilities, surpassed in scale only by Egypt on the African continent (Miller and van Meelis, 2005: 5). Sasol was established in 1950 and in 1955 began producing petrol from coal using the Fischer Tropsch technology that Anglovaal had obtained from Germany (Miller and van Meelis, 2005: 5).



Political instability in Iran around the 1970s led to the throttling of South Africa’s main source of supply and consequent higher oil prices. According to Miller and van Meelis (2005: 5), “the United Nations Security Council’s imposition of a mandatory arms embargo against South Africa in 1977, as well as the disinvestments campaigns during the political turmoil of the 1980s, fuelled this situation”. These exogenous and endogenous shocks shaped the direction of the South African petroleum industry, as well as the development of its downstream chemical industry. For example, whereas earlier decisions had derived from self-sufficiency imperatives, they were now increasingly dictated by military or strategic needs (Miller and van Meelis, 2005).

While the involvement of the State in the energy sector began around the WWII period, it intensified in the 1980s with the creation of institutions such as the Department of Mineral and

Energy Affairs (DMEA) to oversee the petroleum industry (<http://www.info.gov.za>). Other institutions were the former Department of Planning, the former Department of Industries, the former Department of Commerce and Consumer Affairs and several other institutions. In 1987, many functions of the DMEA were transferred to the National Energy Council (NEC), a statutory institution with an appointed Council and professional civil service (<http://www.info.gov.za>; Energy Policy Discussion Document, 1987: 87). However, the allocation of resources such as funding to ensure institutional sustainability derived mainly from the levies on liquid fuels, electricity and coal. In 1987, the Energy Policy Discussion Document (1987: 66-87) argue that tensions created by commercial sectors represented on the NEC crippled the muscle of this organisation to the point of paralysis. In addition, the allocation of regulatory functions, particularly governing transport fuels to the NEC, further fuelled identity crisis for the Council (Marquard, 2006: 372). Ministerial differences about the NEC's budget funding and non-civil service staffing conditions contributed to the demise of this institution four years later, and it was moved back to an Energy Chief Directorate, back within the then Department of Mineral and Energy Affairs (Abolition of the National Energy Council Act, 1991). This means that there has been instability in State oversight and uncertainty about whom to fund the sector, ever since it took management over the petroleum industry. It is paramount to note that the petroleum industry of today is run by two ministries: the upstream petroleum is governed by the Department of Mineral Resources, while the midstream and downstream are under the Department of Energy management.

In 1987, the Government of South Africa initiated another synthetic fuel scheme, Moss gas (now PetroSA), to produce petrol and diesel from offshore natural gas. According to Miller and van

Meelis (2005: 5), a steady supply of diesel was needed to fuel the country's military operations outside its borders. Around this time, Sasol's synfuels process was experiencing problems in producing diesel; thus, Moss gas was expected to make up the shortfall. The company was formed by consolidating state-owned assets in the oil sector, bringing exploration, extraction and processing of gas sources into one company (Miller and van Meelis, 2005: 5-6). However, economic power in the oil sector in South Africa remained highly concentrated. Ownership of upstream facilities was dominated by multinational companies and the government (Miller and van Meelis, 2005), with little or non-existent emphasis on sharing wealth with the locals at large.

On policy development aspect, energy-related policies were conducted separately within four main subsectors: electricity, coal, liquid fuels and nuclear. This meant that different communities, with vested interests and working in silos spearheaded the policy development process (Marquard, 2006: 55-60). Consequently, policies developed in the 1980s were skewed towards electricity and nuclear, with very little policy or strategy guiding coal and liquid fuels (Marquard, 2006). Transparency and accountability are assumed to be almost absent in this era as the country was in a state of siege or undemocratic, while emphasis was placed on implementation with no clear strategy around how to go about this. The implication of this is that where there is lack of transparency, oversight and accountability hardly exists. It becomes impossible as well to track policy implementation progress. This takes us to the problem description which prompted the researcher to undertake the current study.

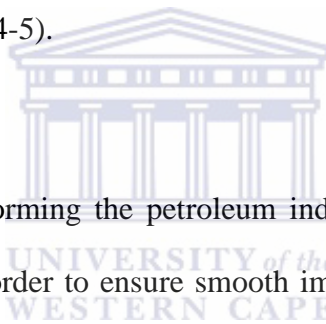


### **1.3 Statement of the Problem**

The South African political landscape changed in 1994 and the energy sector began to slowly transform, to be more transparent, inclusive and integrated. The change in political landscape came with significant changes in South African legislation, and this affected the petroleum industry directly as well. The new era was geared towards sharing the country's natural resources amongst all those who live in South Africa, especially Historically Disadvantaged South Africans (HDSA). One driver of this policy was the EPWA, enacted in 1998 to guide the energy sector further. Marquard (2006: 61) argues that, "the White Paper itself follows an integrated energy planning structure, which recognises that energy is not an end-good in itself, but is rather consumed as a means to some end." As Marquard (2006: 61) says further, much attention was then focused on the first target of increasing access to energy, particularly electricity, because historically, provision of electricity in South Africa was limited to established towns and areas of economic activity, largely excluding the black majority who mainly resided in peripheral townships and rural areas. The EPWA of 1998 addresses this marginalisation through five key policy objectives. These are inter alia: "increasing access to affordable energy services, improving energy governance, stimulating economic development, managing energy related environmental and health impacts and securing supply through diversity" (White Paper on Energy Policy, 1998: ix). These objectives are also embodied in the National Energy Act, No 34 of 2008.

In July 2001, the South African government placed more focus on transformation by way of maximising black ownership in the petroleum industry, as this group was historically excluded from these economic benefits. The LFEC (2000), B-BBEE Act of 2003, and AA Act of 1998

were among policy instruments designed to address economic marginalisation. The LFEC, on its own, alludes to 25% of ownership by black empowerment companies in the petroleum industry, within ten years of Charter enactment. At a snail pace, major companies are placing this policy objective into perspective. For example, Thebe Investment Corporation has a 25% share of Shell's South African downstream retail and marketing business (<http://www.eri.uct.ac.za>; Davidson and Winkler, 2003). Shell, with its Sapref refinery (Durban) partner BP, signed an agreement with black empowerment firm Southern Tankers to transport oil from the refinery to other South African locations (<http://www.eri.uct.ac.za>). There are several local firms involved in the downstream activities, including black-owned firms such as Naledi Petroleum and Afric Oil (Davidson and Winkler, 2003: 4-5).



The gradualist approach to transforming the petroleum industry in South Africa also entailed changes in certain agreements in order to ensure smooth implementation of government policy objective, where HDSA transformation is concerned. Among these was the termination of MSA in 2003. Prior to unpacking what the MSA termination means, it is paramount to note the oil companies in South Africa that were parties to MSA. These were BP, Shell, Caltex, Engen, Total, Exel, Tepco and Afric Oil. The main features of MSA were that “the oil companies that were party to MSA would purchase Sasol’s production of petroleum products up to certain maximum volumes from defined sources of supply and that, Sasol may not market petroleum products, except for certain exceptions set out in the preamble of the MSA” (Competition Tribunal, 2003: 2). These companies were party to what is called ‘Blue Pump Agreements’, which were directly linked to the MSA (Competition Tribunal, 2003). Furthermore, in terms of these agreements between Sasol and the oil companies, Sasol was allowed to market petrol only

through service stations untied to any oil company and through Sasol Blue Pump sales at service stations of the other oil companies in the Blue Pump Area (Competition Tribunal, 2003: 2). These agreements were, however, terminated in December 31<sup>st</sup> 2003, meaning that the commercial restrictions on Sasol marketing its own petroleum products would be relaxed. For instance, Sasol as producer of liquid fuels was now required to integrate downstream into the retail market in order to compete with its main vertically integrated rivals (Competition Tribunal, 2003: 2). Consequently, Sasol signed a 25% black ownership deal with the oil company called, Exel. This is aligned with its downstream business, so that competition was deemed to be fair.

However, the evolution of the energy sector is said to have brought large challenges (Tyler, 2009: 7) instead of solutions, particularly hindering speedy implementation of transformation agenda. The NDP (2012-2030: 150) echoes this claim, asserting that “the Department of Energy finds it difficult to deal with cross-cutting issues including institutional capacity, governance, competition, regulation, investments, economic, social and environmental issues”. The researcher is of the view that this has a bearing on the process of empowering the HDSAs who are required to participate economically in the petroleum industry. In ensuring HDSA transformation in the petroleum industry, the Department of Energy (DoE) plays a regulatory role by way of awarding and enforcing compliance on wholesale, retail and site licences through the Petroleum Controller empowered by Petroleum Products Act of 1977 (Act No. 120 of 1977) as Amended. The Petroleum Controller is the Minister or any person deployed by the Minister to award licences (Petroleum Products Act of 1977 (Act No. 120 of 1977)). The researcher argues that the Minister’s role in this regard is ambiguous because he/she exercises oversight and accountability over it. This means that this area lacks independence and, therefore, oversight and

accountability is prone to bias. Furthermore, this unclear role does not entail that transformation would be achieved once one is awarded a licence to operate, as implementation may require other enablers. Furthermore, the mere fact that this role is conducted at the national sphere of government poses a situation in which transformation may become uneven provincially. The inference is that, aspiring entrepreneurs who reside in Gauteng would more likely have easier mode of transportation and access to the national office than those who reside in remote areas. Government takes this impediment lightly. Clearly, the petroleum industry is currently doing poorly when it comes to HDSA transformation, especially where nodal areas are concerned.

Furthermore, inputs to enable policy implementation are not aligned with policy objectives placed upon the petroleum industry. Input that is useful to support policy implementation, oversight and accountability in the petroleum industry ranges from world-class infrastructure, financing, skilled personnel and credible information, among other things. Tyler (2009: 7) supports this statement, arguing that large-scale investment programmes in the industry require financing, management and skills challenges, with governance becoming an increasing concern in the industry. The planned Mthombo refinery, for example, has been postponed several times due to prohibitive financing challenges. It is in this regard the researcher claims that even though the DOE has stringent systems, policies, procedures and regulations in terms of conducting compliance and enforcing policy, resources remain insufficient to fully support the industry and to achieve the desired policy outcomes. Furthermore, this goes against one of the LFEC objective in which “improving access to financing HDSA companies” (Liquid Fuels Empowerment Charter, 2000) is espoused. The impact of policy in the petroleum industry of South Africa, thus

far, has not fully flowed to the intended beneficiaries. Chapter six of this study highlights major disparities in terms of HDSA economic empowerment.

It should be noted that at the apex of oversight and accountability is the Parliamentary Portfolio Committee on Energy (PPCE) in the petroleum downstream industry of South Africa. Parliamentarians monitor the performance of the industry in relation to HDSA transformation, among various activities. In so doing, Parliamentarians question, conduct site visits and summon the executive branch to account for the performance of the industry. Since the role of the executive is to award licences to aspiring entrepreneurs in the petroleum industry, this means that legislative oversight would be placed on licensing the HDSA companies and accountability must be enforced when this fails to materialise. In this regard, the researcher, firstly, infers that legislative oversight pays little attention in tracking this up. Secondly, this oversight plays less emphasis in determining whether awarding licences do, in fact, lead to HDSA transformation, by way of monitoring licence awardee headway. Lastly, since there is minimum oversight on this, it means that there could be no accountability for poor performance. Legislative oversight and accountability conducted by the PPCE in the past five years missed linking policy objectives to this output. This claim is made clear as the study unfolds.

Furthermore, legislative oversight and accountability can be employed effectively only if capacity is strong and credible information is made available timeously. The rationale for this argument is that Members of Parliament (MPs) may not know the petroleum industry well due to its history of secrecy and technical nature. MPs conducting oversight rely heavily on the information they request and receive from the stakeholders, without prior thorough independent

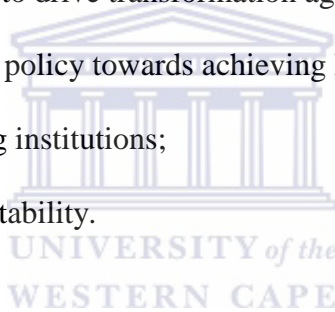
or third-party review. This information may lack objectivity, further reducing the effectiveness of oversight and accountability towards policy objective of ensuring HDSA transformation. Lack of credible information is among issues that hampered the PPCE's oversight role and prevented it from wielding needed maximum oversight and accountability. Exacerbating this situation is prolonging the process of hiring technical and research personnel within Committees, who may advise MPs on what to monitor. This, in turn, deprives the industry of deeper knowledge and reasonable input on policies and programmes. Furthermore, this has resulted in oversight that is reactive, instead of proactive and minimum or almost no accountability for poor performance.

The petroleum industry is complex as its activities involve public-private partnerships. Coordinating policy implementation, oversight and accountability in this space is a challenge. Among other reasons for this are vested interests, which result in fierce competition among incumbent stakeholders. Vested interests emanate from the competitive nature of the industry itself as it must answer both private and public sector needs, whilst also answering the common policy objective of HDSA transformation. The researcher holds the view that not only is policy implementation coordination challenging in such a setting, oversight and accountability could be a challenge as well. This is a puzzle that the researcher dubs 'triangle-conflict' and is revealed as the study progresses. Tyler (2009: 8), for instance, states that "in the energy sector, each institution is driven by internal agendas and objectives, with a striking lack of coordination amongst them". This statement is expressed further "a range of institutions and the complexity of their inter-relationships makes governance of the energy sector difficult to understand, and even harder to oversee" (Energy White Paper, 1998: 15). However, while the sector is slowly progressing, the researcher holds the view that there is minimum attention placed on institutional

architecture structured to ensure effective policy implementation, accountability and oversight. These are weak, especially when they are placed in the same context of ensuring HDSA transformation, among other things.

The problematic development in the preceding section highlights the following:

- Unsustainable funding support;
- Policy objective not linked to input;
- Lack of credible information to allow effective oversight and accountability;
- Weak institutional capacity to drive transformation agenda;
- Poor capacity to implement policy towards achieving HDSA transformation;
- Lack of coordination among institutions;
- Weak oversight and accountability.



The study, therefore, critically evaluates institutional architecture for effective policy implementation, oversight and accountability in the energy sector of South Africa, particularly the petroleum industry.

#### **1.4 Research objectives**

In an attempt to review the existing management of institutional architecture in the petroleum industry in South Africa, this research sought to determine the effectiveness of three main issues: policy implementation, oversight and accountability in the petroleum industry of South Africa. This is done in respect to policy objective of ensuring HDSA transformation in the petroleum

industry. The researcher is of the view that implementation of policy objective to ensure HDSA transformation in the petroleum industry remains relevant in South Africa so that the greater society benefits from its natural resources. With regard to this, evaluation of the extent to which policy implementation is achieved in the petroleum industry, mainly; its downstream part requires empirical research. Furthermore, oversight and accountability are critical pillars that have a bearing on effective policy implementation and these calls for in-depth enquiry. In the light of this, best practices to enhance effective institutional architecture that will achieve the petroleum industry vision, will be introduced.

The following are specific objectives of the study:

1.4.1 To develop a sound theoretical framework;

1.4.2 To discuss the legislative basis for understanding institutional architecture in the petroleum industry;

1.4.3 To evaluate key entities within the institutional architecture, their roles and challenges in the petroleum industry sector, and the implication for effective implementation of policy, oversight and accountability;

1.4.4 To examine and analyse emerging trends from data collected for improved policy management. In so doing, DAG/ OECD evaluation criteria is utilised to assess the effectiveness of policy implementation, oversight and accountability in relation to HDSA transformation;

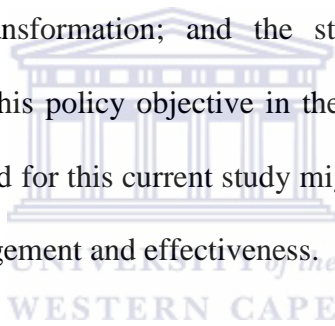
1.4.5 To propose best practice and a conceptual framework for a well-considered institutional architectural construct, that will forge and strengthen strong governance of the petroleum sector;

1.4.6 To make recommendations to enhance the effectiveness of policy in the sector.



### **1.5 Significance of the study**

The significance of this study is grounded on the philosophy that South Africa took a long journey in ensuring HDSA transformation in the past two decades since 1994. Intense research of the sector is required in order gauge what really is being done to achieve policy objective of ensuring HDSA transformation in the petroleum industry of South Africa. This study is significant in three aspects. Firstly, the study critically evaluates institutional architecture for effective policy implementation, oversight and accountability in the petroleum industry of South Africa. The variables: policy implementation, oversight and accountability are investigated separately. The aim is to offer empirical enquiry on the status of policy implementation effectiveness towards HDSA transformation; and the status of legislative oversight and accountability effectiveness over this policy objective in the petroleum industry. Secondly, the emerging trends from data collected for this current study might improve policy implementation, oversight and accountability management and effectiveness.



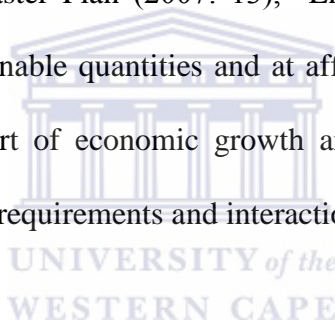
Research findings of the study could furthermore offer MPs some advice on strengthening focus on policy implementation, oversight and accountability towards the realisation of HDSA transformation in the petroleum industry. The DoE could also learn from this research that its role should not only entail enforcing compliance and awarding licences, where HDSA transformation drive is concerned. Third, the researcher is of the view that institutional architecture and its role in effectively assisting policy implementation, oversight and accountability in the petroleum industry has received minimum attention among academics, especially in relation to HDSA transformation. Thus, the question is: to what extent has robust oversight and accountability resulted in effective policy implementation to ensure transformation

impact is felt by the targeted population in the petroleum industry of South Africa? The researcher aims to further interrogate this question, and this justifies the study. In addition to this, the constitutional mandate of DoE, that of the legislative branch and public administration role should be examined in this sector for progressive improvement so that institutions charged with the role to render service delivery do so as envisaged.

## **1.6 Definition of selected terms**

### **1.6.1 Energy Security**

According to Energy Security Master Plan (2007: 13), “Energy security means ensuring that diverse energy resources, in sustainable quantities and at affordable prices, are available to the South African economy in support of economic growth and poverty alleviation, taking into account environment management requirements and interactions among economic sectors”.



### **1.6.2 Energy Policy**

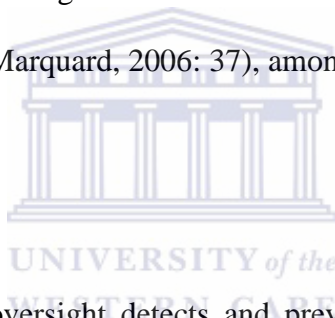
Marquard (2006: 323) traces the concept of Energy Policy from the “latter half of 20<sup>th</sup> century in industrialised countries, and was centered on the concept of the energy sector, a new way of organising our thinking about these industries, their development, and most importantly, the connection between them”.

### **1.6.3 Energy Products**

Energy products are complex, they range from electricity, petrol, diesel, paraffin, wax, kerosene, gas, water etc. Energy services are known as essential services, as problems with them can seriously affect everybody such as electricity and fuel.

### **1.6.4 Institutional Architecture**

A simple definition of institutional architecture relates to formal rules such as policies, regulations and procedures, and informal rules such as customs, norms and schemas. Institutional architecture also refers to a specific organisation or establishment, like hospitals, jails, nursing homes and parliament (Ostrom in Marquard, 2006: 37), among other things.



### **1.6.5 Oversight**

For the purposes of this study “oversight detects and prevents abuse, arbitrary behaviour or illegal and unconstitutional conduct on the part of the government and public agencies” (www.gov.za). Embodied in this function is the role to hold the government to account in respect of how the taxpayers’ money is used and oversee the achievement of goals set by legislation and the government’s own programmes (www.gov.za).

### **1.6.6 Accountability**

The meaning of accountability, according to Day and Klein (1987: 1), “Is for relevant persons to give an explanation of what they do, to those to whom they are responsible and whose authority empowers them or gives them the right to demand such an explanation”.

### 1.6.7 Governance

Ansell and Gash (2007) citing Lynn, Heinrich and Hill (2001: 7) define governance broadly as “regimes of laws, rules, judicial decisions, and administrative practices that constrain, prescribe, and enable the provision of publicly supported goods and services”. Ile (2007: 26) citing Kicher, Klijn and Koppenjan (1997: 2) see governance as directed influence on social processes. Ile (2007) describes this as a workable definition since it could also be argued that its limitations concern the fact that indirect influences may not altogether fall outside the scope of governance. This means that, the definition of the concept of governance would be slightly adjusted to include indirect influences. This suggests that a broader meaning of the concept would include deliberate as well as unintended processes that are associated with public policy and public interactions (Ile, 2007: 26). The author adds that this has implications since the limits of governance are not clear-cut as it includes several actors. In other words, public management is governance but not all governance is public management (Ile, 2007: 26) citing (Kicher et al., 1997: 2). The researcher agrees with this declaration because the concept of governance cannot be constrained to one specific sector or process. As such, the study employs Stoker’s (2004: 3) expanded definition which sees “governance as referring to the rules and forms that guide ‘collective decision-making’”. This is so because decision-making is done collaboratively and agreed upon by actors including both public-private, in specific time and space. To fit in the context of this study for instance, public policy must be agreed upon collectively and in collaboration by both public and private entities in order to achieve good governance. This is what the researcher calls ‘rules of the game’ that must be adhered to collaboratively as understood in the petroleum industry of South Africa.

### **1.6.8 Industry and Sector**

The terms *industry* and *sector* warrants explanation because they are most times used interchangeably “to describe a group of companies that operate in the same segment of the economy or share a similar business type” (<http://www.investopedia.com/ask/answers/05/industrysector.asp>). These terms are rather dissimilar. Thus, the terms ‘sector’ refers to a large segment of the economy, while the term ‘industry’ describes a much more specific group of companies or businesses, (<http://www.investopedia.com/ask/answers/05/industrysector.asp>). The researcher makes reference to the petroleum ‘industry’ as focal point.

### **1.6.9 Policy Implementation**

Hill and Hupe (2002: 231) define policy implementation in terms of a relationship to policy as laid down in official documents. According to Pressman and Wildavsky (1984: xxi-xxiii), “policy implementation may be viewed as a process of interaction between the setting of goals and actions geared to achieve them”. The researcher infers that policy implementation is the auctioning of agreed upon government’s intention through programmes and projects.

### **1.7 Outline of the Study**

A brief preview of each chapter is given in order to provide a layout of the organisation of this thesis.

## ***Chapter One***

This chapter provides the background to the study as it seeks to **CRITICALLY EVALUATE THE INSTITUTIONAL ARCHITECTURE FOR EFFECTIVE POLICY IMPLEMENTATION, OVERSIGHT AND ACCOUNTABILITY IN THE ENERGY SECTOR OF SOUTH AFRICA: A PETROLEUM PERSPECTIVE**. This section includes the following explained topics:

- Background of the study;
- Statement of the problem;
- Research objectives;
- Significance of the study;
- Definition of selected terms;
- Outline of the study.



## ***Chapter Two: Conceptual and Theoretical Framework***

This chapter covers the conceptual and theoretical framework upon which the study is based. The chapter is broadly organised into five themes. The first part analyses two theoretical ways in which institutional architecture is interpreted by institutionalists. Two institutional theories are identified: historical and rational choice institutionalists. The central claim made by institutional theorists is that institutions are made out of ideas, rules, norms, cultures, procedures and formal organisations. These institutions are created by individuals who, in turn, act as catalysts in shaping their behaviour. The second part gives a theoretical understanding of accountability in which divergent dichotomies are observed in every part of society. Core to this is the principal-agent nexus. The third part explains the concept of oversight as both ex ante and ex post, which

also involves the principal-agent relationship. These are viewed by the researcher to be relevant to the context of the study. The fourth part explains an understanding of policy implementation as an activity that is carried out by the agent. It further shows what challenges the agent, as an implementer of statute, may be faced with during the process of implementation. The last part explores the monitoring and evaluation conceptual framework.

In addition to this summary, the following topics are addressed:

- Theoretical approach to the study of relevant institutions to the study;
- Accountability theory;
- Oversight theory;
- Policy implementation theory;
- Monitoring and evaluation concepts.



### ***Chapter Three: Selected Legislative and Regulative framework***

This part explains selected legislation and regulations that govern the petroleum industry of South Africa. An assertion made is that the petroleum industry of today is shaped by history legislatively. Furthermore, although these policies are designed to maximise the interests of norm entrepreneurs as alluded to by rational choice institutional theorists which, in this instance, is to ensure transformation targeted at Historically Disadvantaged South Africans is achieved, among selected policy objective, it should be noted that societies are set to heavily benefit as well upon adherence to policy objectives.

In addition to this summary, the following topics are addressed:

- The evolution of regulatory regime in the petroleum industry of South Africa;
- Institutional building blocks in the petroleum industry of South Africa.

#### ***Chapter Four: Current Institutional Architecture***

This part discusses current institutional architecture and is arranged according to three critical variables that are of focus in this study: policy implementation, oversight and accountability in the petroleum industry of South Africa. Since there are a range of institutions in the petroleum industry, only those relevant to the hypothesis are selected and analysed. The first part of the study looks at the international institutional trends and developments in the petroleum industry. The second part of the chapter explains regional bodies in the petroleum industry, the rules of the game and expected behaviour in operating in the industry on the African continent. The third part presents the institutional architecture in South Africa, mainly those institutions whose role it is to conduct policy implementation, oversight and accountability in the petroleum industry. The last part analyses institutional power relations in the petroleum industry. The study here observed dynamics of power asymmetries between the principal and agent. That is, while the principal may appear to have all the authority, in fact, the agent may take a lead in influencing government policy, especially where the principal has limited technical know-how of the industry.

In addition to this summary, the following topics are addressed:

- International institutional trends and developments to govern the petroleum industry;
- Selected regional institutions guiding the petroleum industry;
- South Africa's institutions with the role for accountability, oversight and policy implementation; and



- Institutional power relations.

### ***Chapter Five: Research methodology and design***

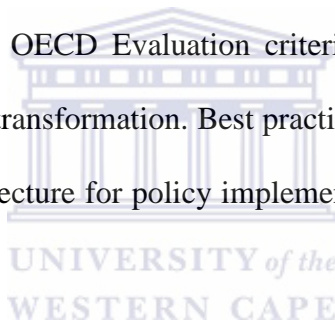
This chapter presents the process that the researcher took when collecting data for the study. The researcher firstly sets out the research design, which is underpinned by a qualitative research tool. Secondly, the study discussed the research methodology, wherein a qualitative-triangulation research paradigm is employed. Thirdly, the researcher explained the research process and the tools used in gathering data. Scheduled interviews, observation and document analysis are selected as best suiting the research enquiry for this study. The reliability and validity of the study is explained. Since there are various elements of the energy sector, the researcher opts to contain the study within the limits of the petroleum industry of South Africa.

In addition to this summary, the following topics are addressed:

- Research design;
- Qualitative research design;
- Research methodology;
- Data collection instruments;
- Target population and setting;
- Research sample;
- Validity and reliability of the study;
- Ethical consideration of the study; and
- Delimitation of the study

***Chapter Six: Findings and Analysis of Selected Issues on Policy implementation effectiveness in the Petroleum Industry of South Africa***

In this part of the study the researcher evaluated selected issues with regards to policy implementation effectiveness, relating to HDSA transformation in the petroleum industry of South Africa. Among the many responsibilities of the Department of Energy towards achieving this objective is to award wholesale, retail and site licences and enforce compliance. Thus, each company awarded a licence to operate is mandated to comply, by including HDSAs in the business plans. The chapter focused on the findings, analysis and emerging data trends in this regard. The general status of policy implementation in the petroleum industry is analysed. This is followed by application of DAC/ OECD Evaluation criteria to assess policy implementation effectiveness in relation to HDSA transformation. Best practice and a conceptual framework of a well-considered institutional architecture for policy implementation in the petroleum industry of South Africa were tabled.



In addition to this summary, the following topics are addressed:

- Analysis of the status of policy implementation in the petroleum industry of South Africa and analysis of emerging data trends;
- DAC/ OECD evaluation criteria of policy implementation effectiveness in the petroleum industry of South Africa;
- Best practice and conceptual framework of a well-considered institutional architecture construct: Policy Implementation effectiveness.

***Chapter Seven: Findings and Analysis of Selected Issues on Oversight and Accountability effectiveness in the Petroleum Industry of South Africa***

Chapter Seven evaluated the effectiveness of oversight and accountability in the petroleum industry of South Africa with regards to HDSA transformation. The function assessed is that played by PPCE, the institution responsible for executing legislative oversight and accountability in order to embed a culture of high performance in meeting the envisaged policy objectives. In so doing the researcher first unpacked the status of oversight and accountability in the petroleum industry of South Africa in general. Following this, the researcher unveiled data trends in relation to the outcome of activities related to oversight and accountability. The study employed the DAC/OECD evaluation criteria in order to assess the effectiveness of oversight and accountability in the petroleum industry, with regards to HDSA transformation.

In addition to this summary, the following topics are addressed:

- Oversight and accountability status quo in the petroleum industry of South Africa;
- Emerging data trends on oversight and accountability for the period 2009-2014 in the petroleum industry of South Africa;
- OECD/ DAC evaluation criteria of oversight and accountability effectiveness in the petroleum industry of South Africa;
- Best Practice and conceptual framework of a well-considered institutional architecture construct: Oversight and Accountability effectiveness.

## ***Chapter Eight: Conclusion and future research***

This chapter dovetailed on chapter-by-chapter summary of the study. Recommendations for improved petroleum governance were analysed. Future research was furthermore proposed.

In addition to this summary, the following topics are addressed:

- Recommendations;
- Policy implementation improvement;
- Oversight and accountability improvement in the petroleum industry.
- Future research.

### **1.8 Conclusion and Chapter Summary**

This study critically analyses the institutional architecture for effective policy implementation, oversight and accountability in the Energy Sector of South Africa, with a particular focus in petroleum industry. In so doing the study explained the background of the petroleum industry from an international perspective. The study further explained the problem statement, which among other aspects points to poor institutional coordination; unsustainable funding support; weak institutional capacity to drive transformation agenda; poor capacity to develop and undertake programmes and projects that implement the policy; and weak oversight and accountability. The development of this study was justified because accountability, oversight and policy implementation effectiveness remain critical components that should assist the country to move forward towards achieving HDSA transformation, but have thus far not received adequate attention in the petroleum downstream of South Africa. The study interrogates this phenomenon for further development of concepts and theoretical understanding. Relevant concepts are

explained. And lastly a chapter summary is provided. Next, the study discusses and analyse  
Chapter Two.



## **CHAPTER TWO: LITERTURE REVIEW- CONCEPTUAL AND THEORETICAL FRAMEWORK**

### **2.1 Introduction**

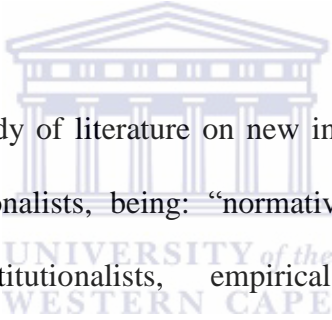
This chapter describes the theoretical framework upon which this study is based. The chapter is broadly organised into five themes. The first part deals with analysing the terrain, in particular reviewing theoretical ways in which institutional architecture is interpreted by institutionalists. Two institutional theories are identified. These are: historical and rational choice institutionalists. The central statement made by institutional theorists is that institutions are made out of ideas, rules, norms, cultures, procedures, and formal organisations. These institutions are created by individuals who in turn constrain their behaviour. The second part of this chapter sets out the theoretical understanding of accountability. This section reveals numerous divergent dichotomies of accountability relevant to this current study. Among other things, literature discourse displays accountability on vertical, horizontal and diagonal axes. The third part of the study discusses literature on oversight, while the fourth outlines the theoretical understanding of policy implementation. The last area displays the literature discourse on monitoring and evaluation to provide clarity in understanding the phenomenon.

### **2.2 Theoretical approach to the study of institutions**

Institutional theory finds its roots in the social sciences ranging from studies in ethnography, phenomenology, political science, organisational studies, and anthropology (Lowndes in March, and Stoker, 2000: 96). Theoretical development in the area of institutionalism grew over the

years and was pioneered by academics such as Jordan, 1990; Pedersen, 1991; Sened, 1991; Hall and Taylor, 1996 in (Peters, 2012: 25). Former institutional analysis was developed in the Anglo-American tradition in the late nineteenth century, during the Woodrow Wilson's era, as espoused by (Cole, 2008: 2). During this time, Cole (2008: 2) infers that institutionalism focused on the study of public or constitutional law and the formal operation of the key political institutions, hence dubbed 'Old Institutionalists'. According to Cole (2008: 2) this era displayed little interest in social behaviour, or the impact of institutions on public policies. Regardless of this claim, old institutionalism argues that "modern regimes resemble ancient political systems in terms of their main institutions, such as executives, civilian and military bureaucracies, judiciaries, legislative assemblies, political factions and parties" (Cole, 2008: 2). However, from 1960 onwards there was a move away from the past trajectory in the understanding of institutions. This new epoch was spearheaded by the behaviourist revolution in the United States, opposing the old institutionalists. This new emergence in institutional theory is defined as "new institutionalism" Powell and DiMaggio (1991: 60). In seeking perceptive and cultural explanations of social and organisational phenomena, this new institutionalism considered the properties of supra-individual units of analysis (Lowndes in March and Stoker, 2000: 97). Hall and Taylor (1996: 936) portray new institutionalism as focusing mainly on the way in which institutions embody values and power relationships. A broader insight is given by Scott (2000: 2) as arguing that new institutionalism focuses on the deeper and more resilient aspects of social structures made out of schemes, rules, norms, and routines, and these become established as authoritative guidelines for social behaviour.

New institutionalism defines institutions themselves as an essential variable in political outcomes (March and Olsen, 1989: 57). March and Olsen (1989: 57) add that institutions give meaning to interactions and provide the context within which interactions takes place. Cole (2008: 5) concurs as arguing that institutions are not merely organisations, but patterns of routinised behaviour and complex belief systems. The assertion upheld is that new institutionalism adopts both informal conventions and formal rules to explore how institutional stability is accomplished through human action. Lowndes in March and Stoker (2000: 98-99) adopts this claim, “new institutionalists concern themselves not just with the impact of institutions upon individuals, but with the interaction between institutions and individuals”.



However, as time evolved, the body of literature on new institutionalism developed further to describe seven types of institutionalists, being: “normative institutionalists, rational choice institutionalists, historical institutionalists, empirical institutionalists, international institutionalists, sociological institutionalists and network institutionalists” (Peters, 1999: 115). This diversity-within-theory, while enriching (since it encompasses a variety of topics), at the same time presents an un-unified, confusing and contradictory body of theory (Peters, 1999: 115). The confusion stems from numerous varieties of approaches inside this big umbrella termed ‘new institutionalism’. Peters (1999: 116) is concerned about this too fragmented approach, which he says will contribute nothing but confusion and disarray to the study of institutionalism. Giving consideration to this argument, the researcher has selected the following new institutionalism theories; historical institutionalism and rational choice institutionalism as being of most relevance to this study. According to Peters (1999: 116), these theories are important in terms of their impacts upon the ideological debates and the research paradigms in

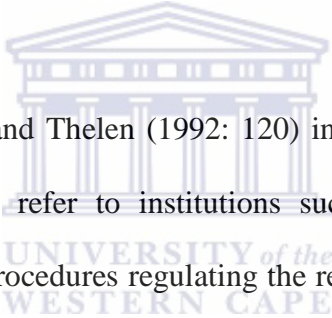


public administration. Lowndes in March and Stoker (2000: 99) further states that, although these schools of thought developed simultaneously, they are in essence autonomous. What unites them is the fact that “they were developed in reaction to the behavioural revolution in the social sciences and that they all seek to explain the role that institutions play in the determination of political outcomes” (Lowndes in March and Stoker, 2000: 99), among other things. Hence the researcher does not only agree that these theories are autonomous, but they are complementary as well. The next point of research, discussion and analysis is the concept of historical institutionalism.

### **2.2.1 Historical institutionalism**

According to Jean-Claude (2003: 127) citing Hall and Taylor (1996: 947) historical institutionalism as a theoretical construct was coined in the early 1980s. Rueschemeyer and Skocpol, Steinmo and Thelen are the earliest pioneers who explored the historical institutionalist school of thought (Steinmo and Thelen, 1992: 118). Steinmo (2008: 118) states that “historical institutionalism is neither a particular theory nor a specific method”. This means that the theory is better understood as an approach to studying politics. This is important for the study of public administration because political ideas (policies) are crafted by politicians, while administrators carry out, or implement them. It is also paramount to know how political ideas are carried out effectively by non-political actors. Steinmo (2008: 119) submits that “historical institutionalists pay attention to real world empirical questions, its historical orientation and its attention to the ways in which institutions structure and shape political behaviour and outcomes”. It is noted that through empirical investigation, institutional structures had profound effects on shaping political strategies, outcomes and, ultimately, political preferences (Steinmo, 2008: 119). In this regard,

historical institutionalists trace the past experiences to determine the future. Hall and Taylor (1996: 944) agree with this assertion as saying that the policy choices made at the inception of the institution will have a continuing and largely determinate influence over the policy far into the future. Rose (1991: 12) explains further that policy choices are limited by past choices as the incumbent governments of the day cannot ignore past commitments that are given substance by complex legal systems and pre-existing institutions. A major premise is that “the current outcomes of public policies do not reflect the mere preferences or interests of the current strongest competitors, but that they are channelled by the existing and past institutional arrangements in which competition takes place” (Jean-Claude, 2003: 130).



To explain this broadly, Steinmo and Thelen (1992: 120) introduce the term ‘path dependent’. Steinmo and Thelen (1992: 120) refer to institutions such as political and administrative organisations or conventions and procedures regulating the relationships of economic actors and the state as path dependent. This means that “modes of conflict-cooperation and the structure of outcomes are to a large degree persistently identical throughout time” (Jean-Claude, 2003: 127). The theory posits institutions as relatively persistent features of the historical landscape and one of the central factors pushing historical development along set ‘paths’ (Jean-Claude, 2003: 130). According to Hall and Taylor (1996: 939), when a government institution or organisation embarks upon a ‘path’, it is difficult to move away from the chosen path of this institution because of the institution’s tendency to persist in the chosen course of policies. Levi expands the definition of path dependence: “Path dependence has to mean, if it is to mean anything, that once a country or region has started down a track, the costs of reversal are very high. There will be other choice points, but the entrenchments of certain institutional arrangements obstruct an easy

reversal of the initial choice” (Pierson, 2000a: 252) citing (Levi, 1997: 28). According to the researcher, it appears that this explanation presents a persistent nature of institutions which is uneasy to be reversed once created. Peters (1999: 19) echoes this claim as he admits that the persistent nature of institutions could change only if there is sufficiently strong political force to counteract it. This statement fits well in the South African context during the apartheid era. For instance, the South African government system of apartheid changed from a structure where representation in Parliament exclusively catered for Whites, but persisted through the Tricameral Parliament, a system that merely provided Coloureds and Indians with voting rights and Parliamentary representation in separate houses, while excluding black people completely. Apartheid laws were created to provide legitimacy to this system. When the system was dismantled by the post-apartheid South African government, it was replaced by a constitutional democracy consisting of a three-tier system of government. An independent judiciary took over and all South Africans received the power to vote. However, despite this institutional overhaul, it does not necessarily mean that past institutional paths cannot be traced through the current system. This is what is meant by path dependency.

According to Steinmo (2008: 123), historical institutionalists are fascinated by history because they believe history matters. Three important ways in which history matters is highlighted here: Firstly, historical institutionalists argue that “political events happen within an historical context, which has a direct consequence on the decisions” (Steinmo, 2008: 126). This could relate well to the example already provided above. The democratic government of South Africa set up in 1994 sought to dismantle apartheid injustices as a result of past political events. The second reason history matters, as provided by (Steinmo, 2008: 126), is that “actors or agents can learn from

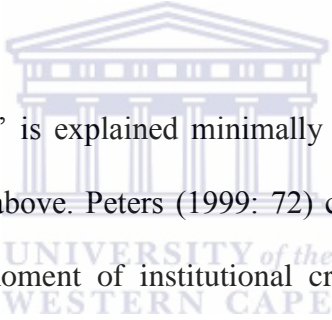
experience”. This stems from an understanding that behaviour, attitudes and strategic choices take place inside particular social, political, economic and even cultural contexts. For example, choices made during economic downturn or political instability give experience for future decisions. So, rather than treating all political action as if they are fundamentally the same irrespective of time, place or context, historical institutionalists attempt to situate their variables within context (Steinmo, 2008: 126). Basically, to address the current problem historical institutionalists bring past experience: how did we succeed in the past economic downturn or political turmoil to build a better socio-economic dispensation today and in the future? And this effect of historic institutionalism is ongoing. Historical institutionalists do this because they assume that what happened in the past and the actors involved at the time are able to offer more accurate explanations for the specific events that they travelled (Steinmo, 2008: 127). Thirdly, Steinmo (2008: 128) states that history matters because “expectations are shaped by the past”. This brings us to the conclusion that it is paramount to acknowledge the importance of history as this could provide a baseline for improving policy implementation, oversight and accountability. To a large extent, the researcher sees this to be what is in the mind of politicians when crafting policies. The past is observed in the hope that the future will yield improved results; and this is the case when it comes to the policy objective of ensuring HDSA transformation. As a result of this policy objective in South Africa, there are laws dubbed ‘reverse apartheid laws’ such as AAA and B-BBEE, among others, by which preference is given to Blacks to exploit economic opportunities.

Proponents of this theory project a detailed picture of many sides of historical institutionalism and this assists in a better understanding of the phenomenon. Peters (1999: 67) presents the

historical institutionalists' perspective as per the *'formation of institutions'*, *'institutional design'*, *'individual and institutional reaction'*, and *'institutional change'*. Peters (1999: 67- 68) postulates institutional formation as one of the important focuses of historical institutionalism. In this regard, 'ideas' are positioned as paramount in defining the creation of an institution (Peters, 1999: 67). When an idea becomes accepted and embodied into a structural form, then the institution has been created, according to Peters (1999: 67). Peters (1999: 68) goes on to demonstrate that, once these ideas are entrenched they have a framing effect, which ultimately becomes basic templates upon which other political decisions are made. The researcher submits that, to a large extent, there is an element of truth to what historical institutionalists propagate. For instance, governments or companies draft manifestos or ideas that project long-term vision that seeks to give direction to the institution going forward. The African National Congress Freedom Charter (1955) is prime example of this. In other words, ideas provide foundation for political behaviour and or decisions (Blyth, 2002: 23). Hall and Taylor (1996: 948), in supporting this claim, add that defining the exact moment when the institution starts taking form is crucial as this contributes to the importance of time and sequence in the analysis through the historical institutionalist approach.

The explanation in the preceding section does not sit well with critics of historical institutionalism as they view it to be rather ambiguous in explaining institutional formation. For instance, Peters (1999: 67) states that, on the one hand, historical institutionalists focus in their literature on the more formal institutions like legislatures and bureaucracies. On the other hand, they assume that 'ideas' play a significant role in defining the existence of institutions (Peters, 1999: 67). In any case, Hall and Taylor (1996: 962) are of the view that even though ideas play a

central role in institutions as ‘building blocks of action’, they are important because they are also constraints on choices. In this sense, Steinmo and Thelen (1992: 3) believe that ‘ideas’ as central components in defining institutions can be vague. The researcher agrees because the very same ideas that come in the form of policies or rules and programmes could have a harmful effect and could destroy the very same institutions being formed. Historical institutionalists need to tell us what informs or constitutes a good or bad idea for better understanding of the phenomenon. However, some critics may argue that ‘good’ or ‘bad’ are subjective concepts in the sense that what appears to be good to one individual may appear bad to another. This gap in the literature calls for a closer interrogation of this approach.



Progressively, ‘institutional design’ is explained minimally as compared to the explanation of ‘institutional formation discussed above. Peters (1999: 72) concurs with this statement: “given the importance attached to the moment of institutional creation that determines the further development of these institutions, the limited attention for how these institutions are ‘designed’ is a bit surprising”. Furthermore, Peters (1999: 72) observes that, in terms of an understanding of institutional design, the historical institutionalists appear to assume a lack of intentionality and of design criteria in the initial formulation of policies and institutions. Historical institutionalists rather are viewed as putting more focus on ‘redesigning’ institutions than institutional design itself (Brunsson and Olsen, 1993: 19, Peters, 1999). Brunsson and Olsen (1993: 19) argue that this process, in which an existing institutional framework is no longer fully applicable to the nature of the institution, does involve conscious policy choices for redesigning the institution, and these are adequately captured and analysed by the historical institutionalists. This is so because historical institutionalists depend on history to analyse this approach. Basically, there

must be a starting point for historical institutionalists to study this phenomenon, and this is where the theory falls short. Historical institutionalists appear to be able to explain the existing phenomenon by tracking the past. This compels Brunsson and Olsen (1993: 19) to provide a simple argument to the design of institutions thus: “successfully designed reform of institutions must be a ‘top down’ process”. They go on to assert that any attempt to build reform from the ‘bottom up’ is viewed as almost certainly doomed to failure, given the need for a clear vision of the future direction of the institution (Brunsson and Olsen, 1993: 19).

Historical institutionalists, furthermore, analyse individuals’ reaction within institutions. In this regard, individuals are viewed as shaping institutions (Hall and Taylor, 1996: 950). This is bound to happen because human beings are social constructs. Hall and Taylor (1996) goes on stressing that individuals make institutional decisions that then persist throughout the future life of the institution. This corresponds well with the notion of ‘ideas’ as discussed previously. The notion of ideas was shown to play a crucial role in the formation of institutions and the paths they embed going forward. Individuals come up with ideas which then shape the very same individual’s behaviour. Hall and Taylor (1996) discuss this further, “individuals attracted to a particular set of ideas will come into the institution ready to accept those ideas”. As such, the capacity of structures to communicate these ideas successfully to individuals joining the institutions, form a link between individuals and institutions, as Hall and Taylor (1996: 951) explain. This is how individuals react within institutions, as seen by historical institutionalists. But what do historical institutionalists say about individuals who do not react or share similar ideas within the institution? The assumption made by historical institutionalists is that

individuals will voluntarily or involuntarily accept and implement these ideas and that this will, in turn, shape their behaviour.

The researcher submits that it is rather a narrow way of concluding that individuals will react in a projected and prescribed manner. It is important that historical institutionalists understand that when they talk of individuals within institutions, they are informed by two types of thinkers that could occupy the same organisational space. These are the binary and dialectic thinkers. For an individual at an intrapsychic, level for instance, a binary thinker will process decision making with the choice among alternatives, which is usually between two alternatives, thus “will it be right for me to choose action A or action B” (Denfeld and Petriglieri, 2005: 32). Similarly, it is normally an assertion that policies formulated are informed by best choices, but curiously, policy implementation yields unintended outcomes. This compels one to question historical institutionalists’ assertion that assumes that the actions of individuals are shaped by their institutions. It is also not clear at this stage if the cause of poor implementation of these ideas can be blamed on implementers or the ideas themselves. According to Denfeld and Petriglieri (2005: 32), “reducing complex phenomena or choices to a binary set of alternatives is part of human nature, a fundamental mechanism deeply engraved in our nervous tissue and passed on from generation to generation for our survival”. The researcher submits that this kind of thinking does occur at a group level as well, where ideas are discussed. For instance, the decision made by the American government during George Bush’s era to attack Iraq could be argued as being informed by binary thinking. Thus, the researcher assumes that George Bush and his team chose between two decisions whether to attack Iraq in order to gain access to oil, and or disarm Bin Laden, who was directly associated with the attack of America. As such, George Bush achieved



the former, while the latter was carried out by his predecessor. Historical institutionalists could place their argument better if dialectic thinkers are brought into the institution decision-making process whereby discrimination of differences is required, even though this can lead to tension and conflict. Denfeld and Petriglieri (2005: 33) assert that this is so because it is where linear and transformative process takes place, leading to better results. Dialectics imply that “progress is made by sequentially resolving a series of emerging conflicts” (Denfeld and Petriglieri, 2005: 33). This takes us to a discussion on institutional change, as adopted by historical institutionalists.

The topic of institutional change proves a difficult one to tackle in the historical institutionalist paradigm. This is because of its static nature. According to Pierson (2000a: 265) the omnipresence of the path dependency discourse discussed previously, implies the risk of suggesting an exaggerated view of the social world as a ‘frozen landscape’. Naturally, this frozen landscape-impression does not correspond with the reality that life is dynamic and makes it difficult for historical institutionalism to explain how institutions cope with new challenges or developments that they face (Pierson, 2000a: 265). It is important to note that institutions operate in a constantly changing environment, and an investigation on how institutions respond to change requires attention. The effectiveness of policy implementation, accountability and oversight are dependent variables that are prone to shaping by the environment. A fitting context that bears no history ought therefore to be determined. However, historical institutionalists provide a response to this concern by bringing two kinds of change. The first one takes us to incremental policy changes, not impossible to consider (Pierson, 2000a: 265), even though institutions are posited as being static. Historical institutionalists consider this as part of

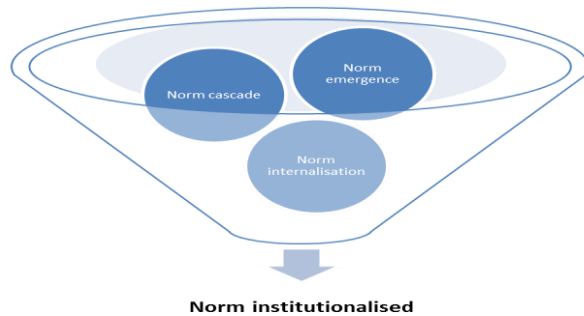
institutional development (Lindblom, 1965: 113), meaning that path dependence, as explained earlier, is not a story of inevitability, in which the past neatly predicts the future, but more a way to link decision making through time (North, 1993: 11).

However, this approach could be perceived as a way of downplaying the influence changes can exert on institutions. For instance, environmental influences can bring a big shock to an institutionalised idea. There is strong evidence that companies may react differently to similar challenges addressed by policy adjustments. Businesses perform more efficiently if they receive institutional support, in particular a policy enabling environment. It is, therefore, more problematic for historical institutionalism to come to terms with sudden, profound changes that upset the whole system and the institutions within; for this reason, historical institutionalism tends to proceed by making only incremental adjustments to policy formulation. Pierson (2000a: 265) argues that such changes “swamp or erode the mechanisms of reproduction that generate continuity”, and hence can severely disrupt the institutional development altogether. Importantly, several scholars dealt with this problem of profound changes in different ways, and they bring forth the concept of “*punctuated equilibria*” (Pierson, 2000a: 265). In essence, this concept refers to slow or gradual evolution, which also occurs at ‘idea’ or ‘policy-formulation’ level. The well-known author of the theory of evolution is Darwin, whose philosophy goes by the name of ‘Darwinism’. When this evolution happens past traits can still be traced. Pierson (2000a) further explains this evolution: institutions are thought to be in a constant equilibrium, carrying out policy decisions that were made at the time of institutional formation. However, at certain moments in time this equilibrium is ‘punctuated’ (Pierson, 2000a: 265). This means that the continuous process is disrupted or halted as a result of policy adjustment. In South Africa for

example these punctuation points or amendments to policy happen after a decade of implementation. Specific reference is made to the Liquid Fuels Empowerment Charter (LFEC), which outlines how to go about ensuring HDSA transformation in the petroleum downstream industry. The LFEC was developed in 2000, and in 2011 an audit report was developed to gather the extent to which transformation is achieved. From this time onwards the LFEC has been going through amendments. Pierson (2000a) observe these *punctuation points* to explain profound policy changes in an institution.

However, the challenge is that, as new behaviours, norms, schemas, rules, and culture emerge during this evolution period, historical institutionalists fail to tell us what rules are being used in the meantime while policy is still undergoing through adjustments. Furthermore, the theory does not clarify how the new formed rules converge with the existing one. While scholars of Public Administration do not rule-out change, the possibility of resistance in adopting incremental changes is also not tackled well by historical institutionalists. The claim made by Bacalso (2010: 7) is that, new rules may be compelled to compete with and contest the already existing ones. It is paramount to note that rules do not just get easily understood and internalised. Rules must first be socialised in order to reach a stage where they are deemed institutionalised. Bacalso (2010) notes that rules or norms go through three stages in order to get full institutionalisation: rules emerge, cascade and then get internalised. Figure 2.1 ought to be observed as demonstrating this argument.

**Figure 2.1: Norm Cycle in organizational context**



*Source: Author's configuration*

For the purposes of the chapter under discussion, the inference is that, norm emergence derives from the top management, which then cascades down information to other levels of operation where finally it gets adoption and implementation. The researcher is of the opinion that the gap during punctuation period may pose complications related to institutional governability and disturb policy implementation process, because it is not clear which rules (old or new) would take precedence. Consequently, there may be no oversight, allowing for an opportunity of poor resource management. Policy non-compliance during this period may further go unaccounted for.

The second way of explaining how historical institutionalism explains institutions' response to new challenges or changes is through stressing what they call the "unintended consequences and inefficiencies generated by existing institutions in contrast to descriptions of institutions as more purposive and efficient" (Hall and Taylor, 1996: 942). The assumption here is that there were some form of initial descriptions and expectations that certain results would be obtained, but

failed to yield as envisaged. Historical institutionalists referred to this as unintended consequence rather than policy or programme failure, which eventually lead to what (Hall and Taylor, 1996: 942) call '*branching points*' from which historical development embarks upon a new path. These profound changes are said to be sometimes not only stemming from internal inefficiency but can also be generated by 'exogenous shocks' (Hall and Taylor, 1996: 942). Collier and Collier (1991: 78) submit that these major change points then converge with a variety of internal political forces and turn into '*critical junctures*'. A clear example of this in South Africa is the transition phase between apartheid and post-apartheid in the early 1990's.

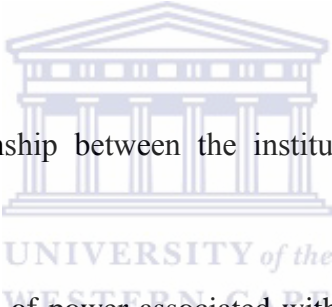
According to Pierson (2000a: 267) "junctures are 'critical' because they place institutional arrangements on paths or trajectories, which are then very difficult to alter." This holds true because many African countries during *critical juncture* or transition stage engage into civil wars. Hall and Taylor (1996: 942) say, policy decisions taken at these moments of critical juncture will then persist and create a new period of relative institutional stability until different external and internal forces converge again into a new critical juncture. Pierson (1996: 147) also introduces the notion of 'increasing returns' to describe this process. Pierson (1996) argues that there are strong incentives not to change direction once decisions have been taken at critical junctures. Pierson (1996: 147) posits policy continuity to be very effective at this stage and that this could provide optimum returns over the long run. However the truthfulness of the statement made by Pierson will be tested as the study unfolds. According to Cole (2008: 12), the model of historical institutionalism can support a bureaucratic model of politics. For instance, decision-making involves a process of sedimentation, as successive layers of decisions become acceptable to most actors by reducing uncertainty, even though each may, in some senses, be sub-optimal

(Cole, 2008: 13). This is because generally, policy networks embrace stability rather than change. Taken literally, this rather static portrayal of institutions could be seen to underplay the prospects for policy change (Cole, 2008: 13).

The researcher submits that this approach is well-suited to explain the persistently poor performance of policies and their implementation, but is much less promising as a means of explaining changes in policies, environment and/or structures governing the effectiveness of policy implementation, accountability and oversight. Furthermore, the approach assumes that unintended consequences bears negative outcome. There is, however, overwhelming evidence in which policy implementation yield positive unintended consequences and historical institutions do not unpack this notion. Additionally, public administration operates in a changing environment which determines whether unintended consequences are positive or negative. Historical institutionalists need to assist us in understanding how they accommodate constant environmental changes, and how institutions cope when faced with critical junctures, the so-called branching points. Sharing similar argument is Weaver and Rockman (1993: 226), who speak of “automatic government” and are skeptical around government’s capacity to implement change. This view is also supported by Hogwood and Peters (1983: 55), who argue that changing organisations and policies is often more problematic to accomplish than it is to achieve their initial formulation. Gaining a theoretical understanding will enable scholars to advise on the right direction to take when effecting policy changes. But Cole (2008: 17) counters this argument as saying that policy programmes pursue their autonomous development irrespective of the activities of governments in power. Stressing this point, Pierson (2000a: 255) adds that there are increasing returns even if policies are dysfunctional, as with time there is increasing buy-in by

key actors. Holding on to this approach, Pierson (2000a: 256) contends that “past experiences are predictable, whereas change is unpredictable”. In such a context, the researcher submits that a climate in which policies are repeatedly amended, suggests an inability on the part of policies to cope with the constantly changing environment. This has been a persistent problem in South Africa’s petroleum industry, as the management of policy has suffered ongoing neglect. This assertion is supported by the fact that there is no National Petroleum Act giving specific attention to South African petroleum matters. Arguments put forward associated with this theory are summarised by Hall and Taylor (1996: 938) as follows:

Historical institutionalists tend to:

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- “Conceptualise the relationship between the institutions and individual behaviour in relatively broad terms;
  - Emphasise the asymmetries of power associated with the operation and development of institutions;
  - View institutional development as emphasising path dependence and thus resulting in unintended consequences;
  - Be especially concerned with integrating institutional analysis with the contribution that other kinds of factors, such as ideas, can make to political outcomes” (Hall and Taylor, 1996: 938).

The researcher is of the view that historical institutionalists have provided a basic idea of what constitutes institutions, how they are created, how the individuals react within institutions and

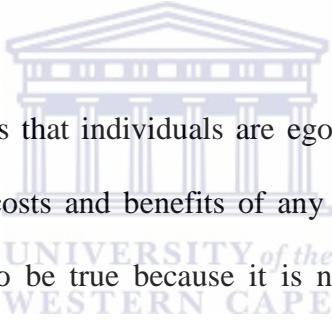
how institutions face change. However, the researcher has a concern with historical institutionalists, because for them to explain institutional formation there must be a historical event. Certainly policy development may be prompted by societal challenges, but this does not necessarily constitute an historical event. Rules are formed because there may be a need to control or manage certain behaviours. The researcher is of the view that efficiency in policy implementation, oversight and accountability are determined by whether individuals are willing to champion these functions, but historical institutionalists do not interrogate this. Also, while the environment is a strong determinant of the current state of affairs, it is important to unpack how it could impact on key dependent variables of this study such as policy implementation, oversight and accountability. Historical institutionalists cannot explain institutional architecture beyond history, and this poses a challenge in understanding the phenomenon under discussion. This propels the researcher to examine the phenomenon further, looking at the second theory, which also falls under the umbrella of institutional theory. This theory is called ‘rational choice institutionalism.’

### **2.2.2 Rational choice institutionalism**

Rational choice institutionalism arose initially from the study of congressional behaviour in the United State of America in the late 1970s (Hall and Taylor, 1996: 957). Rational choice institutionalism is a theoretical approach to the study of institutions arguing that “actors use institutions to maximise their utility” (Peters and Pierre, 2002: 2). Similar to the view of historical institutionalists, rational choice institutionalists argue that “actors face rule-based constraints provided by the institutional environment which influence their behaviour” (Hall and Taylor, 1996: 957). Logic underlying the rational choice institutionalism is that institutions are



formed through set of rules and the members of the institutions behave in response to those rules (Peters and Pierre, 2002: 2). Institutions are not observed to be bearing norms or values, nor does history play a significant role, according to rational institutionalists. Rather, norms and values are seen to be the result of human behaviour, which then acts as a constraint on individual actors. However this constraint sets parameters for action rather than shaping preferences (Hall and Taylor, 1996: 957). This view, shared by historical institutionalists, as discussed above, says that individuals create ideas, which in turn shape their behaviour. The difference is that rational choice institutionalists assume the intention of these ideas is to maximise the utility of individuals.



The rational choice theory assumes that individuals are egoistical in character and that people have a tendency to calculate the costs and benefits of any action before deciding what to do (Kamel, 2009: 72). This is said to be true because it is natural for organisations to analyse different scenarios against costs and benefits prior to making a final choice of action. The expectation is that choices made will yield the envisaged results, be beneficial to the institution and, sometimes, to the actors. Kamel (2009: 72) states that the fundamental assumption of rational choice theory is that the primary unit of analysis is the individual as decision-maker. In this regard, individuals are viewed as egotistical and self-interested actors. According to Kamel (2009: 73), this assertion does not assume that rational choice is only about individuals. For instance, self-interested actors can agree to abide by common rules if they consider this to be in their interest. Cole's (2008: 20) argument is that the key interest is how to design institutions that can limit that 'egotistical' behaviour, which may be detrimental to society as a whole. The

inference is that this is where rules are applied in order to contain the unwarranted behaviour of individuals.

Within the rational institutional theory, three different approaches are introduced: 1) principal-agent models, 2) game-theoretic models; and 3) a rules-based approach (Jean-Claude: 2003: 137). It is paramount that an explanation of these sub-theories is given as they provide deeper insight into the study. The first leg is explained by Jean-Claude (2003: 137) and posits a principal-agent model as a model that is applied in the institutional setting aimed at addressing the control of the bureaucrats by the elected politicians. For example, the principal (which is the parliament or political cabinet) must make the agent (which is a public agency or a bureaucrat) act in a way the principal would like the latter to behave. The agent is assumed to be more knowledgeable about the area where he/ she is supposed to act, and to have access to better information (Jean-Claude, 2003: 137). The problem is that his/her preferences and sometimes even his/her actions cannot be observed directly by the public, which has to judge performance on the basis of observable outcomes (Jean-Claude, 2003: 137).

Furthermore, principals are public figures and thus vulnerable to criticism when the policy is not achieved. According to Downs and Rocke (1994: 362), this introduces a discrepancy between what the principal wants the agent to do and what is in the agent's own interest. The researcher is of the view that this is where power asymmetry challenges between the principal and the agent originate. This phenomenon is explored further as the study unfolds. Anonymous, for instance, asks the question: "nine times out of ten Ministers side with their officials. So, do you want a 10 per cent or 90 per cent chance of success?" The inference is that there could be a contractual

agreement based on performance between the principal and the agent. While the agent may be propelled to execute policy goals he/she may not agree with, the principal may also have other political agendas to achieve, hence the support. This is so because the principal's contractual renewal may be based on performance, which is to ensure that policies are implemented. The fact of the matter is that agents also find their lives easy if they side with their principals in terms of good working relationships. This is explained further below.

Downs and Rocke (1994: 362) explains that in order to ensure cooperation, specific incentives and punitive measures are set around bilateral contracts. This is evident in the petroleum industry of South Africa where the 'principal' is the Energy of Department, (representing government) and the 'agents' are institutions reporting to the Department and the civil servants that work within the Department of Energy. The Department of Energy outlines policy ideas, and these are then handed over to the implementing agencies to implement against envisaged deliverables. Bilateral agreements between the principal and the agents are in the form of a performance contract, or legal binding documents such as a Memorandum of Co-operation or Shareholder's Compact that enforces compliance and provides terms of reference. Notably, these are political decisions that bureaucrats must implement even if they do not agree with the policies dictated by the principal. This evokes concerns for March and Olsen (1984: 747), regarding the performance and the internal management of public organisations in this particular setting. Their main concern is the capacity of the elected institutions of government to hold the non-elected accountable and to have a set of desired policies enacted, even if the bureaucracy is not particularly supportive of those policies (March and Olsen, 1984: 747). In support of this claim is

Peters (1999: 5) arguing that the capacity of governments to put constraints on individual choice in order to produce certain results might not be possible without strong institutional architecture.

Game theory is the second leg of rational choice institutional theory, which explains interaction in the institutional setting as a study of strategic decision-making (Aumann, 1989: 936). Game theory is a model of optimising outcomes by taking into consideration not only benefits against costs, but also the interaction between participants (Aumann, 1989: 936). Wildavsky (1992: 45) agrees that game theory looks at the relationships between participants in a particular model and predicts their optimal decisions. According to Aumann (1989: 937), game theory is informed by two other main branches: cooperative and non-cooperative game theory. These two branches of game theory are portrayed to differ in how they formalise interdependence among the players in institutions. In non-cooperative game theory for instance, a game is a detailed model of all the moves available to the players (Aumann, 1989: 937). As Calvert (1995: 226) says, “a non-cooperative game is any game in which the players are unable to coordinate their strategy choices”. Players may be unable to make coordinated choices for a number of reasons. For instance, participants may be unable to communicate, coordination may be disallowed by statute, or no agent may exist to enforce an agreed upon joint strategy (Calvert, 1995: 226). The researcher notes that these reasons explain clearly how oversight and accountability may be too weak to have the desired impact, which then would lead to poor policy implementation. Therefore, the researcher adopts *Communication, Coordination, Collaboration and Cooperation* 4C0s (developed further in the study) as foundation for this theoretical development, since they are paramount for ease of policy facilitation, oversight and accountability.

By contrast, the cooperative branch of game theory, according to Aumann (1989), starts with a formalisation of games that is altogether removed from procedures. It concentrates instead on the possibilities for agreement. Calvert (1995: 226) declares that institutions involve cooperation. Even so, the researcher states that this does not mean cooperation connote efficiency in policy implementation, oversight and accountability. However, Calvert (1995: 226) believes that institutions have a way of compelling people to work together to yield better results in ways that those same people would not without the institutional constraint. Calvert (1995) contends that institutions usually produce some form of cooperation among at least some subset of the participants. For example, when politicians or executive officials follow the rules of the game specified by a written constitution, they are cooperating (Calvert, 1995: 226). If they did not, they would not be co-operating and in the workplace they would refer to this as insubordination - a punishable offense, which, some instances, may lead to dismissal. Calvert (1995) explains that “the expression of adherence to a value or ideal constitutes an act of cooperation in that it reinforces the expectation of social adherence to that value and of willingness to impose sanctions on its behalf” (Calvert, 1995: 227). Calvert (1995) goes on to argue that “whenever people operate within an institution they need to establish precedent, assign specialised roles, define appropriate levels of cooperation, or take individual roles, define appropriate levels of cooperation, or take individual private information into account, they can do it most effectively by communicating, by starting suggestions, intentions, or information” (Calvert, 1995: 227). This means that even though this theory views individuals as egotistical, these individuals must do this in the context of cooperation, communication and coordination with other individuals and comply with policies and procedures that are provided by institutions. However, the challenge is that so far, there is no proof that coordination, communication and coordination yields efficient

implementation of policy, oversight and accountability, because further resources may be needed. A deeper discussion unfolds.

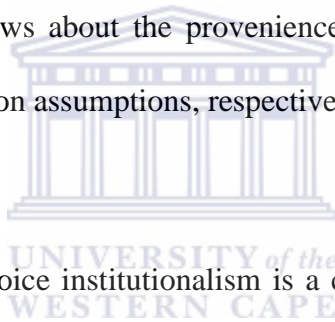
The 'rules of the game' is the third leg of rational institutionalism theory, which presents institutions as laying down the rules of the game, in defining the range of available strategies and the sequence of alternatives (Jean-Claude, 2003: 144). Rules in this instance are seen to be paramount as they are assumed to constrain human behaviour. So, what types of rules would be suitable to control certain unwarranted behaviour at a particular time and space? Jean-Claude (2003: 144) argues that rules are considered the best mechanism by which administrative behaviours can be influenced so as to exploit resources in the most appropriate way. March and Olsen (1999: 25) introduce a term called 'logic of consequences', which means that "action is understood as being based on conscious self-interested calculation of costs and benefits" (March and Olsen, 1989: 25). Actors according to March and Olsen (1989: 25) always choose the action that best maximises their convenience, in that they always choose the course of action that makes them better off rather than worse off. In this sense, the ordering of preferences is presumed to be stable and consistent, and actors will always choose actions that give them the best outcome (March and Olsen, 1989: 27). The objective then is to make the outcomes of behaviour fulfil an actor's personal desires and interests, and in this way (March and Olsen, 1989) observes this action as more preference-based than rule-based. Under such a logic of consequences, the role of norms or rules is seen as "negotiated constraints on fundamental processes of self-serving rationality, rather than constitutive" (March and Olsen, 1989). For rational choice institutionalists, norms and the institutions within which they are embedded are socially constructed. To enforce these norms, rational institutionalists then apply sanctions for non-

compliance, using the rules rendered by institutions. The logic of consequences means punitive measures are employed where there is non-cooperation, in order to make sanctioning effective. The researcher argues that this could be where accountability is enforced or encouraged. However, still this needs clear understanding of the rules by those who enforce them and robust oversight.

March and Olsen (1989) suggest that rules provide the main and most effective vehicle for conformity. Hall and Taylor (1996: 957) share similar sentiments as they state that “the institutional environment provides information and enforcement mechanisms that reduce uncertainty for each actor about the corresponding behaviour of others”. In this context, the actors’ behaviour is seen to be highly influenced by the expectation of how other players will bargain (Hall and Taylor, 1996: 957). However, this study would not rely on the ‘rules’ as prerequisite to enforcing compliance, because the same rules could lack application and therefore be rendered weak. So far there is instead knowledge gathered from historical institutionalists, which suggest that rules themselves at some point face *punctuation point*. Furthermore, as the study progresses it will be shown that positing rules in this manner is rather a misleading argument.

Hall and Taylor (1996: 957) further introduce a term called ‘calculus approach’ which explains how the institutional setting influences individual behaviour, and stresses how strategic interaction discussed in game theory determine policy outcomes. The researcher argues that this is tantamount to offering a prescriptive perspective, which furthermore demands conformity to those prescriptions. Similarly to historical institutionalists, this theory assumes that once rules are

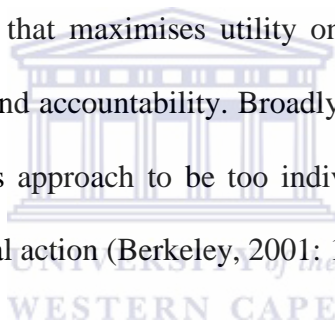
set there will be automatic application of them. They appear to argue that once there is cooperation towards the rules, envisaged results will be achieved. The theory offers little or no insight on the reasons why there are *critical junctures* or *punctuation points*, and how the egoistical policy creators ensure cooperation in such a situation. People however cannot be treated as if they are machines or robots, because machines may respond exactly in the manner they are programmed. In this study reference is made to policy implementation, oversight and accountability as particular institutions conducted by human beings who are social constructs. When humans are faced with exogenous and endogenous shocks may respond contrary to the set rules while a programmed machine may not. Stressing this point, Ward in March and Stoker (1995: 69) argue that no one knows about the provenience of the preferences of people; the knowledge which is there is based on assumptions, respectively.



However, even though rational choice institutionalism is a comprehensive theory that seeks to explain all human behaviour, it has gained extensive criticism from various opponents. Criticism put forward by Scott (2000: 2) for example, is that rational choice institutional theory denies the existence of any kind of action other than the purely rational and calculative. Rational choice institutionalism views all social action as rationally motivated, as instrumental actions meaning; “social actions pursued after evaluating its consequences and consideration of the various means to achieve it” (Wikipedia), however much it may appear to be rational or irrational (Scott, 2000: 2). In essence, the rational choice institutionalists conceptualises actions as rational strategies for realising the preferences of the actor, reducing the motives of political actors to self-interest, according to Berkeley (2001: 14). Furthermore there may be instances where poor corporate governance within institutions becomes apparent even though there are robust rules to constrain



such behaviour. The rational choice institutionalists do not explain what informs individual choices in such a case, even though they term it as non-cooperative behaviour. For instance, is non-cooperative a rational or a non-rational choice, or the other way around? An employee can decide to be non-cooperative by not conforming to what they view to be inappropriate. Therefore, it cannot be assumed that non-cooperative behaviour is irrational. Actions that lead to killing other people cannot be regarded as rational because they cause harm even if there maybe authorisation to do so. In this instance, one may choose to be non-cooperative and this does not suggest irrationality. Furthermore, policies that care little about eradicating poverty cannot be assumed to be rational. There is, therefore, a need for expansion on the theory so that it explains what constitutes a rational action that maximises utility on behalf of institutions that pursue policy implementation, oversight and accountability. Broadly speaking, critics of rational choice institutionalist theory consider this approach to be too individualistic, too minimalist, and too focused on rational choices in social action (Berkeley, 2001: 14).



There are also some important empirical criticisms related to the rational choice approach as espoused by Green and Shapiro (1994: 6). One of the strongest criticisms of the rational choice institutionalism theory involves not the theory itself, but how it is used. Green and Shapiro (1994: 6) imply that “this theory does not account adequately for observed phenomena, because the developer of a theory does not even attempt to test it empirically”. Green and Shapiro (1994: 6) go on saying that, rational choice theory is rather appropriate when it explains the markets, but it fails when it claims to act as a hegemonic theory.

In addition to the above criticism, the researcher's claim is that this approach is useful for the purposes of understanding building blocks of institutional architecture, and how individuals or collective organisations come to make decisions. However, it does not explain or show the path for institutions to achieve effective policy implementation, oversight and accountability. While rules are seen as yardsticks to identify non-cooperativeness, yet there is no clear definition of what behaviour is non-cooperative. In addition, the trend shows that policies are likely to fail during implementation. The question to ponder is, does this suggest cooperativeness or non-cooperativeness? A final choice here would be subjective in the sense that one may decide to choose which is more beneficial. Furthermore, the researcher is of the view that if being non-cooperative is defined according to policy failure, then rational choice institutionalists have more focus on individual behaviour than on the actual policies, or ideas themselves. In addition, there is no proof suggesting that rule-bound institutions achieve effective policy implementation, accountability and oversight. There is, instead, mounting evidence that rules themselves do create red tape and inefficiency, especially where public institutions are concerned. The theory employs a blanket approach, as if rules are an answer to all institutional understanding. In reality, individuals are likely to make decisions that give space for manoeuvre, for example, where corruption becomes a common practise. Some rules and procedures are determined by the change in environment requiring alteration, and rational choice theory should keep pace with this context in terms of strengthening its argument.

But none of these studies explain how institutional architecture achieves effectiveness where policy implementation, oversight and accountability are concerned. The researcher argues that institutional theorists do not test the theory against these variables. This leaves the key

components of this study in disarray, providing rules as a yardstick to measure conformance and not performance. Even so, out of the entire institutional study the researcher adopts four important C0s, thus *Communication, Coordination, Collaboration, and Cooperation* as major drivers for effective institutional architecture. The rationale for this is that the researcher views these 4C0s as an umbilical cord in facilitating policy implementation, accountability and oversight effectively. It becomes clear in the study of institutional architecture that there are two major actors, thus, 1) principal, (enact rules) and 2) agent (implement rules) that interact with institutions. A theoretical understanding of policy implementation is next illustrated.

### **2.3 Policy Implementation Theories**

An understanding of public policy implementation gained momentum in the 1970s, particularly in the United States of America, and later in Europe (Adamolekun, 1983: 39). There are various explanations of what policy implementation entails. Brought to the fore is Adamolekun (1983: 39), who sees policy implementation as referring to the activities that are carried out in the light of established policies. Edwards III (1980: 11) defines policy implementation as a stage of policy making between the establishment of a policy and the consequences of the policy for the people whom it affects. Policy implementation, according to van Meter, Donald and van Horn (1975: 447), “encompasses those actions by public or private individuals or by groups that are directed at the achievement of objectives set forth in prior policy decisions”. Egonmwan (1984: 22) is of the view that implementation is the process of converting inputs such as financial, material, technical, human, into outputs. Van Meter, Donald and van Horn (1975: 447-8) observe a close relationship between policy implementation and service delivery in the sense that in their explanation of this concept, implementation seems to include all activities that happen after the

statement of a policy is issued. Due to the context of this study, an adopted definition of policy implementation is that proposed by Brynard (2005: 9), which says “policy implementation is an accomplishment of policy objectives through the planning and programming of operations and projects so that agreed-upon outcomes and desired impacts are achieved”. Adopting this definition aims at coming into this conclusion at the end, and that this is done by agents.

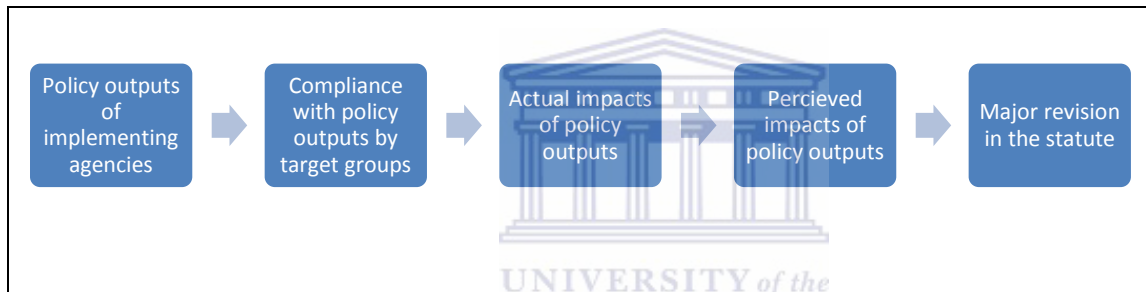
Policy implementation is a well-researched phenomenon but it appears that there is no consensus on the definition. According to Brynard (2005: 8), while this is the case, a theoretical framework is seen to be lacking. Sharing similar sentiments is Goggin (1996: 9), who sees confusion over when implementation begins, when it ends, and how many types of implementation there are. The conclusion made by researchers is that countries including South Africa follow their own approach in executing government policies that may suits its context. However, the reader should note that the two approaches for implementing policy, top-down and bottom-up, are still common and prominent. Mazmanian and Sabatier (1983: 155) argue that the top-down approach indicates theoretical orientations that take implementation as a separate stage of the policy cycle, characterised as an enforcement and execution of the state’s policy decision. A normal course of policy implementation in South Africa employs this approach. It is the Government at the top that gives orders for political decisions to be implemented by bureaucrats and or agencies. It appears that government at the top disassociates with policy implementation process, as they assume that their role ends once a statute is completed. This assertion is supported by other critics of the policy implementation paradigm.

Berman (1978, 157-184) argues that the top-down model take policy language as their starting point. This means that it fails to consider the significance of actions taken earlier in the policy making process as the focus is on the completed statute (Berman, 1978: 157-184). The researcher holds the view that, observed from this angle, there could be a communication breakdown in understanding the originality of issues that the policy sought initially to address. This communication breakdown would be between the three actors, thus, the principal, the agent and the agency which conducts actual implementation. This is so because top-downers see implementation as a purely administrative process that must be done in isolation of other policy processes. Top-down implementers put exclusive emphasis on policy makers as key actors, and as such, policy makers are seen as non-actors where implementation takes place. Thus, top-downers ignore the 4C0s *Communication, Coordination, Collaboration, and Cooperation* adopted in this study. They object to the inherent assumption that policy-makers control processes that affect implementation and, in turn, local service deliverers, who are experts and have the knowledge of true problems on the ground, are ignored in proposing policy. In such a situation, Elmore (1979: 603) holds a view that the top-down model is unachievable in practice because it will always be implementation failure.

Bottom-up, on the contrary, summarises theoretical orientations conceiving implementation as “a process of interpretations, figuring out what to do and delivering concrete services to policy recipients on diverse localities and situations by street-level bureaucrats within different organisational setting” (Mazmanian and Sabatier, 1983: 155). The main focus of the bottom-up approach is on groups and service deliverers. This means that implementation is determined by officials in the implementing agency and/or the client, rather than by the central decision-makers

(Matland, 1995: 150). The South African government, for example, does allow a system whereby provinces can formulate and implement policies, but the central government remains a reporting point. Matland (1995: 150) stresses this point in explaining that for bottom-up “all actions may fall within a limited range where the borders are set by centrally determined policy”. Mazmanian and Sabatier (1983: 153), observes policy implementation as going through a process in order to realise outcomes. They unpack the process as shown in Figure 2.1.

**Figure 2.2: Stages in the Implementation Process**



Source: Mazmanian and Sabatier (1983: 153)

Policy implementation as an important process of service delivery goes through these channels. However, the researcher argues that the process shown above does not tell us which approach between the two is being employed. It also does not tell us where oversight and accountability start and or end. Similarly, *Communication*, *Coordination*, *Collaboration*, and *Cooperation* are not emphasised as anchors to achieve the desired goals. Nor does the process itself seem to be assisting policy implementers.

According to Brynard (2005: 4-5), there are three generations of research that literature on implementation has travelled. Firstly, the classical generation hold the thinking that implementation would happen automatically once the appropriate policies are signed into law. This is top-down view, which observes policy implementation as an administrative mechanism in the machine. However, the researcher is of the view that, in the petroleum industry of South Africa, traits of this behaviour are still in existence in the sense that policy mandates are imposed on institutions, with the hope that they will automatically be implemented. A grasp of the complicated nature of the industry is still at a minimal level where policy implementation is concerned. According to Najam (1995: 97), this “machine-like manner is founded on three concepts: organisational hierarchy, the discrete nature of politics and the administration thereof, and efficiency”. Presented in this way, policy implementation was seen as impossibly complex to study (Sabatier, 1986: 27). In support, DeLeon and DeLeon (2002: 469), points out that the first generation primarily focused on the “immense vale of troubles that lay between the definition of a policy and its execution through case study analysis”. In the second generation the emergence of a bottom-up approach as an alternative analytical approach (Lipsky, 1971: 391) was brought to the fore. Thus, rather than begin with a policy decision, this approach analyses the interaction of actors at the operational level (Lipsky, 1971: 391).

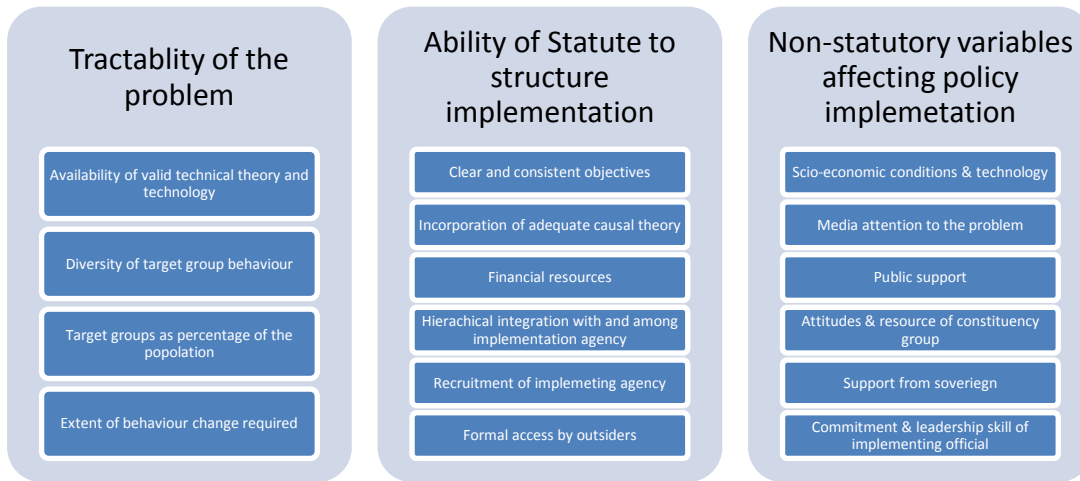
The third generation moved towards a general understanding of implementation and how this might be improved (Najam, 1995). Najam (1995) presents two famous researchers in this area, Paul Sabatier and Daniel Mazmanian, whom proposed a framework of five variables for effective policy implementation. Brynard (2005: 22) suggests that these variables form the important causal factors which embrace divergent implementation perspectives on different

political systems and in countries at varying economic levels of development. This study sees these variables as important to highlight, because they provide a better understanding of policy implementation. The five variables identified by Brynard (2005: 16) are firstly, the *content* of policy, which could either be distributive, regulatory or redistributive. Fundamental to this is the assumption that policies determine politics and the most significant political fact is that governments coerce. Secondly, the *context* of the institution is seen as “shaped by the larger context of social, economic, political and legal realities of the system” (Brynard, 2005: 17). Thirdly, is *commitment* in which Brynard (2005: 18) suggest that it is important at all levels of the process, which includes state level as well as street level. Brynard (2005) proposes that commitment influences and is in turn, influenced by the other four variables in the 5C protocol. The fourth is *capacity* and is viewed by Brynard (2005) in both tangible resources such as human, financial, and technological, as well as the intangible requirements such as leadership, motivation, courage and endurance, among many others. The fifth and last is *clients and coalitions* wherein Brynard (2005) suggests government enjoins a coalition of interest groups, opinion leaders and other outside actors who support a particular implementation process, since power shifts can strongly influence a particular policy implementation process. However, while all these five C protocols of policy implementation are important and well accepted by scholars, the researcher suggests an addition of four more variables, namely *Communication, Coordination, Collaboration, and Cooperation* as adopted in the context of this study. The researcher argues that the effectiveness of policy implementation needs cooperation from all levels, a coordinated effort, intact collaboration and clear lines of communication, both vertical and horizontal. However, it ought to be highlighted that policy implementation does face challenges, to be unpacked below.



Policy implementation has been described as one major problem confronting developing countries, according to Egonmwan (1984: 25). Egonmwan (1991) says the implementation problem in developing countries is the problem of a widening gap between intentions and results. This gap manifests itself in the form of the rich getting richer, while the poor are getting poorer in spite of the 'better life for all' ANC bandwagon. Exogenous shocks may take a different form in the petroleum industry all together, due to the environment in which it operates and the nature of the industry itself. A technical understanding of the industry might deprive this industry of good policy orientation. If it fails at this stage, all other steps of policy process may be impacted to the extent of threatening sustainability of institutions. Furthermore, the implementation gap can also be manifested in the widening of the distance between stated policy goals and the realisation of such planned goals (Egonmwan, 1991). Mazmanian and Sabatier (1983: 20) put forth that policy implementation challenges must be closely observed since they may affect policy objectives. These variables can be broadly categorised as: "tractability of the problems being addressed; the ability of the statute to favourably structure the implementation process; and the net effect of a variety of political variables on the balance of support for statutory objectives" (Mazmanian and Sabatier, 1983: 20-21). Each variable is unpacked in Figure 2.2.

**Figure 2.3: Challenges affecting policy implementation**



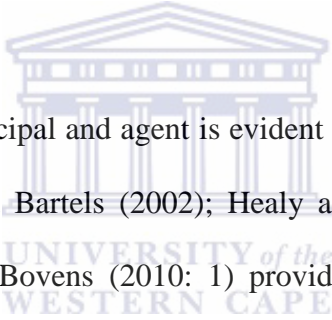
*Source: Mazmanian and Sabatier (1983: 20-21)*

However, as all variables of this study are unpacked, it appears that there is a disjuncture in the sense that they are seen as components that work in isolation. The researcher seeks to understand the effectiveness of policy implementation, oversight and accountability (as whole) in the petroleum industry of South Africa, in regard to policy objective of ensuring HDSA transformation. The 4C0s: *Communication, Coordination, Collaboration, and Cooperation* interlink these important variables. The next theoretical framework to be discussed and analysed is accountability.

## 2.4 Accountability Theory

Institutional theorists discussed earlier mentioned the role of actors in institutions and how they interact with institutions. The researcher is of the view that accountability is a typical characteristic of an institution, whether formal or informal. Accountability can even be found at

home where a child must account to the parents for its actions. It is paramount to unpack this institution and bring empirical understanding to the fore. Historical institutional theory holds that actors in institutions create ideas which, in turn, shape their behaviour. Within the rational choice institutionalists there is the principal-agent sub-theory, which lays a foundation in discussing accountability as understood in the petroleum industry of South Africa. The principal-agent sub-theory emphasises the institutional mechanisms whereby principals identify ideas, monitor them as carried out by agents, and compliance is employed through coercive means, among other things. The researcher holds the view that accountability is a phenomenon created by principals in order to subject the agent's behaviour to answerability.



In this way, interplay between principal and agent is evident when the principal makes the agent follow its instructions. Achen and Bartels (2002); Healy and Malhotra (2010); Lenz (2012); Lupia and McCubbins (1998) in Bovens (2010: 1) provides an understanding of the public accountability function. They present it as the capability of principals to judge the performance of their agents. Analysis and evaluation of accountability as applied in the petroleum industry requires a specification of who is supposed to be accountable, to whom and for what. According to Bolton and Dewatripont (2005: 535), this is a core ingredient of principal-agent theory, which further provides power to the principal to make decisions that affect the incentives of the agent when effecting various possible actions. This process of structuring incentives for the agent is the central focus of principal-agent theory, embodied in the rational choice institutional theory. As Bolton and Dewatripont (2005: 535) claim, the decisions made by the principal that structure the agent's incentives to take various actions, constitute a contract. The discussion below should be understood in this context.

Frink and Klimosky (2004: 1) see academic interest in the accountability phenomenon to have grown significantly over the years. Accountability is a long-standing and well-contested phenomenon with multiple understandings. Pollitt (2003: 89) agrees that accountability could mean many different things to many different people. The researcher holds a view that accountability with its various dichotomies has a potential to be challenging, mainly in selecting a suitable approach for those who are placed with this role. The dichotomies of accountability are explained in the extensive work done by Blind (2011: 3-23). It is important to note two predominantly known components of accountability studied by scholars, thus there are those who present accountability as active and there are those who observe accountability to be passive (Bovens, 2010: 1). In the former case, accountability is used primarily as a normative concept such as a set of standards for the evaluation of the behaviour of public actors (Bovens, 2010: 1). In the latter case, accountability is used in a narrower, descriptive sense as it is seen as an institutional relation or arrangement in which an actor can be held to account by a forum (Bovens, 2010: 1). According to Frink and Klimosky (2004: 3), “social systems in general can be defined in terms of common sets of shared expectations for behaviour”. They go on arguing that, accountability, then, could be seen as the glue that binds social systems together (Frink and Klimosky, 2004: 3). The concept of accountability has further induced a dichotomous analysis of accountability in the social science literature, which the relevant concepts to the study ought to be unpacked. As espoused by Blind (2011: 3), the “dichotomies of accountability can be explained along the prescriptive, descriptive, operational and longitudinal dimensions”, among others, even though these categories are neither thorough nor mutually exclusive. Next, prescriptive dichotomies of accountability are discussed.

### 2.4.1 Prescriptive Dichotomies of Accountability

According to Blind (2011: 3) in prescriptive terms, a dichotomous understanding of accountability is summarised as the *philosophy* versus the *means* of government. Llyod (2008) in Blind (2011: 3), refers to this as the ‘hardware’ versus the ‘software’ of accountability. Blind, (2011: 3) explains that the hardware, or the structures of accountability, includes the procedures, mechanisms and processes, while the software refers to the attitudes and behaviour, perceptions and the mindset. According to Frink and Klimosky (2004: 3), organisational responses to the need for accountability from its members include the creation of mechanisms such as formal reporting relationships, performance monitoring and evaluations, and employment contracts, among others. Indeed, while procedures, mechanisms and rules might be in place, nonetheless, people’s behaviour and attitude needs to embrace and champion them so that the desired policy outcomes are achieved. As Frink and Klimosky (2004: 3) concur, in addition to these formal mechanisms, organisations promote several informal sources of accountability, such as group norms, corporate cultural norms, loyalty to an individual’s superior and colleagues, among others. Blind (2011: 3) citing Bowens (2010) also offers a dichotomous understanding of accountability along prescriptive terms as consisting of ‘*virtue*’ versus ‘*mechanism*.’ In the former accountability entails a positive quality in organisations (Gallie, 1962: 121). In the latter, accountability is seen as an institutional arrangement where an accountee is held to account by a forum (Gallie, 1962: 121). Here, the gist of accountability is not the behaviour of public agents, but the way in which the principal-agent nexus operates in converging formal and informal ways of accountability. To be discussed next is descriptive dichotomy of accountability is explained.

### **2.4.2 Descriptive Dichotomies of Accountability**

The descriptive dichotomies of accountability include the following: “market-based versus administrative accountability, political versus legal/judicial accountability, and social versus institutional accountability” (Blind, 2011: 5). Market-based accountability views citizens as consumers, whom must be accounted to on the basis of the services they receive (Blind, 2011: 5). The researcher is of the view that this is tantamount to ‘People First’ bandwagon concept cited in the South African Batho Pele Principles, borrowed from the private sector. A challenge observed by the researcher is that, this may work well in the private sector even though it is government’s ambition to see them work well in the public sector. Accountability enforcement measures if not employed effectively in the private sector setting may mean loss of clients that are critical for business sustainability. This however does not apply in the public sector. In contrast to market-based accountability, Blind (2011: 5) portrays administrative or organisational accountability as referring to rules, regulations and norms of hierarchical obligation to answer to principals. Blind (2011) adds that, Max Weber’s constructs of hierarchy, rules, regulations and budgets, as also applicable to market-driven concepts and practices, does feature in administrative accountability, hence there is observed convergence with market-based accountability. The next dichotomy to be discussed is the political versus legal/judicial accountability.

### **2.4.3 Political versus Legal/Judicial Accountability**

Political accountability can be defined as the “elected officials’ obligation to answer to the public, and of public servants to the elected officials” (Blind, 2011: 7). The researcher points out that this accountability is applicable in the petroleum industry of South Africa. For example, the

Minister of Energy accounts to the public while government officials account to her/him. Blind (2011: 7) argues that this is generally ensured through elections and the legislative system, and is supported by political party systems and the executive-legislature division of labour.

Goetz and Gaventa (2001: 7) observe legal accountability as assured by the judiciary, which checks whether politicians and officials act within the confines of their prescribed jurisdictions. As such, this has more to do with guarding against the abuse of power. In the same vein Blind (2011), distinguishes between political and legal accountability on the grounds that the former is more subjective. Blind (2011) furthermore claims that, in political accountability, the political principle (the elected official) can hold the agent (the selected official) accountable without observing any procedures to go about this. Legal accountability on another spectrum is based on substantial evidence upon breach of rules (Blind, 2011). Blind (2011: 7) observes legal accountability as based on reason, while political accountability is not. The researcher declares that while such a distinction is useful as it may block abuse of power by the principal and this is applicable in a democratic country like South Africa. A complementary convergence is observed between political and legal accountability, which watches over the interests of both the principal and the agent (Blind, 2011). The next divergence of accountability to be discussed is institutional versus social.

#### **2.4.4 Institutional versus Social Accountability**

The institutional versus social accountability divide is given many names, thus it is also called “the supply-driven versus the demand-led or top-down versus bottom-up accountability” (Blind,

2011: 8). Institutional versus social accountability is seen to be more recent than the two previous descriptive sub-dichotomies. According to Ackerman (2005: 16) the institutions of accountability are the parliament, electoral system, the judiciary and the myriad audit organisations, among others. Social accountability, on the other hand is made up of ad hoc initiatives of direct and indirect civil society and citizen engagement in public affairs with the purpose to wield accountability (Ackerman, 2005: 16).

It is paramount to note that social accountability is further sub-divided into two sub-components; thus: 1) “voice-led social accountability which is defined by citizen participation in policy-making, advocacy and deliberation processes” (Blind, 2011: 9) citing (Malena, Forster and Sigh, 2004). An example of this is that Parliamentary Portfolio Committees champion this kind of dialogue in South Africa, wherein, interested and affected parties are given a chance to participate in policy developments through public participation forums. However, whether citizen’s concerns are taken into consideration is totally another discussion. Blind (2001: 7) mention another sub-component of social accountability as “the control-oriented social accountability defined by citizens’ watchdog role, often in cooperation with other societal actors, such as the media and professional associations” (Blind, 2011: 9). In order to understand institutional architecture effectiveness, this concept is taken seriously in this current study.

There are challenges in the accountability as observed by various scholars. The challenge with this dynamic nature of accountability is that it does not conform to real life situation (Blind, 2011: 15) where it is needed heavily. As Ackerman (2005: 25) states “to be accountable is to be in motion, not simply sitting in an office while being open to criticism”. Hence the researcher



observes accountability to be everywhere and necessary for effective policy implementation. The researcher therefore views academic literature on accountability to be disconnected, as it gives various explanations for different context of accountability. Supporting this claim is Dowdle (2006: 178-9) as makes reference to newly edited volume on accountability, which portrays differing concepts, conceptualisations, and frames for studying accountability. Dowdle (2006) goes on arguing that even when this is apparent no attempts is made to provide a consistent analytical framework for the analysis of this accountability crisis. As such, literature show researchers giving different definitions of accountability and addressing very different accountability dilemmas, practices, and potential crises. The researcher holds a view that this dynamic conceptual understanding of accountability is observed to be useful for the current study in terms of understanding this complex phenomenon. Mosher (1979: 236) accent to this as stating that, accountability is essentially an informing function which also entices the questions of who is accountable to whom, for what are they accountable, what are the means or processes. Also of importance is to understand the impact this has to the actual practice of accountability to those placed with this role in the light of inability to reach consensus on the approach to embark on.

Also the researcher argues that, since it appears that there are various dichotomies, this may pose a challenge on assessing accountability effectiveness, monitor and strengthen it in a coordinated manner. For instance, prior to embarking on policy redevelopment, does government collect information from communities where social accountability was conducted? Also who give the terms and conditions on how to conduct such accountability? There is however more that needs to be uncovered, especially on the topic of accountability. All that we know at this stage is that

there are various divergent dichotomies in the literature of accountability, which appears to be applicable to all walks of petroleum industry, but there are unexplained gaps. Furthermore, to what extent can we agree that accountability successfully informed us the manner is practised where there is policy implementation and oversight? The following discussion is informed by conceptual understanding of oversight.

## **2.5 Oversight Theories**

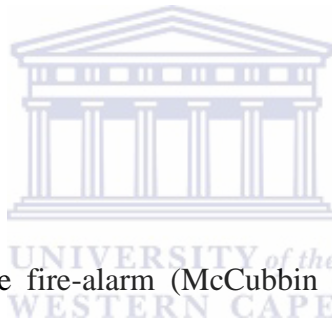
Similarly to accountability theory or concept, an explanation of oversight concept is also drawn from the principal-agent sub-theory embodied in the rational choice institutional theory. A theoretical understanding of oversight is explained in the context of principal-agent sub-theory. Prior to that, an important note to acknowledge is that the petroleum industry of South Africa cannot be explained in isolation of the system of separation of powers as it ensures that there are checks and balances in place. The Legislative authority (Parliament) is mainly the power to make, amend and abolish rules of law. Executive authority (Minister) is given the power to execute and enforce rules of law. Judicial authority is the power that ensures that disputes are solved according to the relevant laws. All these are oversight institutions in the public administration functioning. For example, the Parliament monitors the Ministers to check if government mandate are implemented. However, the legislative assembly calls on the Ministers, as members of the assembly, to explain and account directly for the way in which a statute is executed and other executive functions performed. Ministers monitor the bureaucrats or state-owned agencies. A point to note is that Ministers themselves do not execute policies; they leave implementation at the discretion of bureaucrats and relevant petroleum institutions. The judiciary monitors application of state rules and monitors abuse of these rules by Parliamentarians.

There is a school of thought which views rational choice institutional theorists as recognizing the democratic importance of top-down political control, but they narrowly approach the relationship between politics and administration within the frame of self-interested conflict between principals and agents (Kassim and Menon, 2003: 122). However, dovetailing on the concept of oversight we learn that it is seen as a monitoring and control of one person or institution generally termed the agent by another (the principal) such that the agent acts in the principal's interest, a claim strongly upheld by rational choice institutionalists. In Morgenstern and Manzetti's (2007: 132) view, "the concept of oversight is based upon the notion that, while government is necessary for democracy to prosper in an orderly fashion, its institutions and the people who staff them must be accountable for their actions". Then effective oversight would imply the principal's ability to both verify actions and sanction wrongdoers (Morgenstern and Manzetti, 2007: 132). The concept of oversight is expressed best by the Russian term, *kontrol'* (McGrath, 2013: 354). *Kontrol'* is understood "as an instrument of political control over the bureaucracy, in which the Soviet state set up a number of different types of structures for monitoring the compliance of the state bureaucracy with policy-makers' goals" (McGrath, 2013: 354). These were the instruments by which one branch of the bureaucracy checked others (McGrath, 2013). There are two forms of oversight explained by scholars who studied oversight in which the researcher holds a view that the content is not that different from that of accountability explained previously. The researcher argues that where there is accountability there must be oversight as well even though roles and power relations may differ. This induces debate among scholars, unless a completely distinct understanding of oversight is brought to the fore. There are two well-known concepts of oversight, thus the *ex ante* oversight and *ex post* oversight, which in the next section are discussed.

### 2.5.1 Ex Post Oversight

The *ex post* also known as police patrol oversight entails “permanent oversight of agency behaviour and looking at how it implements in practice the conferred powers” (Fox, 2003: 218). This kind of oversight is described to be dogmatic in nature, and suggests no harmony relations or human element between the principal and the agent. Smith (2003: 47) argues that in this kind of oversight, any deviation from the authority granted by the legislature may end up in sanctioning of the agency. However, as explained by political/ legal accountability previously, we learnt that this is not always the case, as sanctions must be done within the confines of law. According to McCubbins and Schwartz (2007: 86) policy patrol oversight is similar to real police patrols where the principal micro manages the agent. This situation is evident in the petroleum industry wherein various Parliamentary Portfolio Committees call the Department of Energy and its supporting institutions to answer frequently on programme implementation and policy issues of the industry. Considering the type of industry this is, the researcher does not observe this to be an unwarranted idea as long as it assists policy implementers to achieve government’s intended goals efficiently. Thus, does frequent reporting or dogmatic oversight achieve the bottom line? The answer to this question will be made clear as the study unfolds. However, *ex post* oversight is argued to fall into two broad categories, “the ‘imposition of sanctions’, where principals attempt to control agency loss through budgetary restrictions, appointments or revising the agent’s mandate through legislative or regulatory means; and ‘monitoring’, whereby an attempt is made to rebalance the asymmetry of information by surveillance of agent behaviour” (Pollack, 1997: 99).

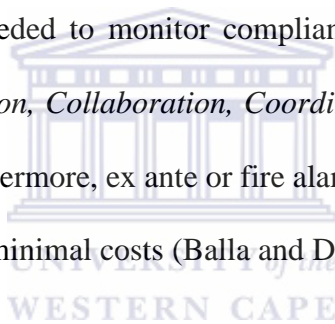
However, although *ex post* oversight stood for several years in being considered to be one of the most important sources of control of the Executive branch; scholars, practitioners and researchers who looked at its performance noticed that this technique of oversight incur high cost. This makes sense because; the legislative arm in South Africa is in Cape Town Parliament, while the central Department of Energy is in Pretoria. This means that there could be travelling costs involved if such oversight was employed. According to Balla and Deering (2013: 29), *ex post* oversight is induced by environmental shocks which may be war-related, among others. *Ex post* therefore were considered to be the “event-driven activities of public administration that require more detailed scrutiny” (Balla and Deering, 2013: 29), hence deemed expensive. Next, *ex ante* oversight is explained.



### **2.5.2 Ex Ante Oversight**

*Ex ante* oversight is known to be fire-alarm (McCubbin and Schwartz, 2007: 88). *Ex ante* oversight is seen as where legislators scrutinise government activities effectively. According to Gerber, Maestas and Doetrius (2005: 4), the purpose *ex ante* oversight is to “constrain choices of government and enable legislator to hardwire agencies to make certain types of decisions or stack the deck in favour of particular interests”. This means that this oversight is a proactive approach that prevents unwarranted behaviour before it occurs, if it is wielded timeously. It should be noted that institutional theorists mentioned that institutions or laws are created by people, which in turn constrain their behaviour. It was not clear then whether the laws are created to prevent or correct what is already been done. Furthermore, institutional theorists could not tell us whether this is oversight or nor accountability. This part clears this notion.

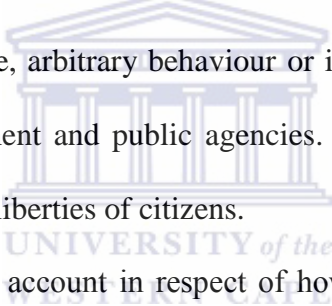
It appears that as the principal must carry out fire-alarm oversight activity cannot do it alone. To a larger extent, principal may rely heavily on third parties to alert to the principal on transgressions. Balla and Deering (2013: 9) also emphasise the importance of outsiders in fire-alarm oversight since the initiation of legislative oversight relies on it. This oversight allows active citizen participation in raising the alarm whenever there is violation or diversion in statutory (McCubbin and Schwartz, 2007). The environmental lobby groups play an active role in the petroleum industry especially where harm on the environment is posed. Whistle blowers as well implement this kind of oversight. However as the focus of this is on critical evaluation of institutional architecture in relation to policy implementation, oversight and accountability, this type of fire-alarm oversight is needed to monitor compliance towards HDSA transformation. This is where the 4C0s: *Cooperation, Collaboration, Coordination and Communication* become relevant in this current study. Furthermore, ex ante or fire alarm oversight is different from the ex post in the sense that it may incur minimal costs (Balla and Deering, 2013: 9).



So far the study has revealed that, according to institutional theorists history matters because it has a tendency of tracking what happened in the past in order to build a better today. Historical institutionalists argued that ideas are constructed by people which then constrain their behaviour. Rational choice institutionalists also observe ideas to be created by people, but assert that people create ideas for selfish purposes. Embodied in the rational choice theory is principal-agent sub-theory, among others which provides a theoretical base for the understanding of how accountability and oversight is constructed and what is employed for. Basically, the principal initiate or create ideas while implementation is done by bureaucrats, but this is done in the understanding that the outcome must maximise the principal's utility. So far, we have learnt that,

same applies to accountability discussed earlier, oversight as well is a norm applied in institutions even though at this stage it is not clear how they are both operationalised in the context under discussion. It is evident that both accountability and oversight are norms that must be adopted in informal and or formal institutions. The researcher sees this practice at homes as well where there are rules for the members of family to adhere to and must account for where there is non-compliance. Parents, in this instance, enforce both accountability and oversight.

In South Africa, the concept of oversight contains many aspects which include political, administrative, financial, ethical, legal and strategic elements. General functions of oversight are:

- 
- To detect and prevent abuse, arbitrary behaviour or illegal and unconstitutional conduct on the part of the government and public agencies. At the core of this function is the protection of the rights and liberties of citizens.
  - To hold the government to account in respect of how the taxpayers' money is used. It detects waste within the machinery of government and public agencies. Thus it can improve the efficiency, economy and effectiveness of government operations.
  - To ensure that policies announced by government and authorised by Parliament are actually delivered. This function includes monitoring the achievement of goals set by legislation and the government's own programmes.
  - To improve the transparency of government operations and enhance public trust in the government, which is itself a condition of effective policy delivery (Oversight and Accountability Model, 2013 <http://www.parliament.gov.za>).

To remind the reader, this study sought to critically evaluate institutional architecture for effective policy implementation, oversight and accountability in the Energy Sector of South Africa; specifically from the perspective of the petroleum industry. There follows a discussion of the conceptual framework on monitoring and evaluation.

## **2.6 Conceptual Framework on Monitoring and Evaluation**

The function and effectiveness of institutions and systems requires strong, ethical monitoring and evaluation (Ile, Eresia-Eke and Ile, 2012: 13). The early proponents of the concept of monitoring and evaluation are Louw, 1998; Potter, 1999; Potter and Kruger, 2001; Babbie and Mouton, 2001, among many others. In this context, monitoring and evaluation is observed to be a “participatory, democratic process for examining the values, progress, constraints and achievements of projects/programmes by stakeholders” (Umtha Strategy Planning and Development Consultancy, City of Cape Town Monitoring and Evaluation, 2004: 7). The researcher holds the view that although monitoring and evaluation seem to be married concepts, these actually are two different organisational processes. Kearl (1976: 200) agrees with this claim. The commonality between monitoring and evaluation is that they are “geared towards learning from what you are doing and how you are doing it, by focusing on efficiency, effectiveness, and impact” (Kearl, 1976: 200). The focus of this study therefore is not on monitoring, but on evaluation. It is important to emphasise that evaluation does not happen in a vacuum, but rather it is applied systematically on programmes or projects in order to attest performance of agreed outcomes. Kearl (1976: 200) puts forward that “evaluation is the comparison of actual project impacts against agreed strategic plans”. This study critically evaluates institutional architecture for effective policy implementation, oversight and



accountability in the petroleum industry of South Africa. It is paramount to note that this evaluation is done in relation to the policy objective of ensuring HDSA transformation. This policy objective is translated into programmes/projects. So, it therefore makes more sense to evaluate programmes/projects that seek to address this policy objective. Programme evaluation, according to Rossi, Lipsey and Freeman (2004: 16), “is the use of social research methods to systematically investigate the effectiveness of social intervention programmes in ways that are adapted to their political and organisational environments and are designed to inform social action to improve social conditions”. It looks at what you set out to do, at what you have accomplished, and how you accomplished it (Umtha Strategy Planning and Development Consultancy, City of Cape Town, Monitoring and Evaluation, 2004).

Since it is paramount that evaluation criteria must be employed in order to get tangible evidence, the researcher adopts Development Assistance Committee (DAC) / Organisation for Economic Cooperation and Development (OECD) evaluation criteria. These embody relevance, effectiveness, efficiency, impact and sustainability. The rationale for adopting this model is that its measurement tools are comprehensive, but also complementary. The model is supported by various evaluation scholars, because it appraises data and information that informs future strategic decisions to improve programmes/projects. In the case of this study, the model will be applied to provide lessons to better speedily achieve HDSA transformation in the petroleum industry of South Africa. Chapter summary and conclusion is tabled next.

## 2.7 Chapter Summary and Conclusion

This Chapter explored concepts and theories that could serve to help understand the phenomena being explored in this study. Two theories were analysed: historical institutionalist and rational choice institutionalist. The rationale for choosing these theories is that they have been proven to be key models for ideological debate and research in public administration studies. Each provides a different, but complementary, understanding of the nature of institutions. The central argument posited by historical institutionalists is that past events matter in designing better ideas of today. Being designed by people, these ideas, when translated into policy, in turn constrain people's behaviour. The rational choice institutional theorists share similar sentiments, though the translation of these ideas is supported by the idea of utility maximisation. In this theory, institutions make rational choices based on the dynamics existing between principal and agent. The principal is portrayed as protagonist in idea/ policy initiation, giving order for the agent to implement. The agent is expected to cooperate by carrying out the principal's instructions, in the process achieving the fulfilment of its own interests.

The three major components of this study – policy implementation, oversight and accountability – were analysed within these two theoretical constructs. The theoretical understanding of accountability suggested different things to different authors. Multiple, divergent accountability dichotomies, were analysed, using examples to provide context. Central to accountability is the principal-agent interplay, wherein the agent must account to the principal for non-cooperative behaviour. It was argued that accountability should not be seen as something that others have, i.e. in the sense of 'power', but rather should be seen as showing how players discharge their responsibilities to be accountable, and how this helps to improve efficiency and efficacy.

Similarly, the theoretical understanding of oversight is centred on the principal-agent nexus, which observes the principal discharging this role with the aid of ex ante and ex post oversight mechanisms. It is the effectiveness of these mechanisms that determine whether unwarranted activities are detected and acted upon with the appropriate sanction.

The study went on to review available literature on policy implementation and the challenges thereof. This review revealed two primary directions that policy implementation takes: top-down or bottom-up. It became apparent that the three major mechanisms governing transformation, the subject of this study, are operating in isolation from another and therefore are vulnerable to both exogenous and endogenous pressures. This gap analysis is missing in the literature discourse. However, by accepting that these governing mechanisms coexist and are co-dependent, the study could more usefully adopt 4COs (*Communication, Coordination, Collaboration, and Cooperation*) as a foundation for this theoretical development, since they are critical for policy facilitation, oversight and accountability. At this point, the researcher explored the literature on monitoring and evaluation, in particular the difference between these two concepts. This resulted in the researcher focusing on the evaluation concept, being in line with the study, which seeks to critically evaluate the institutional architecture for effective policy implementation, oversight and accountability. Focusing on evaluation, an analytical model needed to be identified that would fit the theory. The researcher adopted the Development Assistance Committee (DAC) / Organisation for Economic Cooperation and Development (OECD) evaluation criteria. These embody relevance, effectiveness, efficiency, impact and sustainability, key aspects in evaluating programme/project effectiveness. However, the researcher went on to argue that for all these system to work effectively evaluation need to be done honestly in order to give best future advice

on policy implementation, accountability and oversight. The next chapter explores selected legislative and regulative framework governing the petroleum industry.



## **CHAPTER THREE: SELECTED LEGISLATIVE AND REGULATIVE FRAMEWORK**

### **3.1 Introduction**

The chapter discusses selected legislative and regulative frameworks governing the petroleum industry of South Africa, in particular with regard to HDSA transformation. As the previous chapter revealed, the aim of formal institutions that come in the form of policies and regulations, is to constrain the behaviour of human beings, and channel them into doing what law creators want, and in this case not for selfish ends, but for the greater good of the society. Prior to continuing with this, it is paramount to unpack the policy position that South Africa took after 1994. Brynard (2005: 3) explains that the South African policy development in the period from 1995 to 1996 was a 'White Paper Era'. Historical institutionalists would refer to this period as the critical juncture or the branching point. During this era, past policies were reviewed in terms of the impact they had on the majority of people who live in South Africa.

Brynard (2005: 3) goes on to show that the period from 1997 to 2003 was driven by the intent to achieve service delivery, with a renewed focus on the implementation of policy. From this time onwards, focus has been placed on service delivery, especially in the sphere of local government (Brynard, 2005: 3). Throughout this period, at the heart of policies is the drive to ensure HDSA transformation. The researcher states that the historical events that engulfed South Africa prior to 1994 had everything to do with the trajectory taken by policy post 1994. As historical institutionalists revealed in the study, history matters because it is the source of where things started and how their persistent evolution or *punctuated equilibria*, follows the concept of path dependence. The researcher firstly discusses the South African Constitution, wherein selected

clauses related to this study are explained. The second part sets out related regulations and policies, such as the White Paper on Energy Policy (1998), the Energy Act, Preferential Procurement, and the evolution of Monitoring and Evaluation Framework in the South African context, among others. The last part provides a summary and conclusion to the chapter.

## **3.2 Legislative Building Blocks in the Petroleum Industry of SA**

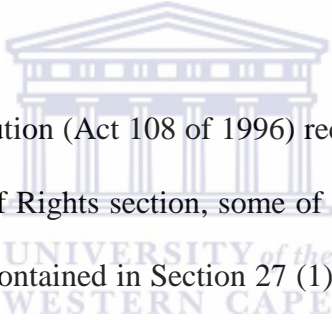
### **3.2.1 The South African Constitution**

The African National Congress Freedom Charter of 1955 provides a platform to understanding the motivation behind the government's position in crafting the new post 1994 legislative framework, particularly in the sector under discussion. It states that:

*“The People Shall Share in the Country's Wealth!*  
*The national wealth of our country, the heritage of South Africans, shall be restored*  
*to the people; of the*  
*The mineral wealth beneath the soil, the Banks and monopoly industries shall be*  
*transferred to the ownership of the people as a whole;*  
*All other industry and trade shall be controlled to assist the wellbeing of the people;*  
*All people shall have equal rights to trade where they choose, to manufacture and to enter all*  
*trades, crafts and professions” (Freedom Charter for African National Congress, 1955).*

The researcher spells out that the statement from the Freedom Charter gives effect to the post-apartheid South African Constitution. The Constitution (Act 108 of 1996), which is the supreme body of law, was promulgated in 1996, shortly after the demise of the apartheid regime. The Constitution, amongst other things, seeks to solve societal problems, which were related to discrimination, racism and deprivation of basic rights concerning all South African citizens. The inference is that, the African National Congress Freedom Charter sought to ensure that South

Africa's wealth is shared equally by all those who live in it, respectively. According to Camay and Gordon (2004: 107), many South African institutions were constructed to counteract the country's racially motivated discriminatory policies. The Constitution has then set precedence for all other government related policies, so that all policies formulated by the government of the day encapsulate the intention of the Constitution. For example, in terms of the Constitution, the Department of Energy is given a mandate to govern the Energy Sector through reasonable legislative and other measures. This mandate is limited by Part B of Schedule 4 of the South African Constitution, which specifies rights and responsibilities regarding electricity and gas reticulation.



Of note, the South African Constitution (Act 108 of 1996) recognises and spells out a number of socio-economic rights in the Bill of Rights section, some of which relate to basic services, such as the right to sufficient water, as contained in Section 27 (1) (b) of the Constitution. The Bill of Rights provides no guarantees when it comes to access to liquid fuels (such as paraffin, gas, petrol, diesel and kerosene) even though these are essential services that human beings cannot go on for long without them. These are, however, natural resources, which the Freedom Charter alludes to, and should be a critical area driving HDSA transformation. This begs the question: what does the Constitution say about transformation with regards to the petroleum industry? The South African Constitution does not only stipulate the rights directed at giving better lives to all, but also is directed at institutions that government created to implement such policies. As such, the energy sector is among the institutions that render services to the poor through the joint involvement of government, private companies and State Owned Companies in services delivery. Chapter 10 Section (195) of the South African Constitution instead provides principles

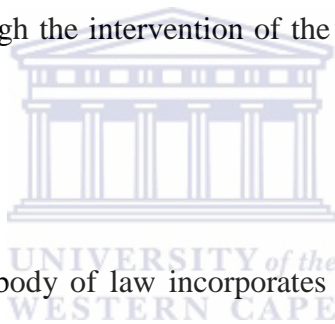
and values relating to how these institutions must conduct themselves during this process in order to ensure a level-playing field and to provide benefits for all. This study selects those clauses in the South African Constitution that resonate with the focus of the industry and are explained in the next section.

- ***Transparency must be fostered by providing the public with timely, accessible and accurate information.***

It is paramount to understand why this principle is itemised, especially when placed in the context of petroleum industry. Hughes (2012: 5) argues that “the apartheid regime primarily operated within and actively cultivated a legal, political, constitutional and policy environment of opacity and non-accountability”. Since the energy sector was governed by excessive secrecy, public debate on energy policy was an impossible endeavour. For instance, the Petroleum Products Act, No. 120 of (1977) prohibited the “publication, releasing, announcement, disclosure or conveyance to any person of information or the making of comment regarding the source, manufacture, transportation, destination, storage, consumption, quantity or stock-level of any petroleum product acquired or manufactured or being acquired for or in the Republic.” As such, the penalties imposed for offenders were severe, resulting in effective management of secrecy. The consequence of these secrecy provisions led to poor collection of data in the sector, thus making it difficult to improve policy formulation and subsequent implementation. This is the challenge that the DOE is still grappling with, as amplified in the (Department of Energy Annual Report, 2011/12).



An additional obstacle in this environment is to monitor how activities in the petroleum industry benefit all equally, regardless of race and religion. For example, the Commission for Africa Final Report (2005: 138) says that most African countries that are endowed with abundant natural resources struggle with the utilisation of these resources and sometimes the poor are impacted the worst. It further states that in some of the oil-rich countries the revenue from oil is often used only to the benefit of the ruling elite (Commission for Africa Final Report, 2005: 138) at the detriment of greater society, while information relating to the financial and economic benefits of the natural resource is also not shared. Secrecy is a strong driver to conceal the exploitation of resources for the benefit of the rich elite and at the expense of continued marginalisation of the poor. This needed to change through the intervention of the Constitution, thus the development of this principle.



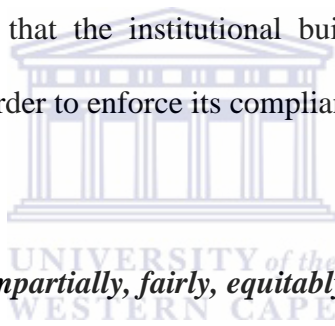
The Constitution as the supreme body of law incorporates this principle in order to reinforce transparency as an essential component that propels institutions to be accountable for their activities. Transparency in South Africa is promoted through two acts of Parliament, one: the Promotion of Administrative Act, No. 3 (2000), which among other things requires that reasons be given for any administrative action, thus promoting transparency in public administrative decisions and related actions, and two: the Promotion of Access to Information Act, No. 2 (2000) requiring governmental institutions to provide information to its clients within particular guidelines, but as an important addition to promote transparency. The benefits that come with transparency are that it promotes better business practices, increases accountability and facilitates oversight easily. Furthermore, the impact of policy is much easier to measure, allowing

improvements and corrections to be made. Further reasons to promote transparency in the petroleum industry are noted by (Yates, 2009: 55) so as to:

- Make contractor selection impartial, transparent and based on merit, where BEE or SMME involvements are concerned;
- Monitor gifts and entertainment to or from government officials, potential or current suppliers, customers and politicians;
- Prevent money-laundering;
- Ban anti-competitive activities such as collusion with competitors on pricing or allocation of customers;
- Monitor conflicts of interest – mainly, those employees with links to a company submitting a bid cannot then assess the proposal;
- Maintain accurate records and internal controls, so that company payments are honestly described and corporate funds are used lawfully;
- Co-operate with the collection of information by authorised government or regulatory officials – for example on safety performance, emissions or for tax assessment;
- Not conceal, alter or destroy data subject to litigation or official investigation;
- Implement community investment programmes transparently and ethically;
- Comply with relevant trade restrictions and export controls, and;
- Document financial, health, safety, environmental and social achievements and challenges.

It is important to note that where transparency does not exist, the chances of corruption are greatly increased. Acknowledging this potential challenge, the Parliament of South Africa passed

the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, to, *inter alia*, provide for the strengthening of measures to prevent and combat corruption and corrupt activities; to provide for the offence of corruption and related corrupt activities; to provide for the establishment and endorsement of a Register in order to place certain restrictions on persons and enterprises convicted of corrupt activities relating to tenders and contracts; to place a duty on certain persons holding a position of authority to report certain corrupt transactions; to provide for extraterritorial jurisdiction in respect of the offence of corruption and offences relating to corrupt activities; and to provide for matters connected therewith. The Act also illustrates the commitment to curb corruption by providing whistle blowing and the protection of such informants. All this is to ensure that the institutional building blocks of this principle are supported by other regulations in order to enforce its compliance.



- ***The provision of services impartially, fairly, equitably and without bias***

This principle is important in this study as it seeks to ensure that the benefits of democracy are felt by all who live in South Africa. As such, it is regarded as imperative to redress historical, social and economic inequalities, since certain segments of communities were deprived of these benefits prior to 1994. The Constitution of the Republic of South Africa (1996), as alluded to in section (9) of the Bill of Rights, encourages the importance of equality and the dismantling of unfair discrimination. Section 217 (2) also refers to procurement, where the organs of state may implement a procurement policy providing for categories of preference in the allocation of contracts and the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination. In support of this Constitutional mandate, in the petroleum industry is the very same EPWP (1998), which provides that “sustainable presence, ownership or control by

historically disadvantaged South Africans, a quarter of all facets of the liquid fuels industry” must be achieved. The PLFC, which was developed in 2000, gives effect to this Constitutional mandate as well. This is explained further as the study unfolds. Another legislative framework addressing this principle is the Employment Equity Act (No 55 of 1998), the Competition Act (No 89 of 1998) (also referred to the Amendment Act No 35 of 1999 and subsequent amendments), and the Skills development Act (No 97 of 1998) are among the institutions designed to guard against impartial and unfair service delivery.

- ***Responsiveness to people’s needs***

In the petroleum industry this is done through Social Labour Plans (SLPs), providing for critical skills development and job creation to ensure that licence holders contribute towards HDSA transformation – particularly in areas where they operate or have an impact. For instance, as PetroSA operations are based in Mosselbay, through compliance to government policy, there is a Centre of Excellence for critical skills development, clinics are built, schools are revamped, and jobs are created. There are however, challenges that should be noted. The findings of the KPMG Report (2013: 2) shows that even though there is sound implementation of SLPs, challenges such as minimal community ownership and participation, absence of systems and processes, as enablers for effective implementation, and lack of effective monitoring derail, or inhibit the implementation of policy. It is paramount to note that the Mineral Petroleum Resource Development Act of 2000 is being reviewed and it addresses this challenge by incorporating these SLPs into the municipal Integrated Development Plans (IDPs). This means that once each company completes the project it can be handed over to the municipality for further administration. The researcher claims that the 4C0s: *Communication, Coordination,*

*Collaboration, and Cooperation*, which are an ‘umbilical cord’ to hold policy facilitation process intact, are needed strongly in this regard so that programmes/ projects respond well to people’s needs. The researcher’s conviction is based on the philosophy that the 4C0s require the involvement of government, private companies and communities and the study expands further this notion as progresses. The South African constitution, however, paves the way to the development of other policies which sought to improve governability of the industry. The White Paper on Energy (1998) is further discussed.

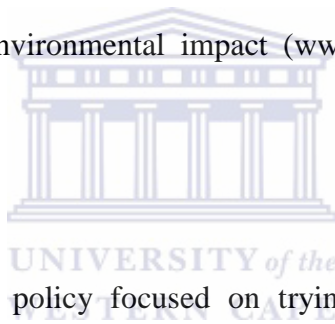
### **3.2.2 The White Paper on Energy Policy (1998)**

Energy Policy can be explained in three different periods, the first being the period of the apartheid regime, from 1948 to 1994. During the apartheid period, while the country was politically isolated by international community, the Energy Policy was mostly centred on energy security and self-sufficiency (Marquard, 2006: 338-9). In the domestic sector, this meant providing modern energy services almost exclusively to the ‘White’ population group, which formed eleven percent of the population (Davidson, Winkler, Kenny, Prasad, Nkomo, Sparks, Howells and Alfstad, 2006: 5). High priority was given to the needs of the industrial sector also, because of its role in the economy.

The second is the period following the first democratic elections of 1994, up to 2000. With the end of apartheid South Africa experienced fundamental shifts resulting in significant changes in the energy policy context. According to Marquard (2006), the 1994 political transition opened a policy window as the political landscape was transformed, prompting influence relaxation by

individual energy supply communities. Within this window period, the 1998 Energy Policy White Paper was developed, to guide further the energy sector. The policy was swiftly aligned with new social and economic policies aimed at reconstruction and development. The White Paper on the Energy Policy (1998) specifically embodies the following objectives, to:

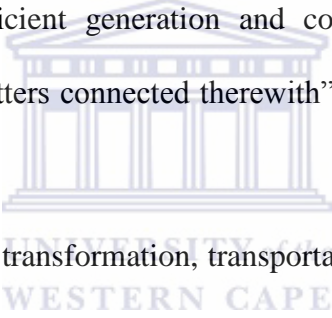
- Improve social equity by specifically addressing the energy requirements of the poor;
- Enhance the efficiency and competitiveness of the South African economy by providing low-cost and high quality energy inputs to industrial, mining and other sectors; and
- Work towards environmental sustainability by addressing both short-term environmental problems, and planning for a long-term transition towards renewable sources of energy with minimum negative environmental impact (www.anc.org.za; White Paper on the Energy Policy, 1998).



From 2000 onwards, the energy policy focused on trying to achieve the targets that the government set after 1994. These targets relate to job creation and economic development (Davidson et al., 2006: 5) among other things. While the energy policies of all three periods are observed to differ, the policy paradigms shifts observed here are said to have contributed to the growth of the sector significantly. The claim made by historical institutionalists, relating to ‘critical junctures’, warrants recognition, because South Africa is seen internationally to have done exceptionally well during the transition period, even though there are still some significant areas of learning. The National Energy Act is explained next.

### 3.2.3 National Energy Act

The aim of the National Energy Act, No. 34 of (2008) is “to ensure that diverse energy resources are available, in sustainable quantities and at affordable prices, to the South African economy in support of economic growth and poverty alleviation, taking into account environmental management requirements and interactions amongst economic sectors; to provide for energy planning, increased generation and consumption of renewable energies, contingency energy supply, holding of strategic energy feed-stocks and carriers, adequate investment in, appropriate upkeep and access to energy infrastructure; to provide measures for the furnishing of certain data and information regarding energy demand, supply and generation; to establish an institution to be responsible for promotion of efficient generation and consumption of energy and energy research; and to provide for all matters connected therewith”. Critical highlights relevant to this study are noted:

- 
- Provide for optimal supply, transformation, transportation, storage and demand of energy that are planned, organised and implemented in accordance with a balanced consideration of security of supply, economics, consumer protection and a sustainable development;
  - Facilitate energy access for improvement of the quality of life of the people of Republic of South Africa;
  - Commercialise energy-related technologies;
  - Contribute to sustainable development of South Africa's economy (National Energy Act, No. 34 of 2008).

Next selected key points in the Petroleum Products Act relevant to the context of this study are outlined.

### **3.2.4 Petroleum Products Act, 1977 (Act No. 120 of 1977)**

The Petroleum Products Act, 1977 (Act No. 120 of 1977) is one of the regulations governing the petroleum industry and its purpose is outlined below, thus;

- Measures in the saving of petroleum products and economy in the cost of distribution thereof;
- The maintenance and control of the price thereof;
- The furnishing of certain information regarding petroleum products;
- The rendering of service of a particular kind or standard in connection with petroleum products;
- The licensing of persons involved in the manufacturing, wholesaling and retailing of prescribed petroleum products;
- Promoting the transformation of the South African petroleum and liquid fuels industry; and
- The promulgation of regulations relating to such licenses and matters incidental thereto.

The South African Liquid Fuels Charter is outlined next.

### **3.2.5 South African Petroleum and Liquid Fuel Charter**

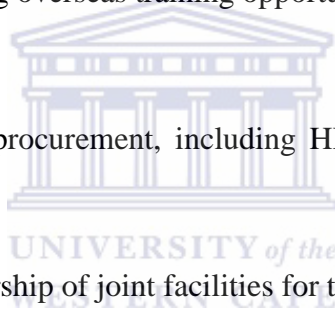
The South African PLFC was inaugurated in 2000. The aim of the PLFC is to provide the necessary framework for transformation of the petroleum and liquid fuels industry. The Charter seeks to address objectives made in the White Paper on Energy Policy, particularly to achieve “the sustainable presence, ownership or control by HDSAs of approximately a quarter of all facets of the liquid fuels industry or plans to achieve this” (Petroleum and Liquid Fuels Charter Final Audit Report, 2011: 21). What this means is that 25% of ownership and control of the



industry by HDSA must be achieved within ten years of the Charter enactment. The PLFC carries thirteen elements that address this policy goal: namely ownership, management control, supportive culture, capacity building, employment equity, private sector procurement, access to joint facilities, refining capacity, retailing, wholesaling, financing, terms of credit and synfuels supply within the companies (Petroleum and Liquid Fuels Charter Final Audit Report, 2011).

The Liquid Fuels Charter's selected objectives are to be achieved through:

- Fostering a supportive culture towards HDSAs;
- Capacity building, including overseas training opportunities;
- Employment equity;
- Private and public sector procurement, including HDSA companies preferred supplier status wherever possible;
- Improved access and ownership of joint facilities for the movement and storage of oil and petroleum products;
- Improving access to refining capacity;
- Creation of fair opportunities for entry into retailing and wholesaling;
- Improving access to financing for HDSA companies, including through the creation of strategic partnerships; and
- Improved terms of credit to HDSA companies,  
(<http://www.atns.net.au/agreement.asp?EntityID=4476>).



Since the Company's Act stipulate critical areas that ought observance in relations to HDSA, it is important to outline it, and this is done next.

### **3.2.6 Competition Act**

The Company's Act defines HDSA as follows: "a person is a historically disadvantaged person if that person is one of a category of individuals who, before the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), came into operation, were disadvantaged by unfair discrimination on the basis of race", among other things. This Act is important in this current study because one of the DOE's mandates is to ensure transformation and ownership. The researcher believes that this space requires regulation so that competition is healthy and is able to benefit all the players equitably and in an unbiased manner. The Competition Act (89, 1998), amended Act (35, 1999), subsequent amendments Act (15 of 2000); and Act (39, 2000) play this role. With regards to the context of this study, this statute makes provisions for the Competition Commission to exempt HDSA or SMME companies from certain "prohibited practices" that lessen or prevent competition in the market, such as *horizontal* (this means: collusive tendering and price fixing) and *vertical* (for example, the practice of minimum resale pricing) relationships. With regard to HDSAs the Act seeks to promote and maintain competition in the Republic in order to promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons (Company's Act, 2000). To protect this group, the Act goes on to exempt the HDSA companies from abuse of dominance in the market such as charging excessive prices. To this effect, the DoE enacted RAS in 2013, including the BFP for commodities such as diesel, illuminating paraffin, and liquid petroleum products in order to ensure that HDSA companies do not remain dormant and disadvantaged through unfair

competition. The Preferential Procurement Policy Framework Act, in relation to the context of this study is explained next.

### **3.2.7 The Preferential Procurement Policy Framework Act**

The Preferential Procurement Policy Framework Act, No. 5 of (2000) is also a significant piece of legislation that seeks to ensure a level-playing field in the business operations in the petroleum industry. In Section 217 (1) of the South African Constitution, it is argued that when an organ of state in the national, provincial or local sphere of government or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective. Section 2 of the Act, deals with the Framework for implementation of preferential procurement policy and does make reference to the advancement of HDSA. It is also applicable to organs of state only, and both the Constitution and this Act are silent with regard to the private sector. The final Preferential Procurement Regulations, gazetted in 2011, aim to ensure that Government's preferential procurement procedures are aligned with the aims of the B-BBEE Act of 2003 and associated Codes of Good Practice, as this is among prominent legislation designed to ensure transformation is achieved in the petroleum industry of South Africa. To remind the reader, this study critically evaluates institutional architecture for effective policy implementation, oversight and accountability in the energy sector of South Africa, within a petroleum perspective. The framework on monitoring and evaluation is explained next.

### **3.3 Policy framework for Government-wide Monitoring and Evaluation**

The development of monitoring and evaluation framework proves government's seriousness in terms of improving service delivery and the impact on intended beneficiaries in South Africa. In post 2009, the South African government formed a unit named 'The Presidency' in which the Department of Monitoring and Evaluation, among many others is accommodated. The strategic mandate of this Department is to monitor and evaluate the implementation of government policies and programmes. The Policy Framework for the Government-Wide Monitoring and Evaluation System (GWMES) was coined in 2005 with three data major areas underpinning the monitoring and evaluation system, namely: programme performance information; social, economic and demographic statistics; and evaluation (National Evaluation Policy Framework, 2011: ii). The National Evaluation Policy Framework (2011: ii) confer that "monitoring and evaluation is designed to provide its users with the ability to draw some causal connections between the choice of policy priorities, the resourcing of those policy objectives, the programmes designed to implement them, the services actually delivered and their ultimate impact on communities". Of interest to this study is the evaluation of the policy objective, which is to ensure HDSA transformation in the petroleum industry of South Africa. The component of 'evaluation' warrants explanation. In the South African context the components of 'evaluation' is not so different from the description given by DAC/ OECD given in Chapter Two of this current study. It embodies relevance, effectiveness, efficiency, impact and sustainability. For instance evaluation in the South African Evaluation Framework is described as "the systematic collection and objective analysis of evidence on public policies, programmes, projects, functions and organisations to assess issues such as relevance, performance (effectiveness and efficiency), value for money, impact and sustainability and recommend ways forward" (National Evaluation

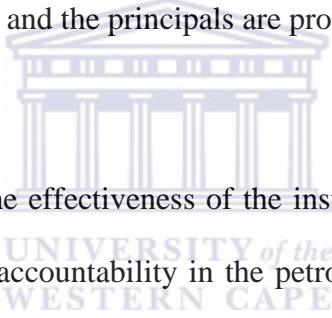
Policy Framework, 2011: iv). It is therefore the programmes/ projects seeking to ensure HDSA transformation in the petroleum industry that will be evaluated in order to contextualise these elements. Next, the chapter summary and conclusion is given, but prior to embarking on that, it is important to outline selected South African Evaluation Policy Framework principles:

- Promote, facilitate and institutionalise the use of evaluation in government;
- Strengthen linkages between evaluation, policy-making, planning and budgeting;
- Develop a common language and conceptual base for evaluation in government;
- Clarify the role of evaluations in relation to other performance management instruments;
- Frame the evaluation function in terms of its scope, institutionalisation, standards, process requirements, skill requirements, governance, financing and oversight;
- Clarify distinctions in the roles and responsibilities of public institutions in relation to evaluation;
- Improve the quality of evaluations undertaken in public institutions;
- Increase the utilisation of evaluation findings to improve performance (National Evaluation Policy Framework, 2011: iv).

### **3.4 Chapter Summary and Conclusion**

This Chapter explored selected legislation and regulations relevant to policy objective of ensuring HDSA transformation in the petroleum industry of South Africa. So far it is clear that historical events affected South Africa prior to 1994 is what led to the development of the

discussed ideas or policies. This means that if it was not for racial discrimination done during apartheid there would be no need to advance such ideas. This notion confirms the claim made by historical institutional theorists that, past events allow for the framing of new ideas. At the heart of the policies discussed is an attempt to redress past racial marginalisation, which came as result of the apartheid system. Basically, governance of the petroleum industry is shaped by history. Furthermore, there is no suggestion that these ideas are constructed to benefit the selfish ends of policy-makers. Specifically for the context of this current study therefore, the researcher disagrees with the rational choice institutional theorists' view, which claims that policies are developed by egoistical individuals. It is paramount to point out that policies in the petroleum industry took a top-down approach, and the principals are protagonists in driving policy-making.



Since the study aims to evaluate the effectiveness of the institutional architecture to implement policy, and provide oversight and accountability in the petroleum industry, the first part of the study examined the ANC Freedom Charter whose vision is to ensure that all South Africans should benefit equally from the economic activities derived from its natural resources. The South African Constitution, as the supreme body of law, supports this dream and key areas relevant to this study were selectively explained. This was followed by a discussion of the White Paper on Energy Policy 1998, the National Energy Act of 2008, the Company's Act, the Preferential Procurement Policy Framework Act and the development of a Monitoring and Evaluation Framework in South Africa. It was observed that certain parts of the regulations are not applicable to the private sector, though this is a significant stakeholder in the petroleum industry. Therefore, potential for biased treatment and an unlevelled playing-field is highly probable at the

policy-making level. The current institutional architecture in the petroleum industry of South Africa is next discussed and analysed.



## CHAPTER FOUR: CURRENT INSTITUTIONAL ARCHITECTURE OF PETROLEUM GOVERNANCE

### 4.1 Introduction

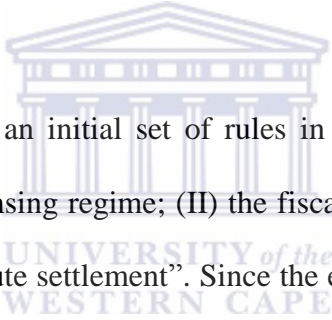
Institutions discussed here are organised according to the three critical variables of this study: accountability, oversight and policy implementation institutions in the petroleum industry of South Africa. There are a range of institutions in this industry, but only those relevant are selected and discussed. It is important to first touch base on international and regional institutions that impact on the petroleum industry since South Africa does not operate in isolation from the rest of the world. This part is important to unveil because it has a bearing on the South African institutional architecture, mainly in the petroleum industry, especially where transformation is concerned. The second part of the chapter explains regional bodies that have impact in the petroleum industry of South Africa. This part shows that South African institutions work closer and homogeneously with the regional bodies. The third part outlines selected institutional architecture in South Africa, mainly those with an oversight, accountability and policy implementation role in the petroleum industry. The last part analyses institutional power relations in the petroleum sector, how the principals and agents interact with institutions in order to forge an effective institutional architecture.

### 4.2 International Institutional trends and developments in the Petroleum Industry

Sturgeon (1974: 1) observes an oil industry characterised by instability since its inception in the 1860s. According to Sturgeon (1974: 1) this situation has seen a steady development of techniques, agreements, organisational structures and public policies over the last century. Since this study views institutional structures as bearing a historical component and evolving over



time, it is important to note that early institutions played a dominant and leading role in this regard. This was done in order to ensure that industrial power was exercised in relation to the circumstances prevalent at the time. The origins of institutional architecture in the petroleum industry began with the creation of an International Petroleum cartel comprising seven big petroleum companies mentioned in Chapter One of the study. It is this Cartel that set up initial governance structures around the First World War period. The nature of the rules at the time was geared towards utility maximisation as observed by rational institutionalists. The inference is that the strategic game in the petroleum industry is often aimed at changing the rules in favour of the bigger players, and as such, these institutions benefited handsomely (Sturgeon, 1974: 3).



Sturgeon (1974: 3-4) put forward an initial set of rules in the petroleum industry centralised around four elements: (I) “the licensing regime; (II) the fiscal regime; (111) issues of sovereign taxation, and (IV) methods of dispute settlement”. Since the end of the Second World War, a set of formal and informal institutions with different roles to govern the petroleum industry emerged. For example, the contract dubbed ‘As Is’ agreement was the first in 1926 and this was followed by the Memorandum on European Markets and The Red Line Agreement (Sturgeon, 1974: 3). These agreements controlled the petroleum sector effectively, but were only sustained until the early 1950’s when they eventually reached a state of collapse due to political pressures (Sturgeon, 1974).

A new structural form called ‘OPEC’ was developed around 1960, which wielded little control of oil until 1972 ([www.opec.org](http://www.opec.org)). Currently, OPEC has a total of twelve Member Countries, inter alia; Algeria, Angola, Ecuador, Iran, Iraq, Kuwait, Libya, Nigeria, Qatar, Saudi Arabia,

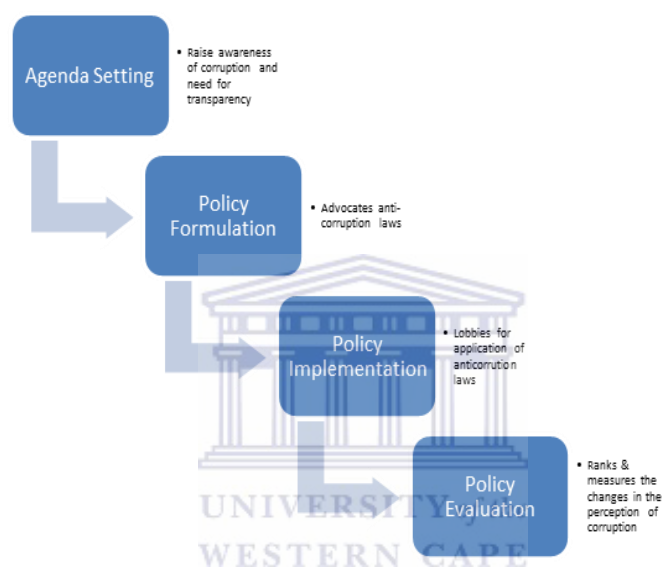
United Arab Emirates and Venezuela ([www.opec.org](http://www.opec.org)). OPEC's imperative is to co-ordinate and unify petroleum policies among Member Countries so that oil prices for petroleum producers and investment returns are realised. However, the muscle of this organisation as a consequence of political pressures, weakened its initial mandate. This phase led to ungovernability of oil prices and so, mistrust and anxiety around players submerged, prompting direct intervention of the OECD countries. According to Sturgeon (1974), the OECD intervention led to the establishment of the IEA, a structure which dealt, mainly with emergencies. This was followed by the creation of an Emergency Sharing System, which operated in close liaison with the international oil companies (Sturgeon, 1974). As the industry evolved further, more governance structures that emphasise transparency in conducting petroleum activities emerged. Thus far, the evolving nature of institutional architecture in the petroleum industry informs us as to how institutions developed, how they fall into disuse and re-develop again. The next section discusses certain oil governance structures developed during post 1990 to oversee governability of the petroleum industry in order to ensure that natural resources impacts positively on the lives of the poor.

#### **4.2.1 Transparency International**

According to Collier and Hoeffler (2004: 563-95); and Karl (1997: 55), Transparency International initiatives were developed to ensure transparent management of natural resources in order to address government corruption, among other things. The issue is that while wealth from oil extraction was discovered in abundance, a gap between the rich and the poor widened, and leaders took no accountability. In essence, citizens' needs were not safeguarded so that poverty is alleviated through equal beneficitation (Darby, 2010: 78). Transparency International is, therefore, a response to these challenges. Transparency International, as advocated by Peter

Eigen in 1993, was adopted and applied by some countries involved in petroleum. Transparency International is relevant to discuss in this study because of its active involvement and guidance in all four critical stages of the policy process showcased in the Figure 4.1.

**Figure 4. 1: Policy Process**



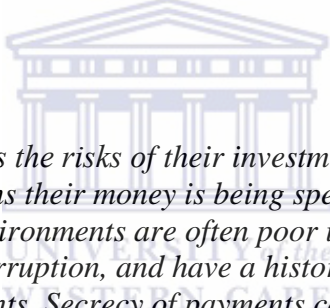
*Source: Author's configuration (wording adapted from Transparency International, 1993)*

Basically, Transparency International (1993) provides an oversight mechanism by raising the alarm on potential corruption and the need for transparency from the agenda setting stage of policy making. At the policy formulation stage, anti-corruption laws are advocated. At the policy implementation level, lobbying for application of anti-corruption laws takes effect. In the policy evaluation phase, the measurements on the changes in the perception of corruption are done, so that the next policy cycle is improved. More institutions such as Bribe Payer's Index, Global Corruption Barometer, and the African Union Convention on Preventing and Combating

Corruption were developed to tackle natural resource mismanagement (Yates, 2009: 11). Publish What You Pay, as another institution formed for similar purposes is next discussed.

#### **4.2.2 Publish What You Pay**

Publish What You Pay was pioneered in 2002 by George Soros (Publish What You Pay, 2011: 5). This initiative is inspired by the idea of breaking the link between oil and corruption by requiring corporations to ‘publish what they pay’ to the governments of oil-exporting countries (Yates, 2009: 11-13). Central to this institution is ensuring that transparency is encouraged in the petroleum space. Publish What You Pay (2011: 5) supports this claim by declaring:



*“Investors need to be able to assess the risks of their investments. Investors need to know where, in what amount, and on what terms their money is being spent in what are often very high risk operating environments. These environments are often poor in developing countries that may be politically unstable, have lots of corruption, and have a history of civil unrest. The investor has a right to know about the payments. Secrecy of payments carries real bottom-line risks for investors. Creating a reporting requirement with the SEC will capture a larger portion of the international extractive industries corporations than any other single mechanism, thereby setting a global standard for transparency and promoting a level playing field. Investors should be able to know how much money is being invested up front in oil, gas, and mining projects”.*

Oil-exporting countries in Africa who have partnerships with Publish What You Pay are only present in three countries: Cameroon, Republic of Congo and Nigeria (Yates, 2009: 13). As Yates (2009) explains further, while the idea for the call for mandatory disclosures of what the oil companies are paying to the governments is perceived as good, it could also be a challenge to practise in countries where oil money is central to the political economy; hence some states are hesitant to be part of it. Next, the Extractive Industries Transparency Initiative is discussed.

### **4.2.3 Extractive Industries Transparency Initiative**

EITI was launched in 2002 as a coalition of governments, companies, civil society groups, investors and international organisations (Acosta, 2012: 4). The EITI is based on the principle that “the wealth from a country’s natural resources should benefit all its citizens and that this requires high standards of transparency and accountability” (Beanland, 2013: 2). EITI basically is an initiative that supports the same objective as the institution discussed above, but with an objective to monitor compliance. Acosta (2012: 4) supports this claim, arguing that “EITI is a standard for monitoring compliance with contract disclosure and revenue transparency criteria to ensure that companies publish what they pay and governments disclose what they receive from the extraction and export of natural resources”. Transparency of revenue sources is achieved through: increased accountability; reduced risk of corruption; fostering democratic debate; improving macro-economic management; and access to finance (Yates, 2009: 13). These are deemed relevant on this current study in order to minimise the chances of corruption and poverty. Yates (2009) confer that EITI conducts regular publication on oil payments and revenue in order to foster a culture of transparency. However, not all countries in the world have membership with EITI, including South Africa. The OECD is an important institution as well since it promotes good governance of petroleum industry. The discussion of it is next.

### **4.2.4 Organisation for Economic Co-operation and Development**

The OECD echoes principles entrenched in the EITI discussed above. The OECD was officially created on 30 September 1961 and sought to promote policies designed to:

- Achieve the highest sustainable economic growth and employment and a rising standard of living in Member countries, while maintaining financial stability, and thus to contribute to the development of the world economy;
- Contribute to sound economic expansion in Member as well as non-member countries in the process of economic development; and
- Contribute to the expansion of world trade on a multilateral, non-discriminatory basis in accordance with international obligations (Gurria, 2008: 2).

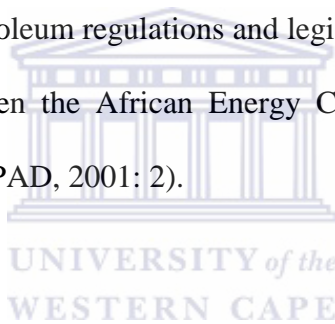
Of relevance to this study is that the OECD outlines principles of corporate governance, not only to the member countries, but also gives standard guidelines to state-owned companies operating world-wide. It is important to note that OECD outlines certain principles in which to a larger extent are similar to the King III Report on Corporate Governance adopted by South African state-owned companies in the petroleum industry among other institutions. However, the major challenge facing these initiatives is the failure to recognise that the actors within institutions may have different strength and capabilities to effectively enforce accountability and transparency in order to realise the intended outcome. Next, selected regional institutions governing the petroleum industry are outlined.

### **4.3 Selected Regional Institutions Governing the Petroleum Industry**

#### **4.3.1 New Partnership for Africa's Development**

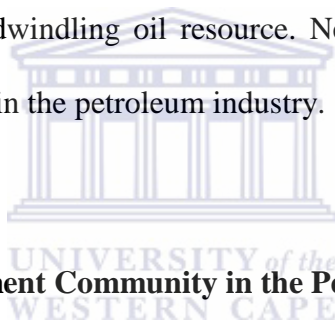
It is paramount to mention regional bodies and their role in the petroleum sector management for the purposes of the benefit of this study. Poverty alleviation is at the heart of the NEPAD initiative (Davidson and Winkler, 2003: 2). The major objectives set for the energy sector are to:

- Increase African's access to reliable and affordable commercial energy supply from 30% or more within 20 years;
- Improve the reliability and lower the cost of energy supply to productive activities in order to enable economic growth to 6% per annum;
- Reverse the environmental degradation that is associated with the use of traditional fuels in rural areas;
- Exploit and develop the hydropower potential of Africa;
- Integrate transmission grids and gas pipelines so as to facilitate cross-border energy flows;
- Reform and harmonise petroleum regulations and legislation on the continent;
- Build capacity to strengthen the African Energy Commission (AFREC) and its sub-regional organisations (NEPAD, 2001: 2).



It is paramount to note NEPAD's energy agenda for Africa as aligned with its key objectives of eradicating poverty, putting Africa on a sustainable growth and development path (NEPAD, 2001), among other agendas. In recent years NEPAD adopted a partnership strategy to promote development of the African energy infrastructure to promote this dream. For example, there is NEPAD's Energy Infrastructure Initiative, which observes power systems and gas or oil projects, mainly those that are ready for implementation (NEPAD, 2001: 2). To this effect, a short-term Action Plan was put in place, which identifies priorities in the energy sector, comprising twenty-three energy projects that fall into four categories: power systems; gas/oil studies; capacity building and facilitation (Zhou, 2003: 8).

However, challenges such as poor infrastructure financing and skills shortages constrain Africa's efforts in harnessing energy resources abundantly. Zhou (2003: 6) argues that most of the lucrative energy resources, such as oil, are rather exploited by foreign oil companies (or renting states) for their markets in the developed world. In essence, oil natural resources extracted in Africa benefit rather the rich renting States, while African poverty is left unaddressed. It is a well-known fact that Africa is endowed with abundant natural resources, but conflict and corruption decelerates further development. However, it is unclear why international renting States manage to obtain wealth in Africa, which does not benefit its own citizens even in the light of international initiatives discussed above. Instead, the so called first-world countries remain wealthy regardless of its dwindling oil resource. Next to note is the role of Southern African Development Community in the petroleum industry.



#### **4.3.2 Southern African Development Community in the Petroleum Industry**

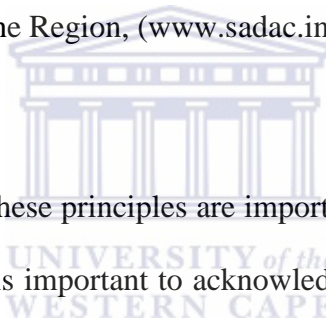
According to Davidson and Winkler (2003: 7) “the SADC is an intergovernmental legal entity grouping fourteen southern African States: Angola, Botswana, the Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe, with a commitment to equitable economic integration and sustainable development”.

The objectives of SADC in this regard are to:

- Achieve development and economic growth, alleviate poverty, enhance the standard and quality of life of the people of Southern Africa and support the socially disadvantaged through regional integration;
- Evolve common political values, systems and institutions;



- Promote and defend peace and security;
- Promote self-sustaining development on the basis of collective self-reliance, and the interdependence of Member States;
- Achieve complementarity between national and regional strategies and programmes;
- Promote and maximise productive employment and utilisation of resources of the Region;
- Achieve sustainable utilisation of natural resources and effective protection of the environment;
- Strengthen and consolidate the long standing historical, social and cultural affinities and links among the people of the Region, ([www.sadac.int](http://www.sadac.int)).



The researcher is of the view that these principles are important as they may hone good business between the Member countries. It is important to acknowledge that efforts for economic growth and poverty alleviation in the African continent are fraught by civil or religious wars and in some cases even by acts of terrorism. For example, Nigeria is one area of concern as an economic power-house abundant in oil in Africa. Mozambique recently discovered gas, but its political climate remains volatile. Indeed, the involvement of South Africa with some of these international and regional bodies needs to be recognised since this plays a significant role regarding accountability, oversight and policy implementation and efforts to address HDSA transformation.

As discussed earlier, international bodies are more concerned about transparency and of course, accountability. The researcher is of the view that, with the consideration of the sector under

review, this could cause paranoia. The industry in general is highly competitive and this perpetuates secrecy. In some nations, the petroleum industry is viewed as a political economy and a means to only certain ends. South Africa has showed signs of scepticism as international membership with some major bodies are minimal (Hughes, 2012). However, South Africa has informally and unofficially considered becoming a supporting country of some of these initiatives, but has turned down responsibility of being an implementing country (South African Institute of International Affairs, 2013: 8). Being an implementing country where EITI is concerned is most often translated in terms of ensuring increased transparency in the collection of resource revenues. The researcher views this on its own as a sensitive matter especially in a context where there are trust issues among countries. It should also be noted that vested interests are rife in the petroleum industry and this intensifies the information unevenness further (Lahn, Marcel, Mitchell, Myers and Steven, 2009: 5). Next, accountability, oversight and policy implementation mechanism used in the South African context are analysed and discussed.

#### **4.4 South Africa's mechanisms to conduct accountability, oversight and policy implementation**

Selected instruments to conduct effective oversight, accountability and policy implementation in the petroleum industry are examined. Accountability mechanisms are discussed first.

##### **4.4.1 Accountability mechanisms**

South Africa in post 1994 created a number of institutions supporting constitutional democracy within the Constitution itself, known as the Chapter nine Institutions. Of relevance to the study are the Public Protector, and the Auditor-General. These institutions are expected to be

independent of government, while they are subject only to the Constitution and the law. In addition, they are required to be non-partisan and impartial when exercising their power, free from favour, fear and prejudice. To ensure that they are doing their intended work, these institutions are required to submit annual reports to the National Assembly, stating what progress or challenges they experience. According to Naidoo (2011:40), these bodies are expected to ensure effective oversight and ensure that performance information on government is placed within the public domain.

The mandate of the Public Protector is particularly relevant to public accountability (Hughes, 2012: 4). The Public Protector was formed in terms of South Africa's Constitution to investigate complaints against government agencies or officials with regards to maladministration and abuse of power in state affairs, among other things (Hughes, 2012: 4). The Public Protector is generally permitted to investigate:

- Government at any level. This includes central and provincial government, state departments and local authorities.
- Any person performing a public function. This includes anyone performing any official duty which affects South Africans, for example a state employee such as a policeman or an electoral officer.
- Corporations or companies where the state is involved, for example Eskom and PetroSA.
- Statutory councils, for example the Human Sciences Research Council or the Council for Scientific and Industrial Research ([www.publicprotector.org](http://www.publicprotector.org)).

The Public Protector's role is reactive in the sense that its activity is induced by a particular event. The public lodge complaints to the Public Protector only where maladministration is suspected, so that those involved can be held accountable. The Public Protector in the South African context is functioning well, but critical skills, lack of enforcement measures and funding shortages limit the potential this institution has.

The role of the Auditor-General (AG) also warrants recognition. AG prevents, detects and investigates economic crimes. This means that the AG wields both *ex ante* and *ex post* mechanisms to forge accountability. By so doing, the AG publicly reports audited financial statements which may expose financial mismanagement of public sector institutions at national, provincial and local level, including that of state-owned Companies. The AG is subject only to the National Assembly where audit reports are submitted. However, while this Chapter nine institution has been described as 'watchdog', which keeps government in check and transform society, it is confronted by similar challenges to that of Public Protector because it is not directly a branch of government. This means that it does not have the power to employ punitive measures against offending public officials or institutions. Their role is purely investigatory and administrative, providing a link between government and citizens, and giving recommendations. In this way AG is viewed as toothless by the researcher. Selected oversight mechanisms are discussed next.

#### **4.4.2 Oversight Mechanisms**

As was observed in Chapter two of this study, oversight is both *ex ante* and *ex post*. The researcher holds the view that for these mechanisms to be employed effectively, transparency is

crucial. Transparency in the petroleum value-chain is essential for improving the governance and management of the industry. It could also assist the bodies that are responsible for oversight to know what they are monitoring. As petroleum is a multi-disciplinary industry, activities related to licensing, the implementation of contracts, the collection and distribution of revenue, and service delivery is done efficiently through robust monitoring in a transparent environment. Various institutions tasked with this role are discussed below.

### ***Parliament and the Portfolio Committees***

Through its oversight function, Parliament acts as the watchdog of the policies, mainly its development and implementation of those that govern the petroleum industry. This could be done through closely monitoring and evaluating government policies and actions in this industry, and by actively engaging with all actors involved. There are numerous tools of oversight used by Parliament, which are inter alia; through Portfolio Committees, the question period, public hearings, parliamentary debates, and audit agencies among others. These are developed in detail as the study unfolds. For the purposes of this study, it is paramount to give a full view and structure of oversight and of where the orders for governing the petroleum industry originate. At the apex of oversight is the National Assembly. Section 42 (3) of the South African Constitution of 1996 empowers the National Assembly and Provincial Legislatures with an oversight role over their respective Executives. Furthermore, Section 92 (3) (b) of the Constitution provides guidelines on how oversight should be conducted, stating that Members of Parliament (MPs) must provide Parliament with full and regular reports concerning matters under their control. As McGee (2002: 1) states “strong parliamentary oversight and scrutiny regimes are an essential part of combating corruption and promoting good governance generally”. Parliamentary

oversight role is structured amongst the various Parliamentary Portfolio Committees. The industry under discussion is monitored by the PPCE at the legislative level.

The reader should note that PPCs are not something new in South Africa, as they existed in the pre-1994 Parliament, where only thirteen Committees existed (Streek, 1997: 25). The difference between pre 1994 PPCs and those formed in post 1994 is that, in the former, “hearings were held in secret; they had very limited powers, and existed essentially to rubber-stamp legislation put forward by the National Party government” (Streek, 1997: 27). There was also no public access to the committees as there is today, to allow public participation in the state affairs. What is significant about the post-apartheid Parliamentary Portfolio Committees is that the rules governing Committees were overhauled and their number increased. In post 1994, Parliamentary Portfolio Committees suit a democratic state where they are open to the public and press scrutiny (Calland, 1999: 73). They further exercise oversight and accountability over the service delivery performance and economic contribution of state-owned Companies and the Government Departments ([www.treasury.gov.za](http://www.treasury.gov.za)). However, the gradual development of this institution in South Africa attest to the theory espoused by historical institutionalist, in which institutions are seen to possess the so called ‘path dependence’. Specific oversight on sectoral service delivery and other matters, as explained by (National Treasury, 2006: 18; Du Toit, 2005: 4; and [www.parliament.gov.za](http://www.parliament.gov.za)) is conducted through:

- Monitoring the economic, efficiency and effectiveness of service delivery as measured by performance indicators presented in the annual reports of Departments;

- Evaluating management's explanation as to why the entity's service delivery performance did not attain the targets set in the corporate plans;
- Equity of service delivery, and investigating the circumstances that led to financial underperformance and the impact this had on service delivery and the measures taken by management to rectify the situation;
- They consider and amend Bills, and may initiate Bills;
- They consider private members' and provincial legislative proposals and special petitions;
- They consider international treaties and agreements;
- They examine specific areas of public life or matters of public interest;
- They take care of domestic Parliamentary issues. As such, Committees have the power to summon any person to appear before them, give evidence or produce documents;
- They may require any person or institution to report to them. Committees may also receive petitions, representations or submissions from the public. Each Committee is headed by a Chairperson.

However, clarity must be made between certain roles of organs of state, where oversight in the petroleum industry is concerned. For instance, the Portfolio Committees oversee the work of the Department they are responsible for, and enquire and make recommendations about any aspect of the Department, including its structure, functioning and policy ([www.parliament.gov.za](http://www.parliament.gov.za)). Parliamentary Portfolio Committees also conduct oversight through the evaluation of performance of state-owned entities, mainly the annual non-financial statements. SCOPA's role is to examine the financial part of annual reports, e.g. the annual financial statements. However,

the researcher holds the view that South Africa should be commended for the establishment of Committees in forging a transparent and a democratic watchdog function. Laski (1938: 149) maintains that “a government that is compelled to explain itself under cross-examination will do its best to avoid the grounds of complaint”.

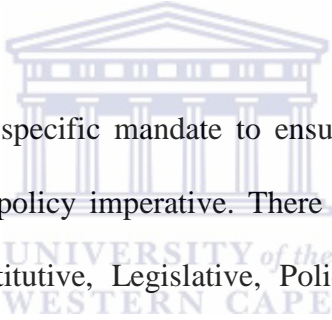
McGee (2002: 1) is of the view that the effectiveness of parliamentary oversight depends upon an active committee system that allows members to wield oversight below the surface of government administration. Importantly, in the South African system, each PPC is made up of political deployees from various political parties. The strength of this structure is that it encourages objective discussion on policies and programmes. These are ‘norm leaders’, responsible for enacting and monitoring compliance to a norm. However, effectively discharging its oversight authority is dependent on a number of factors which are key in the industry under discussion, including the ability of Parliament to access adequate information, the technical capacity of individual Members of Parliament within committees, committee leadership, and the political environment in Parliament (Du Toit, 2005: 2). It is important to note the role discharged by DoE as the department administers policy objective of ensuring HDSA transformation in the petroleum industry. This means that the DOE plays an oversight role over the petroleum industry and this is explained below.

### ***The Department of Energy***

The DOE is responsible for administering the National Energy Act of 2008 and the following Acts: Central Energy Fund Act (Act 38 of 1977) Petroleum Products Act (Act 120 of 1977),



Nuclear Energy Act (Act 131 of 1993), and Electricity Act (Act 41 of 1987 as amended), among others. In terms of these Acts the Department of Energy performs certain regulatory functions, particularly in relation to the liquid fuels sub-sector, oversight of the National Energy Regulator, and the Council for Nuclear Safety (South African Energy Discussion Document, 1995). In terms of Public Finance Management Act of 1999, the DoE has a role to oversee state-owned Companies as schedule (2) and schedule (3a) cites. Broadly, the DoE has policy oversight over the sector. According to Marquard (2006: 355), “the Department of Energy has its strongest policy capacity in the liquid fuel arena followed by electricity”. Policy matter relevant to this study is HDSA transformation, in which the DoE wields oversight for.



The Department of Energy has a specific mandate to ensure that the petroleum industry has sufficient support to achieve this policy imperative. There are other mandates placed on this Department, which include Constitutive, Legislative, Policy, and a mandate to implement relevant court rulings and planned policy initiatives (DoE Revised Strategic Plan, 2011/12-2015/16: 14-18). Constitutionally, the DoE has a mandate to loyally execute the lawful policies of the government of the day, as enshrined in Section 197 (1) of the South African Constitution (1996). It is paramount to note that the DoE’s administrative mandate, to a large extent is handled in cooperation with other stakeholders. For instance, in the fuel industry the National Energy Regulator of South Africa (NERSA) has a role to regulate the liquid fuels, gas and electricity sectors (National Treasury, 2006: 23). Policy implementation mechanisms are explained next.

## **4.5 Policy Implementation Mechanisms**

Selected instruments referred to in this section guide the industry on policy outcome expected from them. It also refers to institutions that conduct implementation of policies.

### **4.5.1 The National Development Plan (2012-2030)**

At the centre of transformation, the National Development Plan (NDP) (NDP, 2012-2030) outlines the structure of the economy which will be transformed through industrialisation, broad-based black economic empowerment and through strengthening and expanding the role of the state in the economy. The National Development Plan is a long-term strategy that seeks to see socio-economic challenges as part of the past by 2030. Among other things, the NDP aims to ensure that all South Africans attain a decent standard of living through the elimination of poverty and reduction of inequality (NDP, 2012-2030). As such, all sectors of economy in South Africa are compelled to attack poverty.

However, while the energy sector responds to this through various programmes/ projects, the researcher's view is that the NDP (2012-2030) appears to be biased towards the electricity industry and lacks strong commitment on the direction of petroleum industry. To support this claim, the NDP (2012-2030) for instance is not certain whether to invest in the new oil-to-liquid refinery, build coal-to-liquid refinery, upgrade the existing refineries, or build a refinery in Angola or Nigeria (NDP, 2012-2030: 148). The researcher is of the opinion that this uncertainty in the long-term plan delays policy redevelopment, programmes/ projects and resource alignment. SAPIA, which is overarching body encompassing oil and gas companies, is explained next.

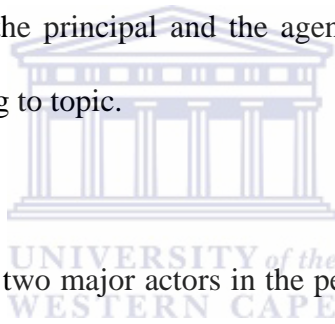
#### **4.5.2 South African Petroleum Industry Association (SAPIA)**

The SAPIA group subsequently arose after the democratic government was launched in 1994. The 1994 political freedom appears to have allowed the squashing of a number of restricting measures, which among others include the Official Secrets Act No.16 of 1956 as it implemented stringent secrecy in the petroleum industry. However, as institutions embark on path dependence, simply means that, traits of secrecy among companies cannot be absolutely dismantled. Oil companies for example are bounded by contracts that bear confidentiality clause, and this is due to competitive nature of the oil business. The six major petroleum companies specializing in refining and marketing operations in South Africa formed this group to represent its various interests. These companies are BP Southern Africa (Pty) Ltd, Chevron South Africa (Pty) Ltd, Engen Petroleum Limited, PetroSA (Pty) Ltd, Sasol Limited, Shell SA (Pty) Ltd and Total South Africa (Pty) Ltd. Basically, this is a legitimate coordinating body in the petroleum industry of South Africa with representatives from each of the said companies. Among other things, SAPIA monitors HDSA transformation implementation by member companies in close liaison with the Department of Energy. According to SAPIA's Annual Report (2003) the petroleum industry was the first industry in South Africa to implement the transformation agenda. Of note, is SAPIA's significant contribution to the process of developing and adopting the Liquid Fuels Empowerment Charter in 2000. This Charter is observed to be the first empowerment charter in the history of South Africa. In the following discussion institutional power relations is analysed.

#### **4.6 Institutional Power Relations in the petroleum industry**

This chapter was organised in a manner that would allow the reader to understand institutional architecture in the petroleum industry. Developing the chapter from this angle enabled the

understanding of how power is important and wielded by international, regional and national actors. Power is an old and broad phenomenon informed by several disciplines, which created extensive literature discourse. According to Van Dijk (2012: 19) some recent work includes studies by Dahl (1957, 1961), Debnam (1984), Galbraith (1985), Lukes (1974, 1986), Milliband (1983), Mills (1956), Therborn (1980), White (1976), and Wrong (1979), among many others. As Van Dijk (2012: 19) explains, “most of this work is carried out within the boundaries of sociology and political science”. The researcher accepts a view cited from Van Dijk (2012: 19) that, in order to understand power relations, it is better to think of it as simply one particularly important way of defining relationships between different actors. So power relations discussed here focuses on two actors, thus the principal and the agent. Lahn et al. (2009: 20) note that power balance may differ according to topic.



As the study established, there are two major actors in the petroleum industry: the principal and the agent. The relationship between them warrants deeper exploration, to allow contextual understanding of how actors react to institutions. What the researcher unveiled also in the study is that these two actors play either a role for exerting accountability, oversight and policy implementation. In these roles, the study has consistently shown the principal as protagonist who identify policy ideas and gives orders. It has portrayed the agents to be obedient, receiving orders and implementing them according to the principal’s requirements. However, it is important to note that these two key actors may compete for power in many different ways. In order to be specific Lahn et al. (2009: 20) recognises inherent asymmetries between government (principal) and oil companies (agent). Thus, on the one hand for example, the government has ultimate authority, while on the other; the oil companies have technical capacity (Lahn et al., 2009: 20).

In the petroleum industry space, governments normally dominate decisions on policy and production targets, while the oil companies may offer advice, mainly on technical matters (Lahn et al., 2009: 20). The power of oil companies emanates therefore from their technical know-how of the industry, which policy initiators may not fully have. Hence Lahn et al. (2009) observes two power asymmetries in the petroleum sector.

However, in situations where the Ministry of petroleum is institutionally capacitated, a good knowledge of the sector's capabilities and doable objectives are developed for the oil companies (Lahn et al., 2009). In this scenario, decision-making is largely top-down and is dominated by the involvement of an elected official, which in many instances is the Minister. Lahn et al. (2009: 40) observe a challenge for effective operation of the oil companies when the Ministry is dominant. For instance, the Ministry tends to interfere too much on oil companies' operational decision-making. Lahn et al. (2009: 40) claim is that, when this happens the oil company ceases to be run like a business, but instead, it becomes an extension of the Ministry. The researcher argues that any decision that arises from the oil company may be treated with suspicion and at times incite no attention. Too much involvement of Government to PetroSA's (a state-owned Company) affairs for example can be seen in this light. Its Board of Directors takes orders from the Ministry which dictates the direction into which the company must take. For example, in the Energy Security Master Plan: Liquid Fuels (2007) PetroSA is mandated to source 30% of oil into the country. This applies also to policy objective to ensure HDSA transformation as it is dictated from top-down. Key factor is that, when this happen "a bureaucratic corporate culture and a lack of entrepreneurial drive for employees" (Lahn et al., 2009: 40) takes precedence. The reason for this is that most often, top-down decisions tend to encounter resistance during implementation

and the usual culprit is resource and policy objectives misalignment. Thus, while the Ministry may have autonomy on decision-making, unavailability of resources may prevent these decisions to materialise.

On the other end of the spectrum, particularly where the company dominates the Ministry in terms of knowledge and capacity, it may take the lead in determining broad objectives (Lahn et al., 2009). The researcher holds the view that in such a situation it may appear that government is out of control of its own destiny, and this may open a possibility to manipulate policy direction in favour of oil company's needs. It further diminishes government capacity and therefore accountability and oversight over management of the industry may too, become a challenge, because information to conduct this may derive from the oil companies and may lack objectivity. Lahn et al. (2009: 22) confer further, "while the operators may be better equipped to propose industry-specific policy, particularly in the early stages of petroleum sector development, this system risks the company in pursuing its own business objectives at the cost of the government's development policies".

According to Lahn et al. (2009) the power asymmetries between government and oil companies is not static, because while they may be in the process of being redefined, the balance of power could change. This argument goes against the assertion made by historical institutional theorists earlier in this study since it could not explain what happens when institutional change takes effect and how it shapes future decision-making, because to them institutions are static or either top-down or bottom-up. A summary and conclusion of the chapter is next given.

#### **4.7 Chapter Summary and Conclusion**

Current institutional architecture in the petroleum industry was discussed and arranged according to three critical variables that are the focus of this study: accountability, oversight and policy implementation in the petroleum industry of South Africa. Selected institutions, from the range existing in the petroleum industry, have been analysed in this chapter. These bring a broader view of how the petroleum industry operates, for they inform the direction currently being taken by institutions in South Africa. The first part of the chapter looked at institutional trends and developments in the international petroleum industry, with particular focus on the context of this study. This showed the petroleum industry as being initially characterised by instability and mistrust, owing to intense competition. Institutions and rules of the game were initiated to protect the interests of bigger players in the industry during this era. These rules focused on four areas: the licensing regime, fiscal regime, issues of sovereign taxation and methods of dispute settlement. Notwithstanding these rules, a lack of transparency characterised the marketplace, caused by vested interests seeking to reduce competition. This led to a situation wherein natural resources were not benefiting the poor. It is upon this situation that institutions such as Extractive Industries Transparency Initiative (EITI), Organisation for Economic Co-operation and Development (OECD) and Publish What You Pay, among others, were instituted to build trust, entrench good corporate governance, improve transparency in financial payments, and generally improve the overall legitimacy of the petroleum industry. However, not all countries adopted these positive governance principles and behaviours.

The second part of the chapter explained regional bodies in the petroleum industry. Rules of the game and expected behaviour in operating in the industry on the African continent were

discussed. Some countries however have memberships, while others are still skeptical. While the African continent is trying its best to be on par with developed countries, certain issues such as limited infrastructure, skills shortages and financial shortages, prevent full developmental impact. Instead, developed nations exploit the abundant African natural resources for their own markets. Furthermore, political instability and corruption prohibits full exploitation of petroleum resources, especially beneficiation by poor.

The third part presented South Africa's institutional architecture, mainly those institutions whose role it is to conduct oversight, accountability and policy implementation in the petroleum industry. Where accountability is concerned, it became clear that both *ex ante* and *ex post* mechanisms, as carried out by the Auditor General and the Public Protector, are developed to ensure protection of democracy and enhance legitimacy. Upon investigation, it was found that these institutions encourage transparency through public reporting, amongst other actions. Institutions that conduct oversight, such as the Parliamentary Portfolio Committee and the Department of Energy, were also investigated, and *ex ante* and *ex post* mechanisms are in place. The central argument in this part of the study is that transparency is essential in improving governance and in allowing the oversight bodies to know what they are overseeing. Room for improvement was found: there are no mechanisms in place to enforce compliance in the roles of both accountability and oversight bodies; rather, their roles are limited only to the making of recommendations. Policy implementation tools such as the National Development Plan, and SAPIA, were also discussed. Finally, institutional power relations in the petroleum sector were analysed, in particular the relationship between the principal and agent in forging an effective institutional architecture. The study here observed power asymmetries between the principal and

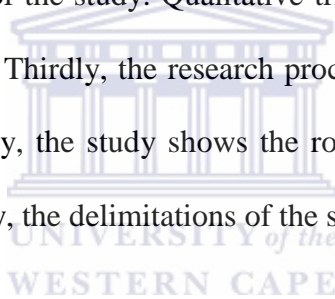


agent: while the principal may appear to have all the authority in setting policy, in practice, government's technical know-how of the industry is limited and the agent often takes the lead in influencing policy. Given this advantage, the agent is positioned as an idea initiator, a point missed in the explanation given by institutional theorists. Instead, institutional theorists placed the principal as an ultimate protagonist in the formulation of ideas or norms, while presenting the agent as per its definition: a body that takes and implements orders given from the principal. The next chapter explains the road-map for collating information for this study.



### **5.1 Introduction**

This chapter expounds the process that the researcher undertook when collecting information useful to this study. In so doing the researcher primarily unpacks the research design, which is underpinned by a qualitative research tool. Secondly, the study discusses the research methodology, wherein a qualitative-triangulation research paradigm is employed. A rationale for selecting this design is informed by a natural setting involving human interaction as social constructs. Furthermore, it is seen as the best method for obtaining various forms of data in enhancing validity and reliability of the study. Qualitative-triangulation embodies ethnographic, case study and historical research. Thirdly, the research process and the tools used in gathering information are explained. Fourthly, the study shows the road map that ensures reliability and validity of this current study. Lastly, the delimitations of the study are explained.



The well-known debates on social research are mainly two: quantitative and qualitative. Each tradition is seen as having different ontological and epistemological points of view in how they view the social world. That is, “the quantitative research regards the social world as separate to the observer in such a way that the social world is seen as a measurable object” (Cooper and Emory, 1995: 21). The qualitative research on the contrary takes the social world as a construct of the researcher and the researched. The word ‘research’ in the social sciences is rather observed as a problematic concept. Cooper and Emory (1995: 21) define research as a systematic enquiry aimed at providing information to solve problems. According to Kumar (2005: 6) the basic term ‘research’ can be understood, as ‘one of the ways to find answers to your questions’. The

researcher adopts this view because this explanation is all-encompassing as it includes various research strategies, designs and methods in order to understand a phenomenon of enquiry. Next, the research design is discussed.

## **5.2 Research Design**

Polit and Hungler (1999: 155) describe a research design “as a blueprint, or outline for conducting the study in such a way that maximum control is exercised over factors that could interfere with the validity of the study of the results”. Research design in this current study is done so that the data collection and research questions are adjusted according to what the researcher seeks to understand. Burns and Grove (2001: 223) infer that in designing a study, researchers are assisted to putting their plans in the manner that will encourage effective implementation so that intended research output are realised. Research design in this study mainly ensures that the data gathered allows the researcher to answer the research questions logically. It is vital to note that the research design could either be quantitative or qualitative. This study is heavily embedded on qualitative research design to critically evaluate institutional architecture for effective policy implementation, oversight and accountability in the petroleum industry of South Africa. As the study falls into the category of qualitative research design it is paramount to justify the researcher’s choice. Prior to embarking on this justification, qualitative research design is broadly explained since it is the preferred choice of this research.

### **5.2.1 Qualitative research design**

Creswell (1998: 1-2) explains that qualitative research “is an inquiry process of understanding a social or human problem, based on building a complex, holistic picture, formed with words,

reporting detailed views of informants, and conducted in a natural setting”. Burns and Grove (2001: 223) perceive qualitative research as normally conducted in a natural setting and involves a process of building a complex and holistic picture of the phenomenon of interest. Patton (2002: 39) concurs by stating that qualitative research uses a naturalistic approach that seeks to understand phenomena in context-specific settings.

Grahame (1999: 14) is of the view that there is a general challenge with defining qualitative research. Grahame (1999) posits that to regard the qualitative research as non-quantitative is understandable, but it is “...uninformative: as such, we need more than a negative definition”. Gurbrium and Holsten’s (2001: 55) provide various definitions of qualitative research, thus: there is (a) “naturalism, which tries to understand the social reality per-se; (b) ethnomethodology studies social interaction to understand the creation of social order; (c) emotionalism studies apprehension with subjectivity in relation to humans and finally; (d) postmodernism, constructing a variety of the social realities through discourse”. However, paying close attention to all four types Bryman (2008: 59) picks up some common characteristics: first, the centrality of social reality and humans; second, investigating a changing reality; third, interpreting the researched reality in a constructive manner, that the researched contributes meaning to the research and fourth, an attempt to understand and seek meaning. Bryman (2008: 59), goes on to say that these common characteristics introduce an idea about what qualitative research ‘is’ all about. Edson (1986: 13) in Bryman (2008) puts forth that there is no qualitative method per se, what we have is only the methods to gather information with which we construct our qualitative understanding. This study holds a view presented by Creswell (1998: 1-2) which presents qualitative research “as an inquiry process of understanding a social or human problem, based on

building a complex, holistic picture, formed with words, reporting detailed views of informants, and conducted in a natural setting”. This definition is adopted because it provides the entire setting in which this study is based. The rationale for selecting qualitative research is presented next.

### **5.2.2 Rationale for qualitative research**

The choice made in this study is motivated by seeking to understand a social or human problem from multiple perspectives. The researcher argues that the problem that this study seeks to address is a social problem that involves human interaction whose role is to implement public policy, conduct oversight and accountability effectively. Some social problems are inexplicable through the means of employing quantitative analysis, especially where study is centred on seeking *cause* and *effect*. Qualitative methods should qualify this study because it is the only effective and useful way assisted the researcher to solicit information that could not be obtained well with quantitative methods. However, it is important to acknowledge that even though qualitative research can be differentiated from a quantitative methodology in several ways; to some degree these research designs in some way complement one another.

There are other assumptions of qualitative research that propelled the researcher to believe that an informed choice is made. This is based on the vital view that every research methodology is induced by certain fundamental assumptions. The methodological and philosophical assumptions of qualitative research are articulated by Creswell (1998: 75-7) and a selected few are highlighted.

- *Qualitative researchers are more concerned with process rather than outcomes.* In this study, the process by which effective policy implementation, oversight and accountability are effected is of paramount to know and unveil. This process guided the study openly into deeper understanding of the phenomenon.
- *Qualitative research is interested in meaning, more particularly, how people deal with and makes sense of life experiences.* This is an area that requires the researcher to interview those involved in the process of employing policy implementation, oversight and accountability because of experiences they have. This path furthermore was followed with the purpose to uncover the nature of challenges that the petroleum industry is experiencing in relation to the phenomenon of enquiry of this study.
- *In qualitative research, the researcher is the primary agent for data collection and analysis.* The data collection for this study is done by the researcher through interviews, observation and documentation where deemed necessary.
- *Qualitative research is descriptive.* This study describes the phenomenon in the process of enquiry and is heavily focused in this area due to the nature of the study and the question it sought to address.
- *Qualitative research is concerned with the nature of reality.* Creswell (1998: 76) says that “reality is constructed by the individuals involved including the researcher, the individuals being investigated, and the reader or audience interpreting the study”. The role of the researcher in this instance is to report these realities, rely on voices and interpretations of informants through extensive quotes, present themes that reflect words used by informants, and advance evidence of different perspectives on each theme

(Creswell, 1998: 76). This study, therefore, relied upon the statements that are obtained from the respondents to build on the researcher's hypothesis.

It is paramount to note that there are researchers who interpret qualitative research as concerned with the role of values in a study. Creswell (1998: 76-77) concurs, contending that, in a qualitative study, "the investigator admits the value-laden nature of the study and actively reports his or her values and biases as well as the value-laden nature of the information gathered from the field" to maximise the integrity of the research. However, it is important to bring to the attention of the reader that the researcher's values are influenced by what is socially constructed from childhood. These values are ingrained and guide the researcher into determining what is right and wrong throughout life. For instance, naturally the researcher is aware that poor corporate governance, which has, to some extent brought a poor reputation in the sector, is wrong. However, it must be clear that this is not part of research per se, the research sought to critically evaluate effectiveness of policy implementation, oversight and accountability in the petroleum industry of South Africa. This means that the DAC/ OECD evaluation criteria diminish any opportunity to influence the outcome of this current study. This is so because it provides an undeniable fact about the phenomenon studied. The researcher's values do not form the foundation of this study because this would be subjective. The origins of values adopted in institutions is rather traced and sourced through the respondents and live documents such as Annual Performance Plans, Strategic Plans and Portfolio Committee Legacy Reports that outlines policy implementation, through programme/projects among others, in order to gain factual information of the phenomenon.

In a nutshell, qualitative research studies are recommended as they provide details about human behaviour, emotion, and personality characteristics that quantitative studies cannot match. Furthermore, as human beings are social constructs, it became essential that a qualitative research tool is adopted so that information about behaviours, needs, desires, routines, norms and a variety of other information is collected in order to improve institutional architecture in the petroleum industry. As the study unfolds, a triangle-conflict in the petroleum industry is observed. The researcher is of the view that this conflict is caused by human behaviour or interaction that quantitative research cannot not elucidates and this is what further qualifies this study to fall under the qualitative research paradigm.

### **5.2.3 Shortcomings of qualitative research design**

Research shows that there is a downside of using qualitative research as a tool for collecting facts. Shortcomings in this tool are caused by the fact that the researcher must focus and study small numbers of subjects because data collection methods are so labour intensive (Frederikson, Chamberlain and Long, 1996: 62). These scholars go on to argue that qualitative research is subject to researcher bias, and the difficulties in analysing qualitative data rigorously (Frederikson et al., 1996). This viewpoint is shared by Griffin (1985: 173), stating that qualitative research appears to depend heavily on the individual judgment of the researcher and on the researcher's interpretation. However, Mays and Pope (1995: 109) argue that there is a way of escaping this. Mays and Pope (1995) furthermore claim that there are strategies available to the qualitative researcher to protect against these potential biases and to enhance credibility of the findings. A checklist they recommend, deduced from Mays and Pope (1995: 109-112) is presented:



- *Was the research question clearly identified?* The question of this study is clear because it sought to critically evaluate institutional architecture for policy implementation, oversight and accountability effectiveness in the petroleum industry of South Africa. The researcher focused mainly on policy objective of ensuring HDSA transformation in order to assess the effectiveness of these variables.
- *Was the setting in which the research took place clearly described?* The research mainly is conducted in the petroleum industry in order to gauge transformation progress by HDSAs.
- *If sampling was undertaken, were the sampling methods described?* Sampling methods explained and adopted in this study are purposive, quota and snowballing. These sampling methods are explicated as the study unfolds.
- *Did the research worker address the issues of subjectivity and data collection?* In this instance, the researcher adopted the views of the participants which are also supported by credible documentation.
- *Were methods to test the validity of the results of the research used?* The researcher employed reliability and validation strategy that is explained later in this chapter. In addition to this qualitative-triangulation is employed to safe-guard the study so that it remains valid and reliable.
- *Were any steps taken to increase the reliability of the information collected, for example, by repeating the information collection with another research worker?* It is important to note that the researcher works in the petroleum industry. This allows the researcher to

continuously confirm facts from colleagues who are experts in the sector so that the study is well informed.

The research methodology undertaken in this current study is next outlined.

### **5.3 Research Methodology**

This part focuses on the tools used to conduct the research process and procedures. Leedy and Ormrod (2001: 14) consent that research methodology is “the general approach the researcher takes in carrying out the research project”. According to Mouton (1983: 124), the research methodology deals mainly with how the research should be planned and executed. The research methodology in this study digs deep into explaining the research methodology adopted in this study whereby the overall plan shows how the qualitative research is conducted. In this regard, the study adopted a “qualitative-triangulation research model, which is explorative, analytical and evaluative in nature” (Campbell and Fiske, 1959: 89). Qualitative-triangulation research is well-known in acquiring various forms of data while exploring a single phenomenon. The concept triangulation warrants an explanation. Triangulation is defined as the “use of multiple methods, mainly qualitative and quantitative methods, in studying the same phenomenon for the purpose of increasing study credibility” (Denzin, 1978: 156).

There are many different approaches to triangulation presented by Denzin (1978: 157-158) that warrant recognition:

- Data triangulation, meaning that data is retrieved from a number of different sources to form one body of data,

- Investigator triangulation, meaning that using multiple observers instead of a single observer in the form of gathering and interpreting data,
- Theoretical triangulation, the researcher here uses more than one theoretical positions in interpreting data, and
- Methodological triangulation, which utilises more than one research method or data collection technique.

Golafshani (2003: 604) declares that “triangulation may include multiple methods of data collection and data analysis, but does not suggest a fixed method for all the researches”. Golafshani (2003) further states that the workability of the triangulation technique depends upon the criterion of the research methods chosen to test the validity and reliability of a study. Therefore, out of the four types of triangulation presented above, the researcher succumbs to the last named technique. The rationale for choosing this method is that it allows for a balanced authentic research outcome that anchors this study going forward. Furthermore, methodological triangulation contains the use of multiple qualitative and or quantitative methods to study the phenomenon in order to augment validity and reliability of the study (Golafshani, 2003: 604). The research tool of this model heavily relies on the use of ethnography, case study, and historical approaches for data and information collection. These properties are critical in this study and are highly recommended by various scholars to safeguard social science studies Golafshani (2003: 604). The research tools are further discussed in the next section. Ethnography is explained first.

### 5.3.1 Ethnography

This method developed in anthropological field research, whereby the researcher's central study focus is patterns of behaviour, customs and ways of life by getting involved in the day-to-day lives of the people or by interviewing one-on-one members of a group (Bickman and Rog, 2009: 2). Ethnography explores real human life behaviour in natural setting. It seeks to understand the relationship between culture and behaviour, with culture referring to the beliefs, values, and attitudes of a specific group of people. Wiersma (1986: 23) understands that ethnography is concerned with what people are, how they and how they interact; furthermore it tries to reveal what lies beneath. Tuckman (1999: 98) states that ethnography is a matter of observing and interviewing rather than manipulating variables by external instruments. This is the case because what ethnographers observe is the behavioural context under which the study occurs. Wiersma (1986: 173) terms this as 'characteristic of contextualisation'. Wiersma (1986) adds that this characteristic requires the data to be interpreted in the context of the situation in which they are observed. The next characteristic of ethnography observed by Wiersma (1986: 173) is the characteristic of 'holistic' as data is viewed as a whole in order to get a basis for explanation about the phenomenon. Another characteristic is that the ethnographic approach does not formulate a hypothesis prior to the research (Wiersma, 1986). This means that the researcher embarks on character contextualisation research without prior determination of what to search for.

There are various types of ethnographic research which may be employed to study human behaviours mentioned by various scholars. Thus, some of these include macro-ethnographic research, which entails studying a larger group of people; and micro-ethnographic research,

which involves observing a smaller sample of humans and practices (Geertz, 1973: 3). This study therefore subscribes to the latter research type. Geertz (1973: 3) state that “ethnographic accounts are both descriptive and interpretive: descriptive because detail is critical and interpretive because the ethnographer must determine the significance of observations without gathering broad, statistical information.” Geertz (1973) devised the term ‘thick description’ to further convey the methodology of the ethnographer. To conduct their research, ethnographers, also called fieldworkers, often live among the people they are studying, or at least spend a considerable amount of time with them. The researcher engages in participant-observation, meaning that the researcher participates in daily life, while also making careful observations and taking notes relevant to the phenomenon being studied. The researcher is of the view that policy implementation, oversight and accountability in the petroleum industry relies heavily on interaction, culture, behaviour and attitudes among the actors. It became relevant for the researcher to employ this approach in Parliament, where the researcher watched the behaviour of participants on numerous occasions where people shared a common organisational culture. This means that an understanding of a phenomenon is done through description of what is observed rather than theory generation.

According to Ile (2007: 45), “ethnography is primarily defined not by the methodology adopted but by the subject matter of a research study that is embedded in ethos, or strong in terms of the cultural perspective sought in the exploration of the research problem”. For the purposes of the variables under investigation it is paramount to know what culture organisations uphold in the petroleum industry. Thus, is there a culture of high performance adopted in the petroleum industry towards achieving HDSA transformation? Is there oversight over this and upon poor

performance, is there accountability? Prasad (1997: 103) concurs: the central aim of ethnography is to provide rich, holistic insights into people's views and actions, including the location they inhabit. Information is collected in this setting through the collection of detailed observations and interviews. Furthermore, as there are many players in the petroleum industry, government, private sector and state-owned Companies, ethnographic research unravels this web of interdependence and of these group behaviours and interactions, and it thus plays an instrumental role in unpacking what is hidden behind the triangle-conflict latter explored in the study. The researcher holds the view that institutional arrangements arise from interactions among individuals; thus ethnographic methods brings meaning to understanding these interactions. This part of research therefore is evaluative and it suits this current study well as it sought to critically evaluate institutional architecture for effective policy implementation, oversight and accountability in the petroleum industry of South Africa.



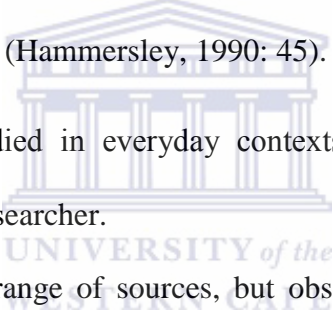
There are many advantages that come along with this approach. Among these is the fact that ethnographers expose qualities of the group experience in a way that other research methods may not (Gray, 2003: 222). Furthermore, ethnographers can help unearth future questions and types of follow-up research questions. Because ethnographers are interested in expanding knowledge, they are able to understand why certain behaviours occur Gray (2003), and bring empirical meaning on this. There are, however, challenges as well to be observed. Gray (2003: 222) claims that while ethnographic research brings a unique technique in soliciting empirical information through behaviour observation, it can also be daunting, time consuming and may furthermore require an experienced researcher as well. Short-term studies suffer in this research since it can take long to understand and analyse certain behaviours. Furthermore, it may take time to build

trust with informants in order to facilitate full and honest discourse. Bias on the part of the researcher is also noted as affecting both the design of the study and the collection and interpretation of data (Gray, 2003). Gray (2003) goes on arguing that too little data may lead to false assumptions about behaviour patterns, while large quantities of data may not be processed effectively (Gray, 2003: 222-3). However, the researcher states that while this could be true, it is important to pin-point on various types of ethnographic research that might escape this fatal flaw, and are each expounded below.

The various kinds of ethnography identified by Ile (2007: 46) citing Silverman (2002: 17), are as follows; there is *integrative ethnography* (which is participatory in approach), *narrative ethnography* (focus on individual life stories that can be either in writing or oral and they allow the understanding of patterns, culture and behaviour in an organisation (Fielding, 1993:155-71), and there is *combinative ethnography* (basically the combination of the two). For the purposes of this research investigation, the researcher employed the narrative ethnographic type in an attempt to capture emerging interaction patterns that may directly affect institutional effectiveness. This technique assisted the researcher to acquire numerous ways in which people make and use stories to interpret the world, particularly that of the petroleum industry. Ile (2007) citing Rubin and Barbbie (2001: 391) explain that this approach captures the meaning as a naturalistic observation and holistic understanding of the cultures and subcultures, which augments better understanding of the phenomenon. By selecting narrative ethnography the researcher believes that shortcomings highlighted by Gray (2003) are overcome.

Ile (2007) indicates that an ethnographic research study may be ‘basic’ or ‘applied’. Applied ethnography is adopted in this study as it “strives to improve our understanding of a problem, with the intent of contributing to the solution of that problem” (Bickman and Rog, 2009: x). The selection of this approach is informed by the complex nature of challenges unraveled in the petroleum industry of South Africa. However, Yin (1994: 27) warns against confusing case studies with qualitative methods using ethnographic methods. This means that this part is different from the case study, which will be explained as the study progresses.

In summary the term ‘ethnography’ generally speaking refers to social research that has most of the following features, espoused by (Hammersley, 1990: 45).

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- People’s behaviour is studied in everyday contexts, rather than under experimental conditions created by the researcher.
  - Data are gathered from a range of sources, but observation and/or relatively informal conversations are usually the main ones.
  - The approach to data collection is unstructured in the sense that it does not involve following through a detailed plan set up at the beginning; nor are the categories used for interpreting what people say and do pre-given or fixed. This does not mean that the research is unsystematic; simply that initially the data are collected in a raw form, and on a wide front.
  - The focus is usually on a single setting or group, of relatively small scale. In life history research the focus may even be a single individual.



- The analysis of the data involves interpretation of the meanings and functions of human actions and mainly takes the form of verbal descriptions and explanations, with quantification and statistical analysis playing a subordinate role at most.
- As a set of methods, ethnography is not far removed from the sort of approach that we all use in everyday life to make sense of our surroundings. It is less specialised and less technically sophisticated than approaches like the experiment or the social survey; though all social research methods have their historical origins in the ways in which human beings gain information about their world in everyday life.

Next to be explained is the case study research as another research tool used in this current study.

### 5.3.2 Case study

The case study discussed here is the second component of qualitative triangulation. According to Yin (1989: 18) a case study investigates a contemporary phenomenon within its real life context using multiple sources of evidence. Case studies concern with *how* and *why* things happen and in so doing, contextual realities are investigated in which, differences between what was planned and what actually occurred is studied (Davids, Theron and Van Rooyen, 2001: ii). This part suits the research well as it seeks to critically evaluate policy implementation, oversight and accountability effectiveness in the petroleum industry. As mentioned in Chapter One of this current study, policy implementation, oversight and accountability appears to be less effective in the petroleum industry, particularly where HDSA transformation is concerned. By adopting case study research, the researcher was able to understand the gap between what was planned and what actually happened.

There are three types of case study research: exploratory, descriptive, and causal research (Feagin, Orum, and Sjoberg, 1991: 21). According to Feagin et al. (1991) the aim of exploratory research is to determine insights and ideas. In an exploratory case study, “the collection of data occurs before theories or specific research questions are formulated” (Feagin et al., 1991). The initial stage in this type of case study is to define the issues to be researched (Feagin et al., 1991: 21). It is important to note that the researcher preliminary sought to understand the current state of policy implementation, oversight and accountability in the petroleum industry of South Africa, with regards to policy objective of ensuring HDSA transformation. Pertaining to this, data collected provided factual information to inform the research further. The descriptive research on the other hand is contrary, because theory is required prior to the collection of data (Davids et al., 2001: ii). Hence Feagin et al. (1991: 21) observe descriptive research to be more concerned with analysing a population with respect to important variables. Three important variables: Policy implementation, Oversight and Accountability, which are anchors of this current study were theoretically studied prior to understand the information to be gathered. Causal research is used to establish “cause-and-effect relationships between variables” (Yin, 1994: 22). It furthermore searches for an explanatory theory of the phenomena. For Yin (1994) this situation offers the most suitable conditions for adopting the case study as the research strategy of choice.

This study therefore subscribes to exploratory research as it provided in-depth and new insight to policy implementation, accountability and oversight effectiveness in the petroleum industry, which is not explained by institutional theorists. The study is exploratory because it explored the factors contributing to poor policy implementation, accountability and oversight in the petroleum industry of South Africa, pertaining to policy objective of ensuring HDSA transformation.

According to Brink and Wood (1998: 312), “exploratory research studies reveal what has not previously been studied and attempts to identify new knowledge, new insights, new understandings, and new meanings and to explore factors related to the topic”. The research is exploratory because it meets the criteria described by Polit and Hungler (1999:17), namely that the study investigates the full nature of the phenomenon, as it critically evaluates institutional architecture for effective policy implementation, oversight and accountability in the petroleum industry. The strong point of this approach is that it does not provide definitive answers for the overall population (Faegin et al., 1991). There are two reasons for this; thus: (1) “exploratory research usually involves only a relatively small group of people, and (2) these people are almost never randomly selected to participate” (Faegin et al., 1991: 27-9). This benefited the researcher in time and cost management as well. This stance is confirmed by Reiter (2013: 1) who states that exploratory research normally demands less money to conduct since most projects can be done by one researcher alone, without the need to mobilise many resources. Another crucial benefit for selecting this kind of research is that results gathered are not necessarily generalisable to a larger population, because its purpose is to understand the sample being studied (Burns and Grove, 1999: 296).

The study succumbs to descriptive research as well, because there is body of knowledge existing on institutional theory, policy implementation, oversight and accountability, which informs this study. Indeed, the study seeks to unravel new knowledge, but theories that already exist assisted the researcher to understand what is missing in the literature. However, research shows that descriptive and exploratory research may be combined while studying the same phenomenon, contingent on the research question. This study picks up that there is complementarity in these

approaches. For instance, exploratory research examines the relevant factors in detail so that an appropriate description of the reality of the existing situation is understood better (Brink and Wood, 1998: 283-286). On the other hand, descriptive research provides an accurate account of characteristics of a particular individual in real-life situations (Polit and Hungler, 1999: 189). Apparently, “descriptive research may be used for the purpose of developing theory as well, identifying problems with current practice, justifying current practice, making judgements, or determining what others in similar situations are doing” (Waltz and Bausell, 1981: 7). According to Burns and Grove (1993: 293) the purpose of descriptive research is to provide the perceptions and views of the respondents about the phenomenon being studied. It is the aim of this study to identify and describe factors that contribute to phenomenon observed. Uys and Basson (1991: 38) dub this marriage as ‘exploratory-descriptive’ research. More features of exploratory-descriptive research are revealed by Uys and Basson (1991: 38) as follows:

- It is a flexible research design that provides an opportunity to examine all aspects of the problem being studied;
- It strives to develop new knowledge;
- The data may lead to suggestions of hypotheses for future studies.

However, in the process of research nit-picking, the researcher discovered that case studies do have some criticisms, in which one of them is as a result of weak scientific rigor and reliability, and that they do not address the issues of generalisability (Yin, 1984: 49). To safeguard this weakness the study carefully ensured that a fair spread and varied opinions from correspondents are authentically taken so that subjectivity is diminished. However, there are some strengths of case study as well. Case studies as Yin (1984) suggests, enables the researcher to gain a holistic

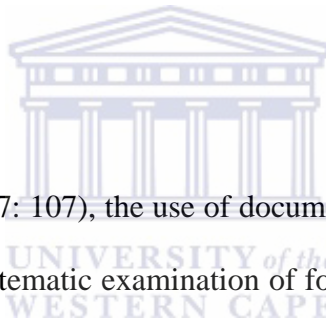
view of a certain phenomenon or series of events. Next, the study explores historical methods usefulness in this study.

### **5.3.3 Historical methods**

Historical model is a third leg of the triangulation approach, which became useful in this current study. Historical methods are used in this study on the premise that past institutional architecture or arrangements have a great deal in understanding how institutions operate today, and this is significant in providing the background for the research. Historical institutionalist theorists in Chapter Two of this current study observe the importance of history when studying institutional architecture. This further justifies the rationale for using this approach in this current study, so that the phenomenon is understood from its organic setting. Historical analysis is observed to be a method of discovering from archived records what happened in the past. This method was required in this study in terms of verifying the accuracy of statements about the past, regarding policy implementation, accountability and oversight in the petroleum industry of South Africa, where HDSA transformation is concerned. The aim of the study is not to dwell on this, but gain an understanding of how the past is addressing the today challenge. For example, we now know that the ‘policy objective of ensuring HDSA transformation’ did not just come from nowhere. Historical events happened. So, in order to gain factual understanding of what really happened, historical or archived documents must be viewed so that the study is informed better.

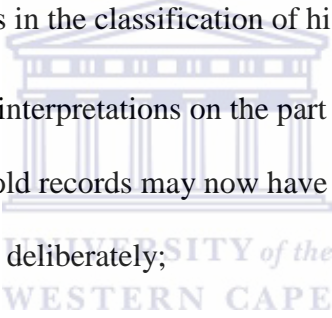
Ile (2007: 45) citing Welmon and Kruger (2002: 179) concur as arguing that, an understanding of this phenomenon can be obtained through a number of sources including newspapers, reports, correspondence, official statistics, government documents, regulations/ordinances, opinions,

editorials, speeches, fictions, songs, poetry, myths and archives. This process of reviewing is called ‘document analyses’. According to Corbin and Strauss (2008: 88), “document analysis is a procedure for reviewing or evaluating documents, both printed and electronic material”. Furthermore, document analysis requires that data be examined and interpreted in order to attain meaning, gain understanding and develop empirical knowledge (Corbin and Strauss, 2008). The gathering and analysing of documents was useful for this current research because it supplement information gathered through participant observation and interviewing. In addition it anchors and benefits this study well because the review of documents is an unobtrusive method (Corbin and Strauss, 2008). Additionally, events are documented in the natural setting where biasness could be minimal.



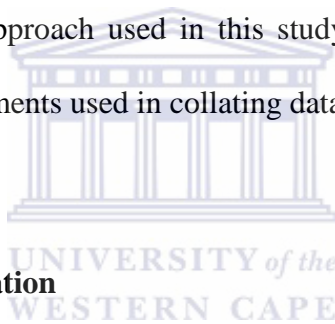
According to Elo and Kyngas (2007: 107), the use of documents often entails an approach called ‘content analysis’, which is the systematic examination of forms of communication to document patterns objectively. The researcher is of the view that this part of the study is skewed towards analysis of content in the sense that a general text on the nature of institutional architecture, policy implementation, accountability and oversight is employed. Content analysis is recommended “since it makes replicable and valid inferences from data to their context, with the purpose of providing knowledge, new insights, a representation of facts and a practical guide to action” (Elo and Kyngas, 2007: 108). As Elo and Kyngas (2007) further describes, the aim is to attain a condensed and broad description of the phenomenon. This view is supported by Cole (1988: 53), since the assumption that content analysis is a method of analysing written, verbal or visual communication messages is promoted.

However, the challenge that comes with content analysis is that documents cannot be regarded as always presenting an objective description of the situation at the time. Instead, these documents should be viewed as having more or less degrees of reality congruence because they are not written in order to convey an impression, one which will be favourable to the authors and those whom they represent (Bryman, 2008: 527; Atkinson and Coffey, 2004: 75). Therefore, there could be some kind of bias from the authors and this study has considered this aspect. To guard against this, the researcher reviewed multiple sources to help gain a balanced understanding of the phenomenon. However, Cole (1988) explains that historical analysis cannot use a direct observation approach since there is no way to test a historical hypothesis. Furthermore, Cole (1988: 54-55) spells out weaknesses in the classification of historical data, thus:

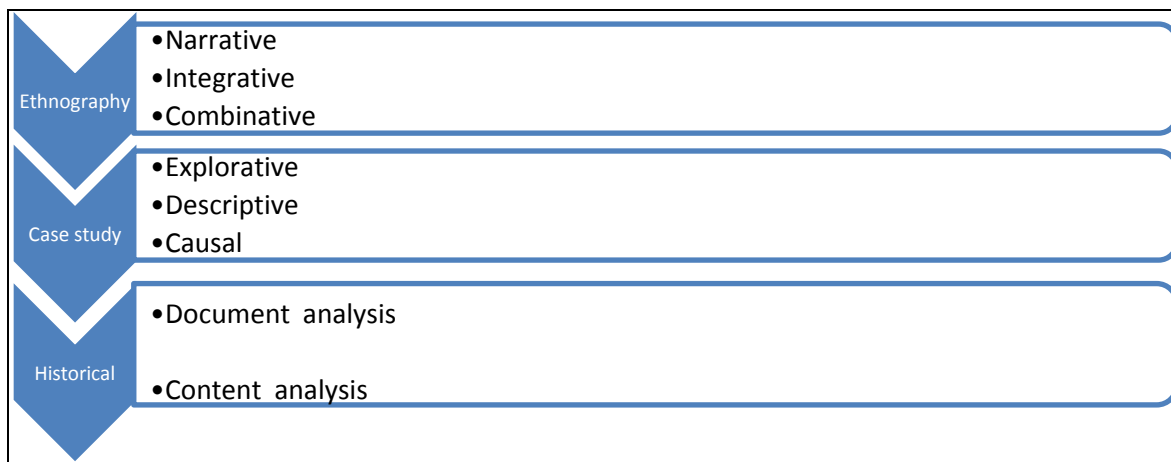
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- May be subject to incorrect interpretations on the part of the recorder;
  - Words and phrases used in old records may now have different meanings;
  - Documents may be falsified deliberately;
  - The meaning of relics are perceived and interpreted by the investigator, among other things.

Observing these challenges, the researcher argues that this could happen only if the researcher relies on one author. Many authors reaching the same conclusion of historical events cannot all distort the same information, especially if facts are the same. Overall, challenges in this approach warrants further unravelling as Thurmond (2001: 256) warns against hoping for a smooth run of research process. Thurmond (2001) claims that triangulation poses some disadvantages which include time wastage. For instance, collecting more data requires greater planning and organisational resources that are not always available to lead researchers (Thurmond, 2001).

Hence the researcher organised findings of this study according to three prominent variables of this study, which are: policy implementation, oversight and accountability. Other disadvantages include the “possible disharmony based on investigator biases, conflicts because of theoretical frameworks, and lack of understanding about why triangulation strategies were used” (Thurmond, 2001: 257). However, the researcher holds the view that adopting qualitative-triangulation approach diffuses all the negative myths because it digs deeper into explaining the phenomenon in all possible angles and in its real context. The researcher argues that Thurmond (2001) is rather employing a blanket approach in observing these challenges. This approach is recommended by many scholars and without it the study is likely to fall into traps of poor thoroughness. The three-sibling approach used in this study is displayed in the below figure. Next, this study looks at the instruments used in collating data.



**Figure 5. 1: Qualitative-triangulation**

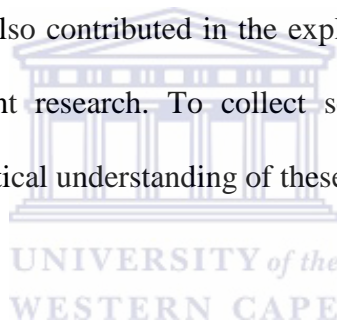


*Source: Author’s configuration*



## **5.4 Data collection instruments**

So far the study has shown that institutional architecture requires more understanding of effectiveness of policy implementation, accountability and oversight because this knowledge is missing where institutional analysis is concerned. In order to unpack this phenomenon, in-depth enquiry through interviews is conducted. Interview schedules are used to collect primary data and to explore the views, experiences, beliefs and motivations of individual participants in the industry of concern. Semi-structured interviews are employed as they provide space for generating pre-set questions in order to give an interview guide. Pre-set questions furthermore allowed greater scope for open-ended answers so that truth about a phenomenon in its real life context is uncovered. Interviews also contributed in the explanation of observed behaviours, as another tool used for this current research. To collect secondary data, document analysis technique was employed. A theoretical understanding of these instruments is explained.



### **5.4.1 Interviews**

Creswell (1994: 148) presents that an “idea of qualitative research is to purposefully select informants (or documents or visual material) that will best answer the research questions”, and that no attempt is made to randomly select informants. According to Gill (2008: 291) interviews and focus groups are the most common methods of data collection used in qualitative research, especially in the field of public administration. Gill (2008) goes on positing that interviews are used to explore the views, experiences, beliefs and motivations of individual participants, while focus group are used to generate group dynamic qualitative data. Interviews are believed to provide a ‘deeper’ understanding of social phenomena than would be obtained from purely quantitative methods, such as questionnaires, according to (Britten, 1999: 11-12). There are three

fundamental types of research interviews studied by academics that are unpacked below thus; structured, semi-structured and unstructured.

**Structured interviews:** Silverman (2000: 3) states that this type of interview question is normally predetermined and verbally administered with no intention to follow up on questions that need clarity. The researcher sees this as challenging because is it uninformative. The study may have a number of unanswered loop holes. Silverman (2000) concurs; structured interviews only allow for limited participant responses and are, therefore, of little use if ‘depth’ is required. This method of interviewing was therefore not recommended for this study since the phenomenon of enquiry is broad, and would require a great deal of flexibility on the interviewee and the interviewer.



**Unstructured interviews:** According to Patton (2002: 23), there are no official and agreed-upon guidelines for how to conduct an unstructured interview. However, this would not assist focus of the research and may be time consuming to analyse the findings. Lack of predetermined interview questions provides little guidance on what to talk about (Patton, 2002: 23), and as a result the researcher could end up not achieving the intended objectives. So, clear evaluation guidelines and need for specificity is recommended. As contrary to the above, their use is, therefore, generally only considered where significant ‘depth’ is required, or where virtually nothing is known about the subject area (Patton, 2002: 23). This type of interview is therefore not suitable for this study.

*Semi-structured interviews:* are “more or less open-ended questions that are brought to the interview situation in the form of an interview guide” (Flick, 1998: 94). The interview questions are pre-set and allow more scope for open-ended answers; to uncover the truth about a phenomenon in its real life context. According to Griffin (1985: 88) from inception of structuring interview questions the focus is on obtaining an understanding based on textual information obtained. This type of interview is recommended in this current study since it is an appropriate tool for exploring sensitive topics, where participants may not want to talk about such issues in a group environment (Britten, 1999: 11-19). Semi-structured interviewing is seen as an important tool for gathering data in qualitative research, which is the study choice. Furthermore, semi-structured interviews in this study allowed flexibility and fluidity in the structure of the questionnaire, as organised around an aid memoire. It allowed the interviewee’s own understanding of the phenomenon to be known better by the researcher, which feeds well to researcher’s interest. This model, furthermore, assisted in determining whether and how particular areas might require further interview follow ups.

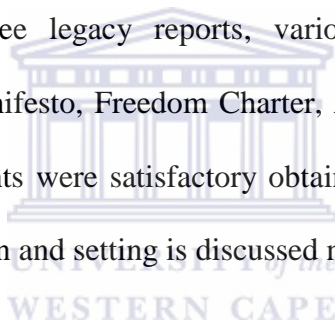
The challenge in this approach is its very own strength because a lot of extra information may surface during interviews. Scholars argue that this could result in poor management of information received (Britten, 1999: 19). However, to counteract this shortcoming, the researcher firstly infiltrated information according to the theories already studied in Chapter Two of this current study. Secondly, pre-set questions were organised according to major variables of this study: policy implementation, oversight and accountability so that answers are logically placed in category of belonging. The next paramount research tool used in this study was observation.

#### 5.4.2 Observation research

Observational research is particularly prevalent in the social sciences. This technique involves the direct observation of phenomena in their natural setting. This instrument basically bears similarities with the ethnographic research explained earlier under qualitative-triangulation approach. So, ethnography or observation is often used where what we are trying to uncover are the norms, values, and shared meanings of those we are observing (Fox, 1998: 3). The setting of observation warrants explanation. The setting of observation was in Parliament of South Africa where Portfolio Committee meetings are held. The researcher attended Parliamentary Portfolio Committee meetings which would approximately take three hours on the day selected. The researcher made observation in this setting for the period of six years. This means that the researcher managed to understand how Parliamentarians operated from the time they took office in 2009, when knowledge of the petroleum industry was still little among MPs. The main issue studied in this regard was to understand alignment of Portfolio Committee on Energy activities with the policy objective of ensuring HDSA transformation. As the role of Parliamentarians is to oversee and hold the Executive branch to account for performance, observations were conducted in order to gauge principal-agent interaction with regards to policy implementation effectiveness and employing robustly *ex ante* and *ex post* mechanisms. Upon gathering information needed it was placed well in the study within its fitting context. In conducting this research the researcher encountered no major challenges since Parliamentary Portfolio Committee meetings are open to the public. Document analysis is also utilised in gathering information to support this study and this is explained next.

### **5.4.3 Document analysis**

The third data collection instrument used in this study was document analysis. Some of the documents were collected from the Department of Energy website, Parliament of South Africa library, university library centres, and various institutional websites, among others. These institutions are important because it is where archived documents with rich history and facts on the phenomena being studied can be obtained. It is paramount to state that some documents are available electronically and others were requested over the telephone to gain access as they were not accessible on the internet. Documentary used in this study includes the following; workshop speeches, budget vote speeches, Cabinet Lekgotla decisions, policy statement related documents, Parliamentary Portfolio Committee legacy reports, various legislation, media statements, journals, ruling political party manifesto, Freedom Charter, Annual and Strategic Plans, among many others. Once these documents were satisfactory obtained they were analysed in order to inform this study. Target population and setting is discussed next.



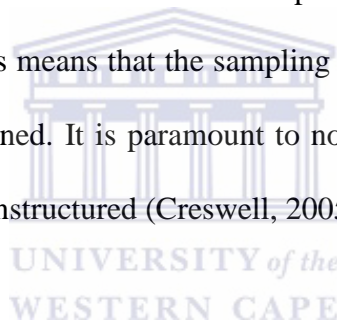
### **5.5 Target population and setting**

Target population refers to the entire group of individuals or objects to which researchers are interested in generalising the conclusions (Yin, 1989: 18). Polit and Hungler (1999: 232) concur as they define “a population as the totality of all subjects that conform to a set of specifications, comprising the entire group of persons that is of interest to the researcher and to whom the research results can be generalised”. Alreck and Settle (1995: 5) state that, when studying a population for a study it is important to ensure that it consists of people who have the relevant information needed by the researcher. Eligibility criteria recommended by Polit and Hungler (1999: 278) was used by the researcher in identifying the characteristics that people in the

population must possess in order to be included in the study. Next the research sample is discussed.

## **5.6 Research sample**

LoBiondo-Wood and Haber (1998: 250) describe a sample as a portion or a subset of the research population selected to participate in a study, representing the research population. This study used purposive, quota and snowball sampling. In purposive sampling, groups participate according to pre-selected criteria relevant to a particular research question (Creswell, 2005: 204). For this particular study, the variables to which the sample is drawn up are interrelated to the research enquiry of this study. This means that the sampling is done with a purpose in mind and so, the targeted groups are predefined. It is paramount to note that the sample size is not fixed prior to data collection since it is unstructured (Creswell, 2005).



Quota sampling which is also sometimes considered as a type of purposive sampling is used in this current study. In quota sampling, it is when the researcher decides, while designing the study, on how many people with specified characteristics to include as participants (Creswell, 2005: 204). The researcher therefore drew sixty six participants who operate in the petroleum industry downstream to give an account on challenges related to policy implementation. The Parliamentary Portfolio Committee on Energy assisted with information related to oversight and accountability on policy implementation and other related matters affecting the petroleum industry. However, even though the Department of Energy has a regulative role it assisted with information related to policy implementation such as ensuring HDSA transformation is achieved by the petroleum industry. This criterion chosen allowed the researcher to focus on people who

would most likely have experience, know about, or have insights into the research topic, respectively.

Furthermore, snowballing according to Creswell (2005) is considered as another type of purposive sampling and was adopted in this study. Creswell (2005) argues that in this method, participants with whom contact has already been made use their social networks to refer the researcher to other people who could potentially participate in or contribute to the study. Babbie and Mouton (2001: 19) is of the opinion that snowball sampling is appropriate when the members of the special population are difficult to locate. It is important to note that when the researcher started interviews, elections in South Africa were already taking place; so changes were made in the Portfolio Committee on Energy in which many Parliamentarians were dislocated. What assisted the researcher in locating other people relevant to the enquiry of this study is this approach. For example, one or two people the researcher had contacts with provided a lead to more participants by asking the first located participants to provide information needed to locate other members of the population, until the desired ration was met. Creswell (2005) supports this strategy of locating more participants as arguing that, the snowball sampling is an approach for locating information-rich key informants. Creswell (2005) further states that snowball sampling is not a stand-alone tool, it is rather a way of selecting participants and then using other tools such as interviews or surveys. The validity and reliability of the study is next explained.

## 5.7 Validity and Reliability of the Study

Similar to other studies, this part thoroughly addresses issues related to validity and reliability. Reliability and validity are seen as essential tool of a positivist epistemology (Winter, 2000: 7). Basically, what positivist epistemology say is that, only ‘facts’ derived from the scientific method can make legitimate knowledge claims (Winter, 2000). The researcher proposes that even though validity and reliability as concepts appear to be used interchangeably, there is a huge difference in the meaning of each, and this is unpacked in this study. Reliability according to Joppe (2000: 1) is the extent to which results are consistent over time and an accurate representation of the total population under study. Joppe (2001) goes on explaining that if the results of a study can be reproduced under a similar methodology, then the research instrument is considered to be reliable. Babbie and Mouton (2001: 75) agree with this notion in saying reliability is a matter of whether a particular technique, applied repeatedly to the same object, would yield the same result each time. Therefore, reliability is seen as equated with the stability, consistency or dependability of a measuring pool (Polit and Hungler 1991: 242). In ensuring accuracy in this regard, the researcher often look for the answers in the research of other researchers and present herself as the ‘third person’, respectively. Furthermore, the researcher declared in the study that the research tools chosen do not only embody strength, they do also contain shortcomings, in which the researcher attempted to address.

According to Burns and Grove (1987: 294) “the validity of an instrument is the determinant of the extent to which the instrument actually reflects the abstract concept being examined”. Burns and Grove (1987: 294) further explain that data is valid if it provides a true picture of what has been studied. In this instance it is important to provide the view from various scholars, which



says that, researchers tend to use various approaches to strengthen validity and reliability, especially where the study is heavily skewed towards qualitative research method. The researcher used triangulation in this study to guard against observed shortfalls, by usage of multiple sources of collecting data. However, to further ensure robust trustworthiness of this study, the researcher employed verification strategies espoused by (Morse, Barret, Mayan, Olson and Spiers, 2002: 11-13). Its essential tools are expounded as follows:

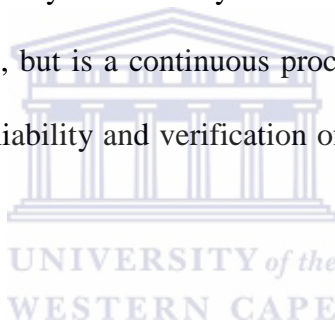
- Firstly, *methodological coherence* is observed to ensure that there is similarity between the research question and the components of the method. Here, Morse et al. (2002) suggests that the interdependence of qualitative research demands that the question match the method, which matches the data and the analytic procedures. This features well in this study since it sought to evaluate institutional architecture effectiveness, oversight and accountability in the petroleum industry of South Africa. To boost congruity of data triangulation is employed to evaluate variables. However, Morse et al. (2002) warns that as the research unfolds, the process may not be linear, as such, this may require data to be treated differently, and so the question may have to be changed or methods modified. The researcher ensured fit of these components with data so that analytic goals and methodological assumptions adopted in this study are coherent. Even so, the reader should note that semi-structured interview adopted in this study allows for such flexibility.
- Furthermore, Morse et al. (2002: 11) stresses that *sample must be appropriate* when collecting data. This can only be done if the participants selected best represent or have knowledge of the research topic. The purpose is to ensure efficient and effective saturation of categories, with optimal quality data and minimum dross (Morse et al.,

2002: 11). In this regard, the researcher deliberately selected key participants explained earlier to collect data, because this is where knowledge on institutional architecture effectiveness on accountability, oversight and policy implementation in the petroleum industry is best known. Morse et al. (2002: 12) citing Morse (1991) argues that sampling adequacy, evidenced by saturation and replication means that sufficient data to account for all aspects of the phenomenon have been obtained. Morse et al. (2002) further explicate that saturating data ensures replication in categories; then replication verifies and ensures comprehension and completeness.

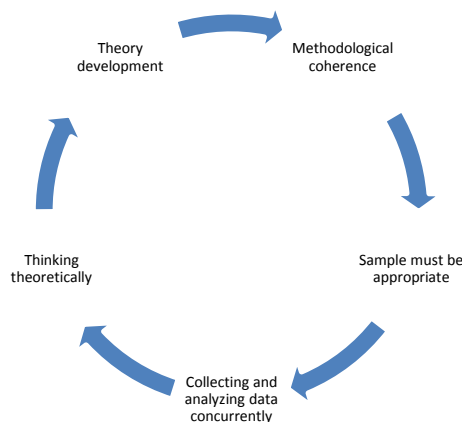
- Progressively, it is presented that *collecting and analysing data concurrently* appears to form a mutual interaction between what is known and what to be known. The researcher in this regard, as participant observer took notes from the informants while concurrently analysing data. At some point notes taken were not sufficient enough to fully study the phenomenon. In this instance the researcher verified answers with the identified population through the scheduled interviews. According to Morse et al. (2002: 12), this iterative interaction between data and analysis is the essence of attaining reliability and validity. In addition, another aspect that glues validity and reliability is thinking theoretically. In this aspect, Morse et al. (2002) is of the view that ideas emerging from data are reconfirmed in new data; which gives rise to new ideas that, in turn, must be verified in data already collected. They go on saying that thinking theoretically requires macro-micro perspectives, moving forward without making reasoning leaps, constantly checking and rechecking, and in so doing a solid foundation is built.
- The aspect of *theory development* is also mentioned by Morsi et al. (2002), which is to move with discussion between a micro perspective of the data and a macro

conceptual/theoretical understanding. In this way, theory is developed through two mechanisms: (1) as an outcome of the research process, rather than being adopted as a framework to move the analysis along; and (2) as a template for comparison and further development of the theory (Morse et al., 2002: 13). The study conforms to the former.

However, since rigour of qualitative inquiry should be beyond question, beyond challenge, and provide practical scientific evidence that must be integrated into our developing cognitive base (Morse et al., 2002), this verification strategy is employed in this study. By using triangulation to obtain data firms reliability and validity of this study even more. It should be acknowledged that reliability and validity is not static, but is a continuous process. The Figure 5.2 demonstrates a continuous process that ensures reliability and verification of the study. Ethical consideration is explained next.



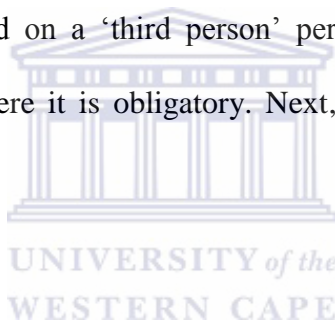
**Figure 5.2: Verification Strategy**



*Source: Morse et al. (2002)*

## **5.8 Ethical consideration of the study**

It is paramount to note that the researcher works in the industry where research is conducted. To ensure that objectivity is observed, the researcher was a participant observer until data were fully collected. It is important to note that interviews were done with selected senior project managers who are at the heart of policy implementation. Relevant MPs and government officials to the context of this study were further interviewed to gather better understanding and challenges regarding oversight and accountability. These were done to clarify certain issues in order to present the study on the view of participants. This process was conducted with quality and integrity. In so doing, the researcher sought proper channels in obtaining information relevant to this study which is also presented on a ‘third person’ perspective. The researcher respected confidentiality and anonymity where it is obligatory. Next, the delimitations of the study are clarified.



## **5.9 Delimitation of the study**

According to the White Paper on Energy Policy (1998: 5-16) the energy sector encompasses industries such as; “the petroleum industry, which includes oil companies, petroleum refiners, fuel transport and end user sales at gas stations, the gas industry includes natural gas extraction, and coal gas manufacture, as well as distribution and sales, the electrical power industry includes electricity generation, electric power distribution and sales the coal industry, the nuclear power industry, the renewable energy industry” (White Paper on Energy Policy, 1998). The traditional energy industry based on the collection and distribution of firewood, the use of which, for cooking and heating, is particularly common in poorer communities (White Paper on Energy Policy, 1998) falls under the energy sector as well. While all these industries engage the sector

well, it is paramount to note that reference is exclusively made to the ‘petroleum downstream industry’, wherein, HDSA transformation is concerned.

Furthermore, as policy implementation in the petroleum industry is jointly done by various stakeholders, this current study is confined only to the role played by the Department of Energy in ensuring that policy objective of ensuring HDSA transformation is achieved. It is so far revealed in this current study that there are numerous players who conduct oversight and accountability vertically, horizontally and diagonally. In this regard, evaluation of oversight and accountability effectiveness is only restricted to that conducted by the legislative branch.

### **5.10 Chapter Summary and Conclusion**

This Chapter described the process undertaken by the researcher in gathering information for this study. A qualitative research paradigm was explored as a first approach. The three components of this study: policy implementation, oversight and accountability, operate in a natural setting involving human interaction as social constructs. The researcher found that the aspects involving human interaction fit well into the qualitative-triangulation research paradigm and this was thus used in the entire research gathering process. The research suited this approach due to its versatility in obtaining various forms of data in order to enhance validity and reliability. As such, qualitative-triangulation embodying ethnographic, case study and historical research was used in the research process to collect information that supported this study. Ethnography, for example, was useful as it sought to understand the relationship between culture and behaviour, with culture referring to the beliefs, values, and attitudes of a specific group of people. Case study research allowed the investigation of contextual realities and the gathering information on the

differences between what was planned and what actually occurred. Historical method was also seen to be useful in establishing baseline information prior to observing and interviewing participants. Scheduled interviews, observation and document analysis were used as research tools. The study focused on the petroleum industry, rather than more broadly on the energy sector. The next chapter discusses research findings on the evaluation of policy implementation effectiveness.



## **CHAPTER SIX: FINDINGS AND ANALYSIS OF SELECTED ISSUES ON POLICY IMPLEMENTATION EFFECTIVENESS IN THE PETROLEUM INDUSTRY OF SOUTH AFRICA**

### **6.1 Introduction**

This part of the study evaluates the effectiveness of policy implementation in the petroleum industry of South Africa. Among the responsibilities that the Department of Energy sought to achieve is to ensure that the regulation of petroleum and petroleum products allows optimal functioning of the petroleum industry to achieve government's intended developmental goals. Embodied within this policy is a role to ensure that the petroleum industry of South Africa achieves 25% of transformation by HDSA. The chapter focuses on the findings, analysis and emerging data trends with regards to the extent to which this 25% of transformation target is attained. Firstly, the Chapter presents the general status of policy implementation in the petroleum industry. Secondly, the DAC/ OECD Evaluation criteria to assess policy implementation effectiveness in relation to transformation targeted at HDSA, is employed. Thirdly, best practice and conceptual framework of a well-considered institutional architecture construct in the petroleum industry of South Africa is determined. Lastly, chapter summary and conclusion is provided. Next, to be discussed and analyses is the status quo of implementation in the petroleum industry of SA.

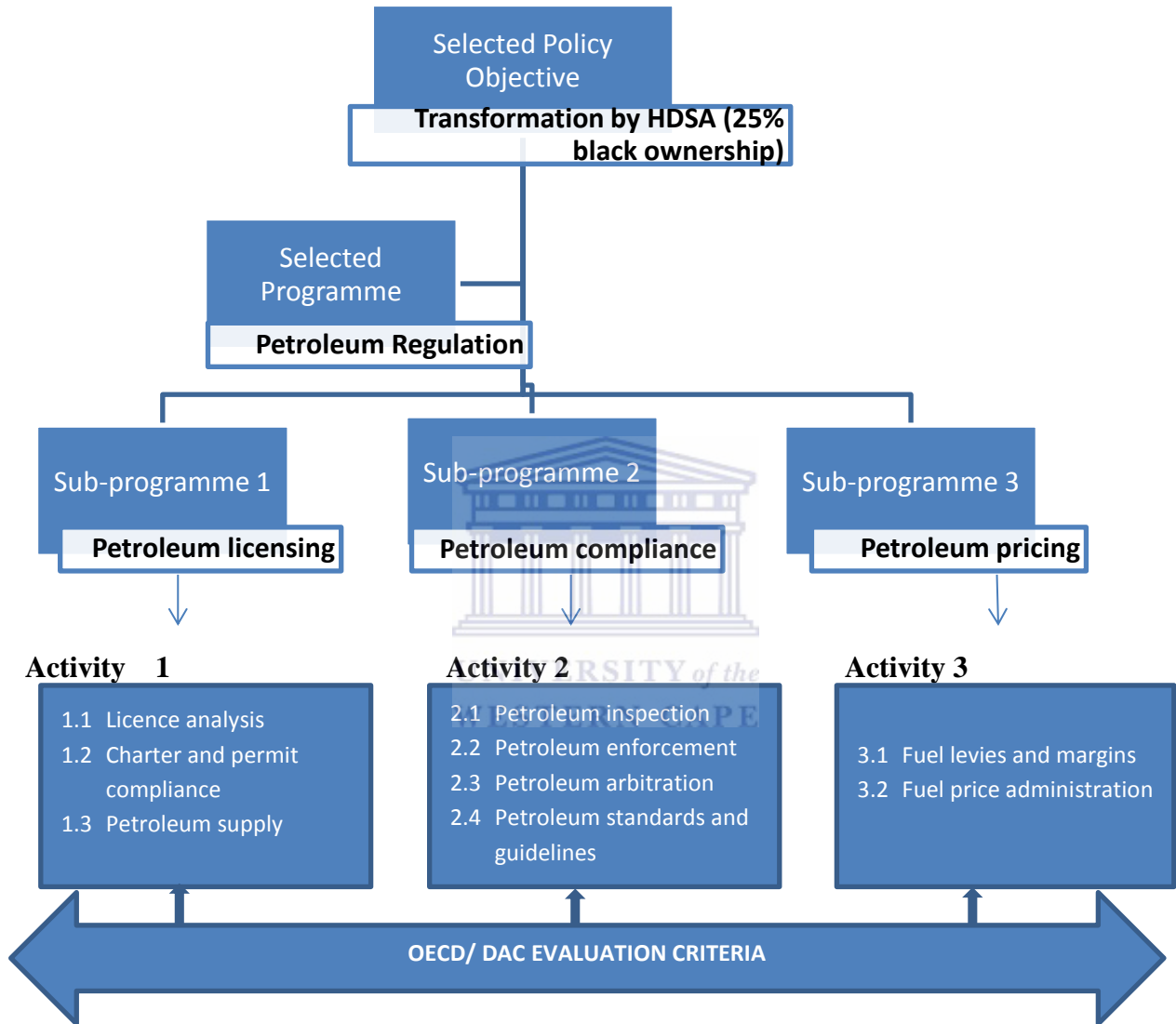
### **6.2 Policy implementation status quo in the petroleum industry of South Africa and analysis of emerging data trends**

Prior to the 1990s, capital in South Africa was heavily preserved for whites. This status quo elapsed since the post-apartheid epoch. As such, South Africa has been the driver of

transformation to ensure even beneficiation and skills development, through the enactment of Affirmative Action and BEE Codes of practice, among other statute. The Charter for the South African Petroleum and Liquid Fuels Industry (2000) views transformation as legal requirement and business imperative. To this effect, this Charter seeks to bring about 25% HDSA ownership and control of all facets of the industry over a ten-year period. This means HDSAs would own in total, by the end of that period, not less than 25% of the aggregate value of the equity of the various entities that hold the operating assets of the South African oil industry (Charter for the South African Petroleum and Liquid Fuels Industry, 2000). It is this objective that gave rise to the researcher attempting to evaluate the effectiveness of the implementation of this policy goal, and to gauge the progress of transformation in the petroleum industry, especially by HDSAs. The term 'HDSA' refers to all persons and groups who have been discriminated against on the basis of race, gender and disability (Liquid Fuels Empowerment Charter, 2000). In the petroleum industry (downstream) of South Africa, the Department of Energy plays a regulative role even though implementation is undertaken inclusively with the industry. In so doing, the Department of Energy pursues various programmes, but of relevance to this study is 'Petroleum and Petroleum Products Regulation'. The said programme comprises of three sub-programmes displayed in Figure 6.1. These sub-programmes are evaluated by the researcher to determine the effectiveness of HDSA transformation. Of note is that the assessment of policy implementation effectiveness is selected for the period 2009 to 2014. This time-frame is significant for the researcher because it marks two decades since the collapse of apartheid. The researcher believes that lessons would have been learned and improvements made.



**Figure 6.1: Flow of selected policy objective and its alignment to programme, sub-programmes and activities**



*Source: Author's configuration*

### 6.2.1 Petroleum Licensing

As alluded to earlier in the study, transformation in the petroleum industry is seven-pronged, thus: ownership, management control, employment equity, skills development, preferential

procurement, enterprise development, and socio economic development. With reference to this sub-programme the aim is to “facilitate participation of Historically Disadvantaged Individuals in the petroleum industry by enforcing compliance by wholesalers, manufacturers and retailers with the Liquid Fuels Empowerment Charter in the adjudication of licences on an ongoing basis” (Department of Energy Annual Performance Plan, 2012/13: 24). Basically this activity is done by the Controller of Petroleum Products, who is appointed according to the Petroleum Products Act, 1977 (Act No. 120 of 1977) to mainly facilitate wholesale and retail licences on behalf of Department of Energy. The Controller of Petroleum Products could be the Minister of Energy or any person he/she delegates. The target performance is based on the percentage of arbitration requests finalised within the prescribed timeframes. Furthermore, the said sub-programme “manages the adjudication of petroleum licence applications; regulates the permitting of the export and import of petroleum products; monitors fuel stock levels; and co-ordinates corrective actions to avoid fuel shortages” (Department of Energy Annual Performance Plan, 2012/13: 24). This sub-programme also includes conducting of licence analyses, and ensuring that prices are in accordance with internationally competitive pricing of petroleum products so that investment is enabled in the industry (Department of Energy Annual Performance Plan, 2012/13).

Performance of this sub-programme by the Department of Energy is put in a logframe displayed in Table 6.1. According to Ile, Eresia-Eke and Ile (2012: 100) “the logframe is a matrix that rests on a hierarchy of aims or objectives that consists of activities, outputs, outcomes and impacts”. The logframe adopted by the Department of Energy exhibits the performance indicators, planned targets, and actual achievements over the years. Of note is that it was only in 2009 that this

department was made a standalone after being separated from the previous Department of Energy and Mineral Resource.

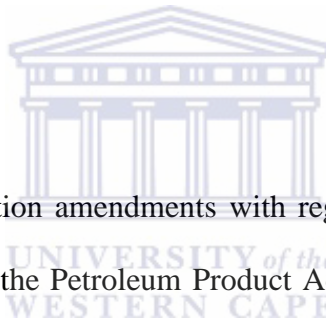
**Table 6.1: Log-frame exhibiting performance for Petroleum Licensing sub-programme**

Strategic objectives	Performance indicator	Actual achievements in 2011/12	Planned targets for 2012/13	Revised targets for 2012/13	Actual achievements for 2012/13
<b>License analysis</b>	Process all applications within 90.	95,5% applications were processed within 90 days.	Process all applications within 90 days.	100% compliance rate by the Controller on finalising all applications within 90 days excluding site and Retail New to Industry (NTI) applications.	Partially Achieved: 67,8% compliance rate on finalising all applications within 90 days (excluding Site and NTI applications). 1050 licence applications were received (excluding site and retail NTI) of which 712 applications were finalised within 90 days. 576 licence applications from the previous years were also finalised.
	Finalise all new to industry applications within 60 days.	No targets set.	Finalise all new to industry applications within 60 days.	90% compliance rate by the Controller on finalising site and retail NTI	Partially achieved: 86,7% compliance rate on finalising site and retail new to industry applications

				applications within 60 days.	within 60 days. 30 site and 30 retail new to industry licence applications were received of which 26 site and 26 retail applications were finalised within 60 days.
<b>Charter and Permit Compliance</b>	Number of site inspections.	1 718 site inspections conducted.	Conduct 1500 site inspections.	1500 Compliance Inspections conducted at sites.	Achieved: 1717 Compliance Inspections conducted.
	Number of fuel samples and tests.	No targets set.	1080 fuel samples and tests.	Number of fuel samples tested for compliance to fuel specifications and standards.	Not Achieved.
<b>Petroleum Supply</b>	Fuel stock levels monitored and corrective actions to avoid distribution shortages coordinated.	No targets set.	Fuel stock levels monitored and corrective actions to avoid distribution shortages coordinated.	Fuels stock levels monitored and corrective action to avoid distribution shortages coordinated.	Achieved: No fuel supply shortages were experienced; corrective actions were implemented where necessary.  Logistics Planning Team and Heads of Supply Managers meetings held throughout the financial year.

Source: Department of Energy Annual Report (2013/14: 82)

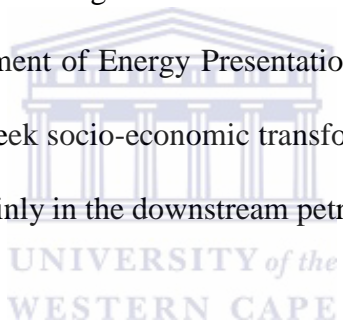
While this sub-programme achieved much, some targets were deferred because there was no budget allocated. Furthermore, in the adjudication of licences to wholesalers, manufacturers and retailers, there is no data to track performance since the indicator was new (2010/11 financial year). However, in the 2011/12 and 2012/13 financial year, 100 % of arbitration notices were issued for arbitration requests (DoE Annual Performance Plan, 2014/15: 51). The researcher holds the view that while there was no baseline information on the envisaged target, it appears that the absence of this may have prompted an idea that 100% of arbitration notices is achievable, hence it is a target for 2013/14 financial year as well. 2000 new petroleum retail site inspections per year were earmarked for 2013/14 financial year (DoE Annual Performance Plan, 2014/15: 51).



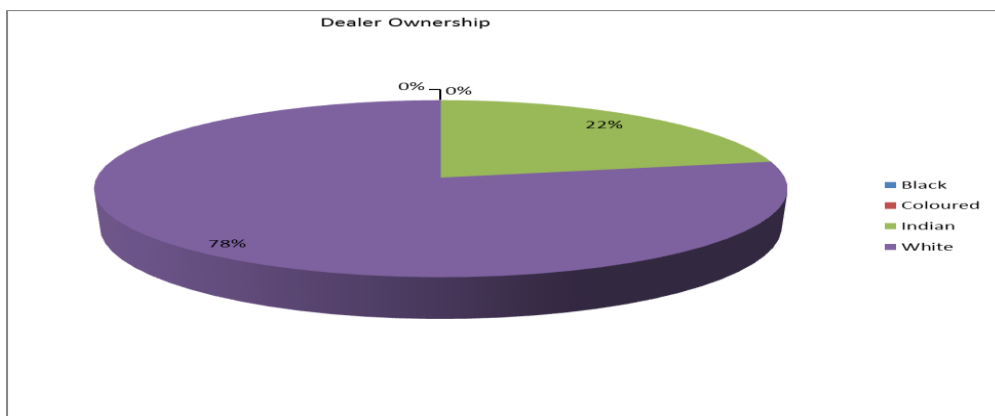
It is paramount to note the regulation amendments with regards to petroleum product site and licences since 2006. For example, the Petroleum Product Act, of 1977 (as amended) prescribes that any person involved in manufacture, wholesale and or retail must purchase prescribed petroleum products and must be licensed by the Controller of Petroleum Products. According to the Department of Energy (2013), in considering licence, the Controller of Petroleum Products, guided by the Act, must give effect to the objectives of the Act and transformation of the South African petroleum and liquid fuels industry, respectively. For example, the Controller of Petroleum Products provides a business plan guideline, in which the business plan should show ‘how many HDSA individuals does the company applying for a licence employ or intend to employ; how many HDSA individuals are involved in ownership and management; what skills development plan does the company intend to have and how long will implementation take’ (Department of Energy Presentation, 2013: 3). With regard to petroleum licensing, as at 2013,

Table 6.1 depicts output on number of issued licences. The reader should note that a major component of the Liquid Fuels Charter is procurement, which is set to render opportunities to many HDSAs companies (Department of Energy Presentation, 2013: 3). Accessing these opportunities requires licensing from the Department of Energy via the Controller of Petroleum Products.

However, progress on the transformation of the petroleum industry and compliance to the LFEC is viewed to be less than satisfactory, as echoed by the (Report of the Portfolio Committee on Energy on its activities undertaken during the 4<sup>th</sup> Parliament May 2009 – March 2014). Also adding on this point is the Department of Energy Presentation (2013: 16) which argues that the impact of policy instruments that seek socio-economic transformation is currently at a minimum. Figure 6.2 illustrates this point, mainly in the downstream petroleum pipeline.



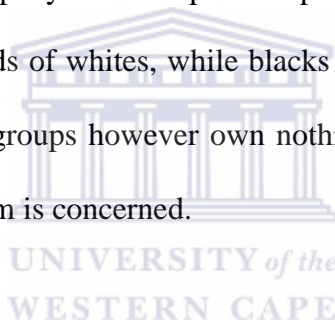
**Figure 6.2: Dealer ownership in the petroleum industry of South Africa by race**



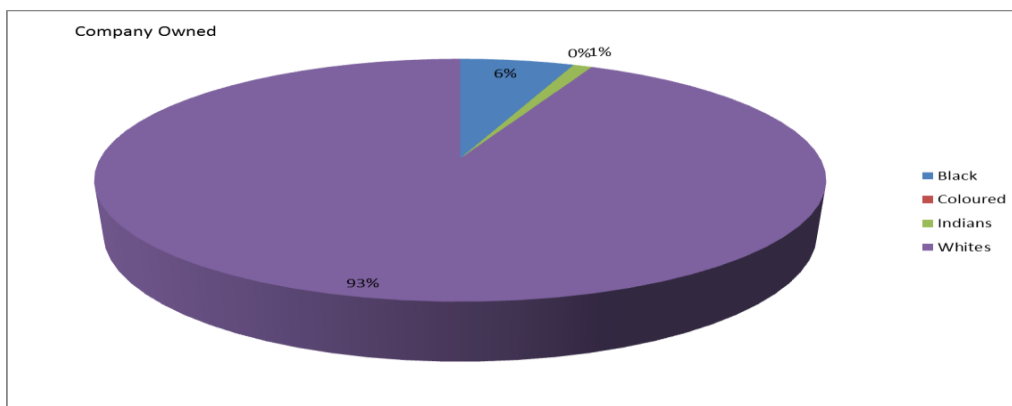
*Source: Department of Energy Presentation (2013)*

What Figure 6.2 describes is that, in terms of dealer ownership in the petroleum industry of South Africa, white people lead by 78%, Indians follow by 22%, while other groups have no dealer ownership at all. In the researcher's view, huge disparity in terms of ownership shows that transformation is less achieved as massive ownership is still in the hands of the privileged even after two decades, post 1994 elections. The Department of Energy Presentation (2013: 16) blames this impediment on the fact that limited site availability, among other things, inhibits the equitable site allocation to HDSAs.

Similarly, Figure 6.3 displays company ownership in the petroleum industry of South Africa as at 93% of ownership is in the hands of whites, while blacks follow by 6% and 1% is owned by Indians. Coloured and other race groups however own nothing at all in the petroleum industry space, where downstream petroleum is concerned.



**Figure 6.3: Company ownership in the petroleum industry of South Africa by race**



*Source: Department of Energy Presentation (2013)*

However, the researcher went on to assess progress made in issuing of the following licences: Manufacturing, Wholesale, Site and Retail by South African Provinces. The rationale for this is to assess emerging data trends over the years as far as transformation is concerned in the petroleum industry of South Africa. Also, the researcher sought to unearth evenness of licence distribution in South Africa, because the belief is that the better the distribution of licenses in a province the better it is transformed. Table 6.2 shows that there has been an overwhelming increase in issuing licences in the petroleum industry of South Africa since 2006 after the LFPC enactment until 2013. The formula to calculate growth is as follows:  $(\text{PV} = \text{Present Value} - \text{Past Value} / \text{Past Value} * 100)$ .

**Table 6.2: License issuing per South African Provinces from 2006-2013 and gap analysis**

Name of Province	Manufacturing licence	Wholesale licences	Site licences	Retail licences	Year of licence issued
Eastern Cape	1	15	267	291	2006
<i>Total</i>	3	25	374	451	2013
<i>Percentage growth</i>	2%	66.6%	40%	54.9%	
Mpumalanga	0	19	183	237	2006
<i>Total</i>	3	40	329	402	2013
<i>Percentage growth</i>	3%	110%	79.7%	69.6%	
Limpopo	0	15	207	239	2006
<i>Total</i>	0	18	307	348	2013
<i>Percentage growth</i>	0%	20%	48.3%	45.6%	
Gauteng	0	83	837	1114	2006
<i>Total</i>	0	210	1117	1612	2013
<i>Percentage growth</i>	0%	15%	33.4%	44.7%	
North West	0	10	186	226	2006



<i>Total</i>	0	19	234	298	2013
<b>Percentage growth</b>	0%	90%	25.8%	16%	
KZN	0	17	367	453	2006
<i>Total</i>	1	29	472	673	2013
<b>Percentage growth</b>	1%	70.5%	28.6%	48.5%	
Northern Cape	0	6	75	68	2006
<i>Total</i>	0	9	148	147	2013
<b>Percentage growth</b>	0%	50%	97%	116%	
Western Cape	0	12	419	486	2006
<i>Total</i>	0	22	549	774	2013
<b>Percentage growth</b>	0%	83%	31%	20.5%	
Free State	1	12	236	258	2006
<i>Total</i>	0	18	343	391	2013
<b>Percentage growth</b>	1%	50%	45%	51.5%	

*Source: Author's configuration, raw data sourced from [www.energy.gov.za](http://www.energy.gov.za)*

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Figure 6.4 demonstrates the trends and gaps in terms of licence issuing per South African Provinces.

**Figure 6.4: Licence issued since 2006 to 2013 per South African Provinces**

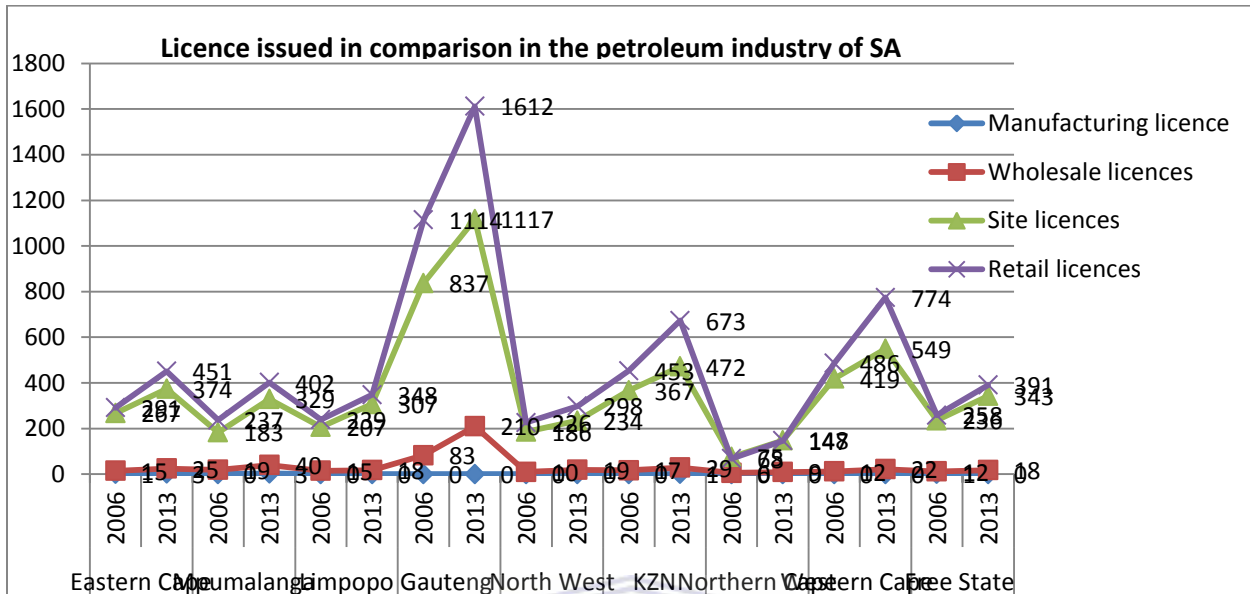


Figure 6.4 suggests that retail and site licence issuing leads in the South African petroleum industry. Gauteng province has the highest number of site and wholesale licences as compared to the rest of the provinces, even though there are no manufacturing licences issued. With regard to the above figure generally in terms of retail licence issuing the Gauteng Province leads from 1114 in 2006 to 1612 in 2013. This means that from 2006 to 2013 retail licence issuing grew by 498 and when this is translated into percentages growth is at 44.7%. This skewed growth in terms of licensing may be caused by the fact that National Government, where licences are issued, is situated in Pretoria, which means that transportation could be a challenge for other aspiring entrepreneurs who may be in remote areas. Thus, the services are there but not all South Africans are able to reach them. This means that transformation is progressing well in the Gauteng province if all licence holders utilise them. Furthermore, the number of site licences that were issued increased between 2006 until 2013 throughout the country. The province with the

lowest number of site licence is the Northern Cape even though licence issuing grew from 75 in 2006 to 148 in 2013. In percentage terms, the growth received by Northern Cape is at 97.3%. However, the onus is on whether upon licences being issued there is sustainable ownership by HDSA.

The number of manufacturing licence is the least in comparison to retail and site licences throughout the country. It is the view of the researcher that slow pace of issuing licences, especially for manufacturing licence impact negatively on the transformation objective due to the amount of ownership can be obtained. As argued earlier, the Liquid Fuel Empowerment Charter was designed to drive transformation agenda, targeting 25% ownership by HDSA, at least within the ten year of Charter enactment. However, the Department of Energy Presentation (2013: 17) argues that access to large infrastructure for the movement and storage of crude oil and petroleum products, such as Single Buoy Mooring, pipelines and depots and storage tanks, oil refiners and synthetic fuel manufacturers' plants is acknowledged as a major challenge in the supply chain of emerging companies owned by HDSA. Basically, the owners of such facilities provide third parties with non-discriminatory access but with no commitment to capacity. The Department of Energy (2013) holds a view that HDSA companies should be given fair opportunity to acquire ownership in such facilities as well.

As was said in the study, transformation in the petroleum industry carries seven pillars; it is paramount to showcase progress made through other forms of transformation the petroleum industry undertook. Table 6.3 demonstrates a summary.

**Table 6.3: Transformation Journey in the Petroleum Industry of South Africa**

2005	<ul style="list-style-type: none"> <li>▪ Successful completion of SAPIA’s scarce and critical skills research.</li> <li>▪ Launch of the association’s first human resource development journal, dubbed ‘The Petroleum Professional’.</li> <li>▪ SAPIA and Women in Oil and Energy signed an MOU. Cooperated to facilitate the sustainable empowerment of women in the oil, gas and other energy sectors.</li> </ul>
2006	<ul style="list-style-type: none"> <li>▪ Leadership in Oil and Energy programme was launched.</li> <li>▪ Joint initiative of SAPIA, the Chemical Industries Education and Training Authority, and the University of the Witwatersrand. Run from 2006-2011, with 348 industry employees graduating, in which 93% pass rate.</li> </ul>
2008	<ul style="list-style-type: none"> <li>▪ The launch of the South Africa Supplier Development Agency (mandated to accelerate empowerment through increased access to the industry procurement opportunities).</li> <li>▪ Implemented a five-year Human Resource Development Strategy for the industry.</li> </ul>
2009	<ul style="list-style-type: none"> <li>▪ SAPIA works with Department of Education to direct curriculum content for technical students to qualify as process plant operators at National Vocational Certificate Levels 2, 3 and 4.</li> </ul>
2010	<ul style="list-style-type: none"> <li>▪ Developed partnership with the National Petroleum Employees Association on skills development and representation in CHIETA.</li> <li>▪ Participate in the Liquid Fuels Charter and energy industry transformation public hearings in Parliament.</li> <li>▪ Participate in development of the National Skills Development Strategy.</li> <li>▪ Participate in development of the CHIETA Sector Skills Plan.</li> </ul>
2012	<ul style="list-style-type: none"> <li>▪ Women in Leadership Programme launched in August.</li> <li>▪ The SAPIA constitution was amended to make provisions for admission of members that are licensed wholesalers or manufacturers.</li> </ul>

*Source: South African Petroleum Industry Association (SAPIA) Presentation (2014: 6-8)*

Furthermore, in terms of ensuring that petroleum services reach all in South Africa to address past marginalisation, a number of IeCs were initiated by government. The IeCs form part of the IDPs of District Municipalities, and were developed in 2002, but intended to lapse by 2015. “The main purpose of IeC programme is to have 30 filling station type centres in operation and an information type centre in each of approximately 287 municipalities spread across Nodal areas” (www.energy.gov.za). The IeCs sell products such as paraffin, candles, diesel, petrol, gas

and gas burner stoves in the community. The IeCs are owned by a registered community cooperative. The IeCs also have a village vendor network of people, mainly women and youngsters, who serve as delivery points within the communities ([www.energy.gov.za](http://www.energy.gov.za)). People then purchase energy products from these vendors in order to reduce travelling costs. The vendors are trained on how to use the energy sources safely and they, in turn, are expected to train other local people ([www.energy.gov.za](http://www.energy.gov.za)). These IeCs not only provide energy services closer to the people, but also they indirectly create jobs and skills, reducing thereby the incidence of poverty. In terms of jobs creation, each IeC provides 50 short-term during the construction phase and 10 permanent jobs after construction. Progress made so far is shown in Table 6.4.

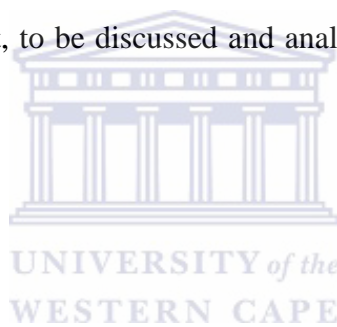
**Table 6.4: Progress made with regards to IeC initiative since 2003-2014**

Area in which IeC is located	Name of municipality	Population benefiting	Year of construction earmarked
Kgalagadi (now called John Taolo Gaetsewe) in Northern Cape	Kgalagadi District Municipality	224,799	2003
Caba Mdeni in Eastern Cape	Alfred Nzo Municipality	801,344	2005
Mutale in Limpopo	Vembe District Municipality ISRDP	1,294,722	2007
Ratlou in North West	Ngaka Modiri Molema District Municipality	842,699	2008
Morrisberg	Central Karoo ISRDP	71,011	2010
Qunu in Eastern Cape	OR Tambo District Municipality	1,364,943	2010
Bizana in Eastern Cape	Mbizana Local Municipality	7,974	2010
Ulundi in KZN	Zululand District Municipality	803,575	2010
Qamata in Eastern Cape	Chris Hani District Municipality	795,461	2010
Caba-Mdeni in Eastern Cape	Alfred Nzo District Municipality	801,344	2010

QwaQwa in Free State	Free State ISRDP	54, 661	2010
Mpumalanga	Bohlabela District Municipality	390, 610	2010

*Source: Author's configuration, information sourced from [www.energy.gov.za](http://www.energy.gov.za) and from Wikipedia where population is concerned.*

However, even though this initiative is crucial in terms of addressing transformation, lack of funding, poor cooperation by bigger oil companies, who must contribute in implementing the IeCs, and poor governance of the existing IeCs, hampers government's efforts. Also, the population of these district municipalities is way too much for one IeC to supply its energy needs. Furthermore, the target of 30 IeCs by 2015 is unlikely to be reached, considering that not all these IeCs are completed. Next, to be discussed and analysed is the second sub-programme, which is 'petroleum compliance'.



### **6.2.2 Petroleum Compliance**

Compliance monitoring and enforcement is important to conduct for the purposes of ensuring the policy objective of HDSA inclusion into mainstream economic activities. This activity aims to ensure development and transformation of the liquid fuels industry and security of supply of petroleum products in the South African economy through monitoring and enforcing technical and economic compliance to legislation, specifications, standards and licence conditions in each year of the medium term (DoE Annual Performance Plan, 2014/15: 50). However, the researcher focuses only on transformation. The main activity is to ensure that a number of new petroleum retail site inspections are conducted in each year in order to ensure targets are met.

To conduct compliance monitoring, the Department of Energy Annual Performance Plan (2013/14: 85) shows that in the 2009/10 financial year 1 200 compliance inspections were conducted. In the 2010/11 financial year, 3 360 retail site compliance inspections were conducted (Department of Energy Annual Performance Plan, 2014/15: 50). This means that a baseline target of 1 500 inspections was exceeded. In 2011/12 financial year, 1 500 retail site compliance inspections were conducted. In the year 2012/13, 1 500 retail site compliance inspections were conducted, and by year 2013/14, 1 500 retail site compliance inspections are envisaged to be conducted (DoE Annual Performance Plan, 2014/15: 50). In so doing the DoE employs an external company to conduct random inspections. Judging from the statistics gathered earlier, 5 096 retail licences were issued throughout the nine provinces. This means that the number of inspections earmarked for the year is way below the number of issued licences in the petroleum industry of South Africa, considering that these are only retail licences. Gauteng Province alone has a huge number of retail licences. This begs a further question: to what extent are licence holders eventually becoming entrepreneurs?

Enforcement of conduct has been a challenge, since, the indicator being new, there has been no past data to track performance. The projection therefore is for 2013/14 financial year in which enforcement notices would be issued in 80 percent of cases where non-compliance is identified during routine compliance inspections (DoE Annual Performance Plan, 2014/15: 51). It is important to note that enforcing compliance could be a challenge. Since this is a new activity, the Department of Energy needs to have a basic plan and a strategy in place that will see this goal achieved. In terms of testing a fuel sample, a percentage of cases where enforcement notices are issued in cases where non-compliance is identified during fuel sample testing. Fuel sample

testing faces similar challenges, as in the years from 2010 to 2013 there is no past data as the indicator was new. Estimates of the performance indicator starts to focus on the 2013/14 financial year in which 95% enforcement notices would be issued where non-compliance is identified during routine fuel sample testing (DoE Annual Performance Plan, 2014/15: 51). Compliance monitoring and enforcement is also viewed in terms of the requirements of the Liquid Fuels Empowerment Charter. The logframe, Table 6.5, indicates a summary of the achievements made.

**Table 6.5: Log-frame exhibiting performance for Petroleum Compliance sub-programme**

Strategic objectives	Performance indicator	Actual achievements in 2011/12	Planned targets for 2012/13	Revised targets for 2012/13	Actual achievements for 2012/13
<b>Petroleum Inspection</b>	-Process all applications within 90 days.	-95,5% applications were processed within 90 days.	-Process all applications within 90 days.	-100% compliance rate by the Controller on finalising all applications within 90 days excluding Site and retail (NTI) applications.	-Partially Achieved: 67,8% compliance rate on finalising all applications within 90 days (excluding site and NTI applications). 1050 licence applications were received (excluding site and retail NTI) of which 712 applications were finalised within 90 days. 576 licence applications from the previous years were also finalised.
<b>Petroleum Arbitration</b>	-Finalise arbitration requests within	-All arbitration requests are not being finalised	-Finalise arbitration requests within 14	-100% of arbitration notices issued	-Partially Achieved: 66% of Arbitration notices issued within the 14



	14 working days.	within 14 working days due to capacity constraints.	working days.	within the 14 day turnaround time for processing.	working days turnaround time. 3 arbitration requests were received and only 2 finalised within 14 working days.
	-Finalise public complaints within 14 working days.	-No targets set.	-Finalise public complaints within 14 working days.	-Finalise public complaints within 14 working days.	-Partially Achieved: 22 out of 24 received finalised within 14 days.
<b>Petroleum Enforcement</b>	-A system of corrective action for non-compliance with the Liquid Fuels Charter (LFC) and technical, legal and commercial licensing conditions developed, maintained and implemented.	-No targets set.	-A system of corrective action for non-compliance with the LFC and technical, legal and commercial licensing conditions developed, maintained and implemented.	-A system of corrective action for non-compliance with the LFC and technical, legal and commercial licensing conditions developed, maintained and implemented.	-Partially Achieved: The Minister of Energy met with all oil company Chief Executive Officers individually to discuss the LFC Audit findings and to map the way forward.

*Source: Department of Energy Annual Report (2013/14: 83)*

Performance of this sub-programme appears to be a challenge for the Department of Energy, since its aims have only partially been achieved. When it comes to this activity also, the LFPC of 2000 Audit Report findings of 2011 suggests transformational gaps, owing to poor compliance by the industry to the provisions of the Charter. This means that even though the DoE issues

licences in accordance with the policy, this does not translate into transformation impact. In addition, the DoE Annual Performance Plan (2014/15: 53) points out that on an annual basis, the sub-programme aims to conduct 1 500 retail site inspections for petroleum manufacturers, wholesalers and retailers to ensure compliance with the LFC and technical, legal and commercial licensing conditions. The Annual Performance Plan (2014/15) reveals that in 2012/13, 1 717 site inspections were carried out, meaning that a target therefore was reached and exceeded. However, by the end of September 2013 (half-way into the new financial year), 845 inspections had been conducted, but already twenty non-compliance issues had been noted. Six were resolved immediately, and fourteen enforcement notices were issued. Issues of capacity should be noted as well as this sub-programme carried a complement staff of fourteen in 2013/14 (DoE Annual Performance Plan, 2014/15: 53). This means that there is a gap between the policy objective, input resources made available, and the sub-programme. This is where *ex post* mechanisms are wielded by the principal to ensure policy goals are achieved. It is the failure to successfully implement enforcing measures that proves that rule-bound institutions do not always achieve effective implementation of policy. The next sub-programme to be discussed is 'petroleum pricing'.

### **6.2.3 Petroleum Pricing**

This sub-programme seeks to strengthen the regulatory framework in the liquid fuels petroleum industry by implementing the Regulatory Account System (RAS). This is intended to achieve a transparent fuel pricing mechanism that will reward investors in the liquid fuels sector throughout the value chain, by 2013/14 (DOE Annual Performance Plan, 2012/13). It is important to explain what the RAS is and the rationale behind the creation. RAS replaces the

previous Market of Petroleum Activities Return Mechanism and Retail Margin determination (MPAR) model, which is observed by (Sibiya, 2013: 20) to protect the new entrants in the retail sector less. The MPAR is the model that was used by the oil companies to make investment into retail sites (SAPRA, 2008). However, while this model ensured investment returns, on the other hand it caused institutions to over invest into retail sites (Figure 6.4 demonstrate this claim). As SAPRA (2008) explains, the consequence of this is that the average national throughput of service stations was declining, putting pressure on effective retail operations. Furthermore, investment returns were not realised at retail outlets.

The DOE Performance Plan (2012/13) states that RAS calculate the margins of retailers and how they meet their licensing conditions. RAS compensates for all assets and operating expenses in a transparent manner (Sibiya, 2013: 21). Sibiya (2013) further explains that employing RAS means that whoever owns the asset would get full compensation for it and whoever operates the asset is envisaged to get the return for operating the asset. This means that if the site is owned and operated by the retailer, she or he would get both CAPEX and OPEX margin, with the exception for the pumps and tanks which are normally owned by the oil company ([www.energy.gov.za](http://www.energy.gov.za)). According to Sibiya (2013: 20), new licensing had to be introduced to save potential service stations owners from having to purchase unviable service stations through the inclusion of the net present value (NPV) calculation in the licensing system. RAS thereby is seen to protect the vulnerable retail sector by separating wholesale assets from retail (service stations) assets (Sibiya, 2013: 20). According to Sibiya (2013), the protection of the entrepreneurial margin in RAS margins is crucial for HDSA empowerment. Furthermore, Sibiya (2013) views such

protection to render confidence to financial lenders and SMME development, highly required in the petroleum industry to enable operations.

According to the DOE Annual Performance Plan (2014/15), in 2012/13, the stakeholder consultation process on the fixed retail margin for illuminating paraffin was finalised, and a discussion document on the maximum refinery gate price was published. By the end of September 2013, the global energy information provider, Platts, was consulted regarding elements to ensure internationally competitive pricing in the administration of petroleum product pricing (DOE Annual Performance Plan, 2014/15). The DOE also participated in the South African Petroleum Industry Association-Kellogg Brown Rood study on the review of the basic fuel price, and two reports on the implementation of the regulatory accounting system applicable to the adjustment of fuel margins and petrol attendants' wages were compiled and approved in 2013/14. All these efforts saw the RAS being implemented as from December 2013, as envisaged by the Department of Energy. Output is demonstrated in the logframe, Table 6.6.

**Table 6.6: Log-frame for Petroleum Pricing sub-programme**

<b>Strategic objectives</b>	<b>Performance indicator</b>	<b>Actual achievements in 2011/12</b>	<b>Planned targets for 2012/13</b>	<b>Revised targets for 2012/13</b>	<b>Actual achievements for 2012/13</b>
<b>Fuel Levies and margins</b>	-Revision and implementation of the Basic Fuel Price (BFP) and Magisterial District Zones (MDZ) System.	-Terms of Reference for the review of the BFP and MDZ have been finalised.	-Promulgation of BFP and Zone Differential Rules.	-Conduct a desktop study on BFP.	-Achieved: The DOE had meetings with Platts and Argus to discuss the international pricing elements. A DOE official participated in the SAPIAKBC study on the

					review of the BFP. The report would be used as input document to the DOE processes.
	-Implementation of RAS.	-The Rapid RAS margins were implemented in fuel prices structure in December 2011.	- Implementation and Monitoring of RAS. Two Reports per annum on the calculated price margins for the respective segments of the value chain.	-Two reports produced on the implementation of RAS.	-Achieved: Two reports on the implementation of the RAS as it applies to the adjustment of fuel margins and petrol attendants' wages were approved.
	-Promulgate and implement the fixed retail price of illuminating paraffin.	-The Fixed Margin for Illuminating Paraffin (IP) Study is completed and approved by the Minister.	-Monitor the fixed retail margin of IP.	Promulgation of a fixed retail margin for IP.	-Partially Achieved: The stakeholder consultation process on the fixed retail margin for IP was finalised on 26 March 2013. The comments were consolidated into a report and will be incorporated into the regulations. A discussion document on the Maximum Refinery Gate Price (MRGP) was published for public comment.

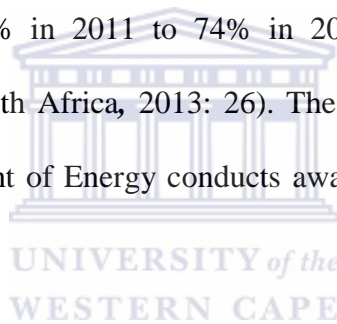
Source: Department of Energy Annual Report (2013/14: 84)

It should be noted that since RAS was approved in 2013, the Basic Fuel Price for liquid fuels, Single Maximum National Retail Price for Paraffin and Maximum Retail Price for LPGas was

developed and implemented as well, as depicted in the logframe. As said before, the rationale for the development of RAS was to address the pricing system by separating wholesale assets from retail assets. Prior to the creation of this structure, wholesale assets and retail assets were vertically integrated, meaning that wholesalers, both emerging and established, were swallowing profits from the retail sector (Sibiya, 2013). This means that the retail sector, which is dominated by SMMEs and by those who are HDSA will only develop at slow pace. This necessitate correction in order to comply with Section 2A (5) (a) Petroleum Product Act of 1997 (as amended), which encourages appropriate investment and returns to every activity in the petroleum industry, respectively. According to Sibiya (2013: 20), the main challenges that were facing the liquid fuels sector are a direct product of this vertically integrated wholesale and retailing in terms of ownership, among other things. The researcher agrees, because Table 6.2 shows a number of licences i.e manufacturing, wholesale, site and retail licences, meaning that if these are integrated to bigger groups, they will swallow all the investment returns made by smaller groups. This undermines the government policy objectives of ensuring HDSA transformation.

Sibiya (2013: 20) argues that when RAS was introduced the positive motivation was to take away a return for retail assets from the wholesale margin, back into the retail activity via the retail margin. In addition, RAS sought to eliminate the double dipping effect in that it splits the retail margin into two major portions, thus Apex and Investor Return (Sibiya, 2013: 21). Even so, while this activity is fairly new, there are already challenges in terms of addressing what it was intended for. Sibiya (2013) expresses the view that expected changes to pricing system have rather not yet fully flowed through to the intended beneficiaries, as bigger oil companies still

swallow returns made by the retail sector. The retail sector basically is not yet fully liberalised to divert investment returns to benefit SMMEs and transform the downstream petroleum industry of South Africa. Furthermore, there are still challenges in monitoring the implementation of the maximum retail price where the middle-man is involved in the industry under review, since this space is not yet regulated. The middle-man basically buys at wholesales and re-sells way above the maximum retail price of liquid fuels. The most impacted group are the destitute and especially in rural areas where there may be one supplier of paraffin or Liquefied Petroleum Gas that the community purchases from. Poor people continue to use traditional methods of cooking due to unaffordability of petroleum products. For example, the use of firewood for cooking in South Africa increased from 65% in 2011 to 74% in 2012 (A Survey of Energy Related Behaviour and Perceptions in South Africa, 2013: 26). The researcher furthermore went on to investigate whether the Department of Energy conducts awareness workshops. A discussion of this is next.



### ***Stakeholder awareness workshops***

The DoE renders stakeholder engagements and advisory services on the petroleum licensing process to facilitate the development of small businesses, for example, the development of business plans, licence application and tracking process. Furthermore the DoE conducts stakeholder awareness workshops, which seek to inform policy implementers about compliance on policies and regulations. Other workshops are prompted by input on policies, among other things. The workshops shown below in Table 6.7 pertain to the programme and sub-programmes selected in this study. However, where stakeholder awareness workshops are concerned there is no evidence of workshops conducted prior to 2012. The Table 6.7 shows that a total number of

five workshops were conducted in 2012. In 2013, twenty two workshops were conducted and in 2014 twelve workshops were conducted thus far.

**Table 6.7: Workshops Conducted by Department of Energy since 2010-2014**

2012	2013	2014
<b>Two workshops</b> were on draft regulation on mandatory blending of Biofuels with Petrol and diesel.	<b>One workshop</b> was on Illuminating Paraffin pricing structure and awareness on the sale of petroleum product.	<b>Twelve workshops</b> were conducted on nine South African provinces, for awareness on the 12L Tax Allowance of the Income Act Tax and allowance of energy saving were conducted.
<b>One workshop</b> was on the Bio-fuels Break-even price and the Bio-ethanol Blending value.	<b>Twelve workshops</b> were on awareness on price of Illuminating paraffin to all nine South African Provinces.	
<b>One workshop</b> was on Petrol Products Act as amended and all its amendments.	<b>Nine workshops:</b> On the draft Integrated Energy Plan on September 2013, the first consultation workshop was held in Johannesburg, with other provincial consultation workshops taking place in October and November 2013.	
<b>One workshop</b> on the price of Illuminating Paraffin. IP retail sector.		
<b>Total 5</b>	<b>Total 22</b>	<b>Total of 12</b>

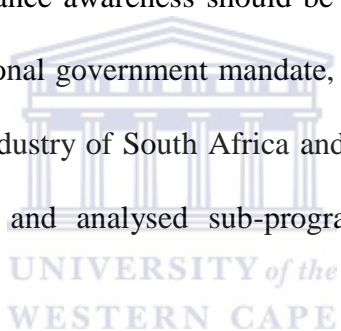
*Source: Compiled by the Author, information sourced [www.energy.gov.za](http://www.energy.gov.za)*

It does appear that the DoE gradually brings awareness to stakeholders about enforcing compliance to government policy. For example, awareness workshops were initially at a snail pace, but progressively increased over the years, mainly in the downstream petroleum channel. While this is the case, there is no evidence of workshops conducted on the LFEC compliance, which was developed in 2000. The researcher holds the opinion that, in ensuring compliance and



commitment to the implementation of policy objective of ensuring HDSA transformation, the LFEC requires extensive training. The purpose of training will ensure that there is traceable knowledge of it.

Furthermore, there is no evidence that shows yearly programme and or schedule for earmarked targeted areas where workshops must be conducted, for what and for which province and local municipalities. This could be developed and documented so that learning progress is traced. It is the view of the researcher that institutions are likely to fail to comply if they are unclear about guidelines. Workshops for compliance awareness should be conducted in order to increase not only compliance, but also the national government mandate, which is to ensure socio-economic transformation in the petroleum industry of South Africa and full economic participation. Next, the study mirrors the described and analysed sub-programmes against the DAC/ OECD evaluation criteria.



**Table 6.8: DAG OECD Logical framework**

Sub-programmes	Component/ project description	Indicators	Means of verification	Assumptions
<b>Goal</b>	<b>Transformation by HDSA: 25% Black Ownership within 10 years of Liquid Fuel Empowerment Charter Enactment</b>			
<b>Petroleum licensing</b>	To process manufacturing, wholesale and retail licence applications.	100% compliance rate by the Controller on finalising all applications within 90 days excluding Site and retail NTI applications.	Department of Energy data base.	Applicants to submit all required information during licence application time.

	Finalise all NTI applications within 60 days.	90% compliance rate by the Controller on finalising site and retail NTI applications within 60 days.	DoE Annual Report (2013/14).	Applicants to submit all required information during licence application time.
	Number of sites inspection.	1500 Compliance inspections conducted sites.	DoE Annual Report (2013/14).	Outsourced company to conduct this to be hired on time and be well resourced.
	Number of fuel samples tested for compliance to fuel specifications and standards.	No targets set.	DoE Annual Report (2013/14).	Clear targets be in place in order to be able to trace noncompliance.
	Fuel stock levels monitored and corrective actions to avoid distribution shortages coordinated.	Fuels stock levels monitored and corrective actions to avoid distribution shortages coordinated.	DoE Annual Report (2013/14).	Monitoring and Corrective mechanisms to be readily made to circumvent fuel shortages.
<b>Petroleum compliance</b>	To inspect petroleum manufactures, wholesalers and retailers for compliance with LFC and technical, legal and commercial licensing conditions.	100% compliance rate by the Controller on finalising all applications within 90 days excluding NTI applications.	DoE Annual Report (2013/14).	Outsourced company to assess compliance to be hired on time and be well resourced.
	To develop, maintain and implement a system of corrective action for noncompliance with the LFC and technical, legal and commercial licensing conditions.	A system of corrective action for noncompliance with the LFC and technical, legal and commercial licensing conditions developed, maintained and	DoE Annual Report (2013/14).	Corrective system to be developed, implemented and be made available for the public once finalised.

		implemented.		
	To manage arbitration requests and public complaints in the petroleum industry.	Arbitration requests and public complaints to be finalised within 14 working days.	DoE Annual Report (2013/14).	A log-call system for all complaints to be developed and managed.
<b>Petroleum pricing</b>	Promulgation of Basic Fuel Price and Zone Differential rules.	Conduct a desktop study on Basic Fuel Price.	DoE Annual Report (2013/14).	Final study report on BFP to be made available and be able to provide the needed pricing guidelines.
	Implementation and monitoring of RAS. Two reports per annum on the calculated price margins for the respective segments of the value chain.	Two reports to be produced on the implementation of RAS.	DoE Annual Report (2013/14).	Evidence of RAS report to be made available to the public.
	Petroleum Products Act with annexed LFC, LPG retail price regulations in place, BFP for diesel, illumination paraffin, and petrol based on Import Parity Pricing methodology.	Draft report on fixed retail margin for illuminating paraffin Fuel Price Working Rules.	DoE Annual Report (2013/14).	Evidence of the report to be made available to the public.
<b>Output</b>		<b>Output indicators</b>		
<i>Petroleum licensing conducted</i>	To process manufacturing, wholesale and retail licence application.	67,8%: All applications were finalised within 90 days.	DoE Annual Report (2013/14).	
	To monitor compliance on LFC, technical, legal and commercial licensing.	86,7%: Compliance rate on finalising site and retail NTI application within 60 days.	DoE Annual Report (2013/14).	
	To inspect petroleum manufacturers, wholesalers and retailers for	1717: Compliance inspections	DoE Annual Report (2013/14).	

	compliance with LFC and technical, legal and commercial licensing conditions.	conducted.		
<i>Petroleum compliance enforcements conducted</i>	To inspect petroleum manufactures, wholesalers and retailers for compliance with LFC and technical, legal and commercial licensing conditions.	67,8%: Achieved compliance rate on finalising within 90 days excluding NTI applications.	DoE Annual Report (2013/14).	
	To develop, maintain and implement a system of corrective action for noncompliance with the LFC and technical, legal and commercial licensing conditions.	A system of corrective action for compliance to LFC is not completed.	DoE Annual Report (2013/14).	
	To manage arbitration requests and public complaints in the petroleum industry.	66%: Arbitration notices issued within 14 working days. 3 arbitration requests were received and only 2 were finalised within 14 working days. 22 out of 24 public complaints finalised within 14 working days.	DoE Annual Report (2013/14).	
<i>Petroleum pricing implemented</i>	Promulgation of Basic Fuel Price and Zone Differential rules.	DoE met with Platts and Urgus to discuss international pricing elements.	DoE Annual Report (2013/14).	
	Implementation and monitoring of RAS. Two reports per annum on the calculated price margins for the respective segments of the value chain.	Two reports on the implementation of RAS as it applies to the adjustments of fuel margins and petrol attendant's wages were approved.	DoE Annual Report (2013/14).	
	Petroleum Products Act with annexed	Illuminating Paraffin	DoE Annual Report	

	LFC, LPG retail price regulations in place, BFP for diesel, illumination paraffin, and petrol based on Import Parity Pricing methodology.	retail price partially achieved.	(2013/14).	
	<b>Activities</b>	<b>Inputs</b>		
<b>Petroleum licensing</b>	1. License analysis	-Implementing staff at Head Office (Controller of Petroleum Products)	-DoE Annual Report 2013/14	-Data is captured accurately.  -Licence application processed in-line with Petroleum Product Act requirements.
	2. Charter and permit compliance	-Regional workshops conducted	-DoE Annual Report 2013/14	-Workshops conducted as planned.
	3. Petroleum supply	-Implementing staff at Head Office	-DoE Annual Report 2013/14	-To continuously confirm fuel supply is enough.
	4 Petroleum enforcement	-Implementing staff at the head office	-DoE Annual Report 2013/14	-To continuously enforce petroleum compliance.
<b>Petroleum compliance</b>	5. Petrol inspection.	-Company outsourced to conduct random inspection nationwide.	-DoE Annual Report 2013/14	-Non-compliance may undermine government's efforts of ensuring that international best practise are followed.
	6. Petrol arbitration.	-DoE continue to negotiate with wholesalers and	-DoE Annual Report 2013/14	-14 arbitration were issued.

		retailers.		
	7. Petrol enforcement.	-Implementing staff at the head office.	-DoE Annual Report 2013/14	-Enforcement notices issued where there is non-compliance
<b>Petroleum pricing</b>	8. Fuels levies and margins	-Implementing staff at the head office	-DoE Annual Report 2013/14	Two RAS reports developed.
	9. Fuel price and administration	-Implementing staff at the head office	-DoE Annual Report 2013/14	

*Source: Author's configuration*

### **6.3 DAC OECD evaluation criteria of policy implementation effectiveness in the petroleum industry of South Africa**

According to Meyer (2002: 22), evaluation is primarily used to ensure that the direction chosen is correct, and that the right mix of strategies and resources were used to get there. Evaluation is typically observed to focus on outcomes and their relationship with outputs (Meyer, 2002: 22). As Meyer (2002: 22) contends, there are numerous types of evaluation, in which some are formative in terms of helping to develop learning and understanding within stakeholders, while others are summative, indicating the degree of achievement, among others. This study however puts focus on the evaluation of the policy implementation process. According to Ile et al. (2012: 133-4) implementation-process evaluation puts focus on the extent to which the plans are created for implementation and the way the project/programme activities are actually being executed. What is important also about this kind of evaluation is its capacity to investigate the extent into which intended outputs were made and also determine unintended consequences that might arise from implementing project/programmes (Ile et al., 2012: 133-4). Evaluating outcomes therefore

will assist this study to assess the intended policy objective achievements, considering that implementation of policies in the petroleum industry have already travelled two decades since the inception of democracy in South Africa. This would in turn provide opportunities for revisiting the projects/ programmes that are underway, in order to effect amendments and improvements (Meyer, 2002: 22), if need be. Evaluation is used in this context on *ex post* perspective since it rigorously assesses completed or ongoing activities to determine the extent to which stated policy objectives are achieved, while also contributing to improved decision-making. It is important for this study to unpack DAC/ OECD evaluation criteria so that policy implementation effectiveness can be determined.

The DAC/ OECD evaluation criteria is employed in order to evaluate the effectiveness of the implementation of policy in relation to transformation targeted at Historical Disadvantaged South Africans in the petroleum industry of South Africa. As said earlier in the study the DAC/ OECD evaluation criteria embody relevance, impact, effectiveness, efficiency, and sustainability. To assess policy effectiveness in the petroleum industry of South Africa the discussed three sub-programmes will be assessed using the five DAC/ OECD evaluation yardsticks.

**Table 6.9: DAC OECD evaluation criteria of sub-programme for transformation targeted at HDSA in the petroleum industry of South Africa**

Sub-programme	Relevance	Effectiveness	Efficiency	Impact	Sustainability	Percentages of B-BBEE Owned
1. Petroleum licensing						

<b>Licence Analysis.</b>	-Highly relevant to the specific situation of petroleum industry.	-Output partially achieved.	-67,8% achieved against the target of 100% for licence application excl. NTI applicants.	Partially felt	-Lack of funding for HDSAs threatens transformation agenda.	-Information not available.
	-Highly relevant to the specific situation of petroleum industry.	-Output partially achieved.	-Partially achieved: - NTI applicants 86,7%.	-Partially achieved.	-Non availability of full information during licence application delays this target and thereby a threat to speedily transformation.	-Information not available.
<b>Charter and permit compliance.</b>	-Highly relevant in the sense that it addresses transformation as national government agenda.	-Effective as the target was exceeded and produced at allocated time-frame.	-1717 achieved against the target of 1500.	-Impact achieved.	-Sustainability is high	-Information not available.
<b>Petrol supply.</b>	-Not relevant especially for the study as it sought to assess policy implementation effectiveness in aspect of HDSA transformation	-Output achieved as there are no fuel shortages.	-Efficiency achieved as output achieved within available resources.	-Impact achieved.	-Sustainability is high	-Information not available.
<b>2. Petroleum compliance</b>						
<b>Petroleum inspection.</b>	-Highly relevant due to the fact	-Output partially	-67,8% achieved	-Partially felt.	-Sustainable only if	-Information not



	that if inspections are not done there is a high risk of non-compliance at retail outlets.	achieved.	against the target of 100%.		resources are available to do so.	available.
<b>Petroleum enforcement.</b>	-Highly relevant because is the only reasonable way to enforce compliance to policy implementation.	-Output partially achieved.	-66% achieved against 100% target.	-Partially felt.	-Sustainable only if resources are available to do so.	-Information not available.
<b>Petroleum standards and guidelines.</b>	-Highly relevant because SA must be at par with international best practices.	Output partially achieved.	-66% achieved against 100% target.	-Partially felt. A system of corrective action for non-compliance with the LFC and technical is not yet finalised.	-Threatens compliance to transformation.	-Information not available.
<b>3. Petroleum pricing</b>						
<b>Fuel levies and margins.</b>	-Needs-driven as it sought to ensure investments returns benefits wholesalers, manufactures and retailers through development of RAS. Completed	-Output achieved: The overall; aim of developing all the regulatory elements of institutional petroleum management capacity has been	-Highly effective: The objective was achieved earlier than the targeted time-frame and within the available funds.	-Impact achieved: Meetings were held between DoE, Platts and Argus to discuss international pricing elements.	-Sustainable for transformation.	-B-BBEE companies not yet benefiting.

	institutional set up for proper petroleum management.	achieved.				
<b>Fuel price administration.</b>	-Illuminating paraffin fixed margins also is highly relevant in the sense that it sought to impose regulations to ensure transformation.	-Output partially achieved.	-Less effective as illuminating paraffin fixed margin is not finalised within the stated time-frame.	-Less impact: Fixed margin for illuminating paraffin is partially achieved.	-Not sustainable for transformation if this is not achieved. The middle-man still exploits this area since there are no regulations yet.	-Information not available

*Source: Author's configuration*

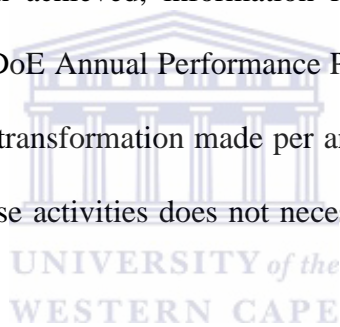


**6.3.1 Relevance**

Relevance checks the extent to which the objectives of the sub-programmes are still valid. It also assesses the degree to which the activities and outputs of the programme are consistent with the overall goal and the attainment of its objectives (Chianca, 2008: 41-51). Relevance also reviews whether the activities and outputs of the programme are consistent with the intended impacts. Starting with sub-programme one, which is ‘Petroleum licensing’, it appears to be relevant to the specific area of the petroleum industry. The licence analysis activity is in-line with this sub-programme, because it accurately identifies the conditions to qualify for licensing new entrants in the petroleum industry. It indicates clearly that applicants must demonstrate the inclusion of HDSA for one to qualify for the licence to operate. Even though output is partially achieved, the 67, 8% obtained with regards to licence applications (excluding the New To Industry applicants) is a clear indication of the relevance of the sub-programme to the policy objective of ensuring HDSA transformation. 86.7% achieved regarding processing licences for new to industry

applicants, further reinforces this claim. What the researcher observes to be an issue is the unintended consequences in which applicants delay bringing required information on time.

Furthermore, this sub-programme speaks to the Liquid Fuels Empowerment Charter and permit compliance, and this clearly promotes the policy objective which the study evaluates. To show relevance of this sub-programme, a staggering 1717 is achieved against the target of 1500. However, the researcher does not find 'Petroleum supply' activity embodied within the discussed sub-programme to be linked with the HDSA transformation target. Despite the study seeking to assess the level of transformation achieved, information regarding the percentage of Black Ownership is not available in the DoE Annual Performance Plans. It means, therefore, that there is no ability to track the extent of transformation made per annum and by each sub-programme. Issuing licences or conducting these activities does not necessarily imply that transformation is achieved.



The second sub-programme 'Petroleum compliance' also shows signs of relevance to the policy objective. This sub-programme is run through petroleum inspections activities to assess the inclusion of HDSA in mainstream economic activities. Here, output is partially achieved at 67, 8% against the target of 100%. This is a clear sign that shows relevance of the sub-programme to policy objective. In conducting 'petroleum enforcement' 66% is achieved against the target of 100%. In terms of 'petroleum standards and guidelines' 66% is also achieved against the target of 100%. The output obtained clearly proves that activities are linked to the sub-programme as it empowers HDSA. The third sub-programme is also highly relevant to policy objectives. The sub-programme 'Petroleum pricing' running through fuel levies and margins, was achieved way

before the target time-frame, and this is an indication that the sub-programme is relevant. In general, sub-programmes are in-line with policy objectives, even though few lessons can be learned. Next, the analyses of effectiveness of these sub-programmes, is discussed.

### 6.3.2 Effectiveness

Effectiveness basically assesses the extent to which the objectives are achieved and likely to be achieved. When evaluating effectiveness it is also paramount to interrogate major factors influencing the achievement or non-achievement of the objectives (Chianca, 2008: 41-51). From a general perspective, the sub-programmes analysed in this study have a balanced outcome in the sense that some output is achieved and even exceeded, while others are only partially achieved. In order to validate the effectiveness of the sub-programme, a comparison of expected vs. achieved results is used based upon the logical framework displayed below. Taking into consideration the fact that not all indicators have baseline information, these are not taken into consideration in the logframe in Table 6.10.

**Table 6.10: Effectiveness of policy implementation**

Sub-programme	Committed outputs by the Department of Energy	Output yielded	% of BBBEE Ownership
<p><i>Petroleum licensing</i></p> <ul style="list-style-type: none"> <li>▪ Licence Analysis</li> <li>▪ Charter and permit compliance</li> </ul>	<ul style="list-style-type: none"> <li>▪ 100%</li> <li>▪ 100%</li> <li>▪ 500</li> </ul>	<ul style="list-style-type: none"> <li>▪ 67,8% (excl. NTI)</li> <li>▪ 86,7% (NTI)</li> <li>▪ 1717</li> </ul>	Information not available
<p><i>Petroleum compliance</i></p> <ul style="list-style-type: none"> <li>▪ Petroleum inspection</li> </ul>	<ul style="list-style-type: none"> <li>▪ 100%</li> </ul>	<ul style="list-style-type: none"> <li>▪ 67,8%</li> </ul>	Information not

<ul style="list-style-type: none"> <li>▪ Petroleum enforcement</li> <li>▪ Petroleum standards and guidelines</li> </ul>	<ul style="list-style-type: none"> <li>▪ 100%</li> <li>▪ 100%</li> </ul>	<ul style="list-style-type: none"> <li>▪ 67,8%</li> <li>▪ 66%</li> </ul>	available
<p><i>Petroleum pricing</i></p> <ul style="list-style-type: none"> <li>▪ Fuel levies and margins</li> </ul>	<ul style="list-style-type: none"> <li>▪ To develop RAS and implement by 2013.</li> </ul>	<ul style="list-style-type: none"> <li>▪ RAS developed and implemented by 2013.</li> </ul>	Information not available

*Source: Author's configuration*

So, while there are outputs achieved, judging from the above logframe it cannot be claimed that policy implementation is effective in the petroleum industry of South Africa, because not all sub-programmes reached the committed 100% target. It is paramount to unpack why other outputs were achieved and why others were not achieved. Overwhelming, achievements were made when it comes to enforcing Charter and permit compliance, as more sites were visited within the targeted time-frame. To make this achievement the Department of Energy employed on time an external company to conduct random nation-wide testing for compliance, with no resource constraints. However it becomes apparent that for some activities, performance indicators did not meet the Specific, Measurable, Assignable, Realistic, Time-related (SMART) principles, nor did they ensure that the annual and quarterly targets were aligned with indicators, hence the conclusion that they did not meet the targets.

The researcher brings a view of what policy implementation encounters in general in the petroleum industry. It should be noted that anywhere in the world many regulations have improved, but also accompanied by areas of non-compliance. There are indeed a plethora of cross-cutting issues that lead to non-compliance with the rules stipulated in the (OECD, 2000:

14-20) that may affect the petroleum industry. The OECD (2000: 14) stipulates that non-compliance to regulations occurs when requirements are too complex to know and understand. In this instance, people are said to fail to comply with regulations because they do not understand the requirements and therefore fail to implement the policy. The OECD (2000: 14) point fingers at policy initiators, mainly in the design of regulations. For example, policy makers often feel pressure to issue new rules or expand existing ones to cover unforeseen circumstances, to close loopholes, and to address new problems (OECD, 2000). Preliminary impact assessment of new changes to be implemented does not take effect at this stage. To remind the reader, as was observed by historical institutionalists, designing an idea is a challenge, hence norm entrepreneurs or policy makers opt to adjust the existing one with path dependence. In this regard, the researcher is of the view that the reason why it is a challenge to craft an ideal rule from its inception, is because norm entrepreneurs may have no idea themselves, and hence they fail to educate the targeted population on adherence. As OECD (2000) contends, reacting to pressure could lead to the loss of simplicity in transferring the details of compliance with the regulatory structure involved. The researcher observes that upon policy non-adherence, enforcing institutions are not doing follow-ups to understand whether this is not the prime reason for non-compliance. They instead assume that coercive means will lead to compliance. In such a situation the principals distance themselves from implementation of a norm completely, supporting an argument made by various policy implementation protagonists. Policy implementation has been attempted by trial and error from its inception because it is seen as an activity that must be done by a certain body in exclusion of all other policy processes.

The researcher links the said challenge to poor stakeholder consultation. OECD (2000) echoes this claim by arguing that failure to consult with target populations cause regulatory failures because lack of adequate consultation may fail to secure target group support for the proposed regulation. It was observed in the study that stakeholder workshops on LFEC that are done by the DOE are minimal and they do not target the HDSAs that are still in peripheral areas where real transformation lacks. The OECD (2000: 16) infers that failure to monitor the regulations is unlikely to induce compliance. The OECD (2000: 18) further states that compliance to regulations is unlikely to be adhered to if it bears too much cost. Factors that are seen to contribute to this are that, “substantive standards may be too high, the transition time for coming into conformity may be too short, or the regulation could be inflexible” (OECD, 2000: 16). For example, the Mining Charter and the Liquid Fuels Charter specify procedures and rules for granting production and exploration right, royalties, and taxes. In South Africa, for instance, there is contention with the proposed provisions made in the Mineral and Petroleum Resource Amendment Bill (MPRDA) (2013), whereby the government proposes to take a 20 percent ‘free carry’ in all new oil and gas projects, and reserve the right to buy another 30 percent at market-related rates, which would allow it to take its interest in projects to an effective 50 percent. The industry players view this to be difficult to translate and vague. Due to this, government is still at loggerheads with investors as they threaten to pull out of South African exploration should the Bill make its way into law. OECD (2000) is of the view that if a rule seems unreasonable, instead of complying, businesses may dedicate more time and money in lobbying regulators to change it or ask for special immunities. And this is currently what happens in SA with regards to the proposed MPRDA Bill. Next, efficiency of sub-programmes is discussed and analysed.

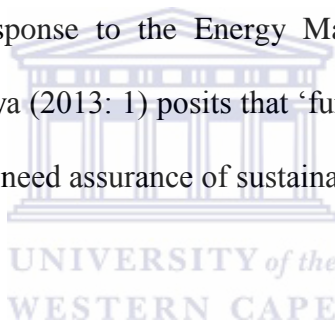
### 6.3.3 Efficiency

Efficiency is said to measure the outputs (qualitative and quantitative) in relation to the inputs (Chianca, 2008: 41-51). The OECD (2010) defines efficiency as “a measure of how economically resources/inputs (funds, expertise, time, etc.) are converted to results”. Efficiency in the context of this study is analysed according to the relationship between resources and results; thus the input-output ratio for evaluating by sector. It is evident so far that there are partial successes in terms of implementing policy that seeks to ensure HDSA transformation. It is paramount to first highlight that for it to be successful, each policy input must be strong. Input to support the petroleum industry in achieving policy goals are finances, skilled personnel, and infrastructure, among many others. These inputs are analysed in order to assess their relevance to policy objectives and whether they are strong enough to enable policy implementation in the petroleum industry of South Africa. Firstly, the study analyses the financial status and infrastructure and its linkage to policy objectives that the industry must achieve.

From financial resource perspective, the current funding structure in the petroleum industry is among the challenges that raise concerns in terms of enabling attainment of policy goals. Programmes and projects that are heavily driven by the petroleum industry do not fall under government funding structures as they require huge financial injection. Institutions are required to source their own private funding. Even so, the researcher believes that government has a role to play in this space, which is to assist these institutions with financial guarantees that require intensive negotiation with the National Treasury. The impediment is that, in the petroleum industry there is low gross profit margin due to high costs of loans, especially to black retailers (Department of Energy Presentation, 2013: 17) who may lack capital and ability to demonstrate



critical skills highly required in the industry. In most instances private lenders withhold hundred percent loans until guarantees show that risks are minimal. In addition to this, it appears that rules to on-sell are less relaxed and thereby restrict the blacks and Coloured retailers from selling in the event of financial difficulties, and in obtaining lucrative opportunities like high volume sites (Department of Energy Presentation, 2013: 17). It should be noted that this financial hurdle impacts heavily on those who intend to venture into downstream petroleum business (as wholesale, dealer and owners) and the most highly impacted group is the very same HDSA. Project Mthombo, for example, a project intended to import crude oil in barrels, run by PetroSA has been postponed several times, due to finances being prohibitive. This project for instance was announced in 2007 as a response to the Energy Master Plan: Liquid Fuels, but was postponed a number of times. Sibiya (2013: 1) posits that ‘funding is the most critical part of the transformation agenda and funders need assurance of sustainability’.



Furthermore, the Department of Energy’s funding to deliver on all the areas that need attention for energy resource development in South Africa is seen to be minimal, as explained in the Report of the Portfolio Committee on Energy on its activities undertaken during the 4<sup>th</sup> Parliament (May 2009 – March 2014). It should be noted that, while finances constrained infrastructure development for a while, the Department of Energy Budget Vote Speech (2014) suggests an increased budget for the 2014/15 financial year to meet some of its infrastructure challenges. In the 2012/13 financial year for example, the budget of R6.7 billion was appropriated to the DoE, in which 98.9% of it was spent. In 2013/14 financial year, the DoE was allocated a budget of R6.5 billion, showing a 2% decline over the previous year’s allocation. The allocation for the year 2014/15 is R7.4 billion, with 93% of this amount being earmarked for

transfer to Municipalities and state-owned Entities, meaning 7% is directed at department's operations. The 2014/15 appropriation is 14% higher than the 2013/14's final appropriation. The evolution of the DoE budget is shown in Table 6.11.

**Table 6.11: Evolution of Department of Energy Budget**

<b>Year</b>	<b>Amount</b>
2012/13	R6.7 billion
2013/14	R6.5 billion
2014/15	R7.4 billion

Source: Author's configuration, information collected from [www.energy.gov.za](http://www.energy.gov.za)

However, it is clear that by observing the presented budget it is no way near in solving petroleum industry infrastructure challenges. These require huge capital, far more than the increase in the budget. Infrastructure investment remains a core objective for many governments as a means of stimulating economic growth and ensuring sustainability. The framework to ensure development of infrastructure to support the petroleum industry is well considered in South Africa. An important initiative is the NDP 2012-2030 that was developed by the Presidency's Office in 2011. The NDP 2012-2030 is explained in detail in Chapter Four of this current study. Another giant step that has seen the petroleum industry feature in national development programmes has been the establishment of the Presidential Infrastructure Coordinating Commission, which stream-lines spheres of government together in a joint forum to promote infrastructure coordination and decision-making. Furthermore, in 2012 the President launched the National

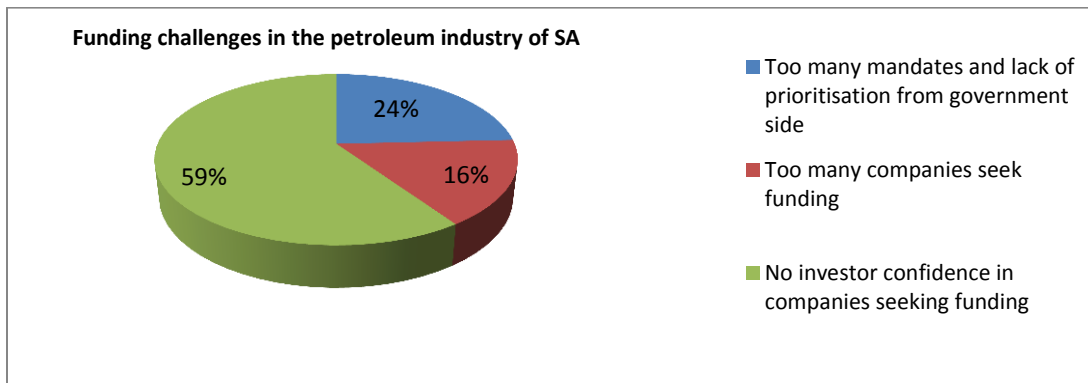
Infrastructure Plan, which is aimed at delivering on an integrated and sequenced programme across sectors, in line with the NDP. The plan clusters, sequences and prioritises future projects and infrastructure initiatives into 18 Strategic Integrated Projects in which the sector under review appears prominently. According to Twenty Year Review South Africa (1994-2014), this will be a continuous process, creating a pipeline of projects that would give substance to the infrastructure initiatives outlined in the NDP, while also giving effect to infrastructure as one of the key drivers of the New Growth Path.

In the researcher's view the dream to ensure infrastructure to enable implementation of policy objectives in South Africa will take very long to materialise. The rationale for stating this argument is that the Strategic Integrated Projects alluded to here appears only on paper. Currently, the government funding structure does not have enough budgets to develop and or upgrade existing refineries. Thus, implementing institutions are required to finance infrastructure projects from themselves, or source private funding from other institutions. The NDP (2012-2030), furthermore, makes clear that, even though systems, policies and procedures are available, government does not have sufficient institutional or financial capacity to finance and implement the infrastructure investment plans on the scale required to support further economic growth. It is paramount to note that the Report of the Portfolio Committee on Energy on its activities undertaken during the 4<sup>th</sup> Parliament (May 2009 – March 2014) confirms the urgency and the need to upgrade aging energy infrastructure, so that full economic growth is realised. In the DoE Budget Vote Speech (21 July 2014: 6), the Minister of Energy confirms the existing infrastructure constraints, some of which are as a result of inadequate infrastructure development planning, resulting from challenges in delivering on the government goals and objectives. This

compels the researcher to argue that the government policy objective is not linked with available infrastructure and funding. So, government may continue to issue licences, but if there are no funding and infrastructure resources to support the new to industry applicants, the licences obtained cannot be put to use, and transformation is unlikely to be achieved.

There may be underlying reasons why a sector that in 2012 contributed 6.48 % to the national GDP (DoE Presentation, 2013: 17) is financially overlooked. In the process of understanding why funding is an issue in the petroleum industry the researcher discovers various reasons, in which some respondents blame government while others blame the system and so forth. The researcher interviewed a total number of 66 respondents. Figure 6.5 shows that 24% of respondents argue that funding challenges are as a result of too many mandates that need funding, which are beyond government's capacity. These mandates are accompanied by a number of projects that need extensive capital. At the same time, it appears that these projects are allowed to compete financially and it is at this point that government's indecisiveness and lack of political will is observed. This group of interviewees sees funding as an important role that government must play if policy goals are to be realised. Furthermore, a total of 59% of respondents confirm that lack of funding is due to minimal investor confidence. They go on to argue that investor confidence stems from the fact that government itself lacks confidence in the leadership of some of the companies, as it does not commit to securing government guarantees on their behalf. 16% of the respondents put to it that there may be too many companies that seek funding and government does not want to be seen to be favouring some above others. As a result of this lack of support, output so far has not been linked to the policy objective, which sought to achieve 25% of HDSA transformation within 10 years of enacting the LFEC.

**Figure 6.5: Funding challenges in the petroleum industry of SA**



The skills gap, as a subject of this study, is analysed on the angle of what government seeks to achieve, thus, HDSA transformation, subject to conformance with rules and regulations. The researcher holds the view that the Department of Energy and its agencies have embarked on an extensive venture in ensuring skills gaps is bridged. Skills transfer and development are well documented in the LFEC which echo the intentions cited in the Skills Development Act, Affirmative Action and BEE codes of practice, among others. It does appear from the discussion in this study that workshops, which are a pinnacle in educating and transferring skills, have been conducted. It is clear that effort have been made to empower citizens about policies and regulations. Nevertheless, skills gaps that still persist in the petroleum industry appear to be of concern in impinging on government's intended goals. For example, the DoE Presentation (2013: 17) infers that at the downstream petroleum sector entrepreneurship and business skills are not provided in the initial training, particularly for those who are awarded retail licenses. In essence, if this initial training is missing, those people who seek to venture into the petroleum business are set up for failure, because policies carry technical lingo and the industry is highly regulated. The implication is that, in such a situation, the chances of non-compliance with policy provisions

are probable. However, as SAPIA appears to have an upper hand in driving the transformation agenda in the petroleum industry through workshops and various programmes; it could be argued that the impact of this is minimally felt, for black entrepreneurs in the petroleum industry are still limited even after two decades post-apartheid. In addition to this, workshops must go beyond just facilitation of skills, but rather to penetrate the actual use of licences obtained in downstream acquisition across the value-chain.

The researcher furthermore holds the view that skills gaps in the petroleum industry should be bridged through workshops targeted strongly in the rural areas where HDSAs are still trapped in poverty. These skills should penetrate in rural areas where transformation impact has not been yet fully felt. Another issue is that liquid fuel price changes all the time, thus sometimes the price per litre of liquid fuel increases and sometimes it decreases. Where the middle-man operates, prices are ever increasing whenever there is an increase in international markets, and never decrease when the prices are reduced. The further assertion is that, if communities are empowered with information about awareness on the actual prices for liquid fuels, there could be monitoring agents between the Departments concerned and the communities. It is important to note that currently, skills available in the country do not match the requirements for transformation as put out in policy objectives. Subsequent to this discussion is impact analysis.

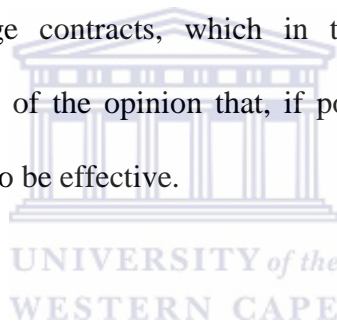
#### **6.3.4 Impact**

According to OECD/ DAC evaluation impact assesses the positive and negative changes produced by a development intervention, directly or indirectly, intended or unintended (Chianca, 2008: 41-51). So, judging from information collected in the study so far, the South African

petroleum industry has achieved a lot when it comes to HDSA transformation. However, the policy objective states that petroleum industry must achieve 25% of transformation within 10 years of enacting the Liquid Fuels Charter. The conclusion made by the researcher is that achievement of this policy goal is partial and, therefore, the impact is minimally felt. An issue here, according to the researcher, is that the sub-programmes do not show a logical link with the policy objective. Thus it is clear that conducting licence analysis, petroleum inspection, and fuel levies and margins does not translate and bridge the transformation gap that still exists towards HDSAs, even though they are deemed relevant. It is shown in the study that there is so much progress when it comes to awarding of licences. According to the researcher this is an unintended negative result, because the impact of these licences should be translated to visible HDSA transformation. The skewedness of these licences is worrisome also because there is an over concentration on the Gauteng Province. Issues such as site non-availability should be noted as well because this is also another unintended consequence that slows down the pace of transformation. However, of note is that there may be several positive unintended results and impacts, but these are not documented in any detail by the sub-programmes. For this reason, the researcher can only provide a general indication of the unintended impacts the sub-programmes have achieved. In the researcher's view, monitoring systems should include data collection on unintended impacts if and when these become apparent.

Besides this gathered general view, the researcher made interviews to understand other issues impinging on successful policy implementation. The researcher embarked on understanding how stakeholders view government policies, programmes and project impact in the petroleum industry. The researcher interviewed 66 respondents from institutions in the petroleum industry

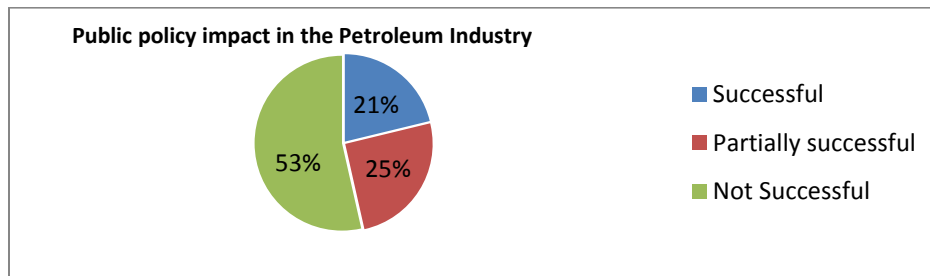
who brought various opinions. The researcher carefully selected these stakeholders because they are at the heart of programme/projects implementation, with the intention of meeting the government mandate of ensuring HDSA transformation. A total percentage of 53% of respondents view government policy as not successful in achieving the desired impact. These respondents blame government capacity in fully understanding the policies that impact the petroleum industry. They go on to infer that, while internally the Department of Energy appears to have a number of employees, they actually lack policy practitioners who are specialists in the area of petroleum industry. It is also stated in the presentation that was done by the Department of Energy (2013: 17) that the structure of royalties, which is within the policy, complicates the process to negotiate and manage contracts, which in turn, impacts on effective policy implementation. The researcher is of the opinion that, if policy requirements are not relaxed, policy implementation is unlikely to be effective.



From Figure 6.6, 25% of respondents state that policy in the petroleum sector has been partially successful ever since the demise of apartheid. These respondents suggest that policy implementation has managed to make some benefits on its provisions, even though not fully employed in the rural areas where poverty and economic opportunities are minimal. 21% however argue that policy to address HDSA transformation has been so far successful. However, it cannot be disputed that during policy implementation efforts there will always be winners and losers. But it raises concerns if there is a high number of people frustrated during the process of implementation, and if these are caused by policy requirements and input. However, hard earned achievements since the demise of apartheid cannot be watered-down, even though there is still much to be done. Next, sustainability is discussed.



**Figure: 6.6 Policy Impact in the Petroleum Industry**



### **6.3.5 Sustainability**

Sustainability according to Chianca (2008: 41-51) is concerned with measuring whether the benefits of an activity are likely to continue without appropriate support. The researcher believes that the impact of sub-programmes is considered sustainable, and this is based on solid transformation considerations. Furthermore, it is evident that today is better than yesterday when it comes to the progress made thus far in the industry under evaluation. This warrants recognition, because industry players progressively include HDSA even though this is not yet to full potential. However, it should be noted that the goal to ensure transformation targeted at HDSA remains at threat as a result of funding being prohibitive, infrastructure not being up to scratch and critical skills being still in short supply. This means that inputs are not linked to policy objectives, and hence output is not satisfactory. Following this discussion and analysis, the study provides best practice and a well-considered conceptual framework.

Summary of issues raised are as follows:

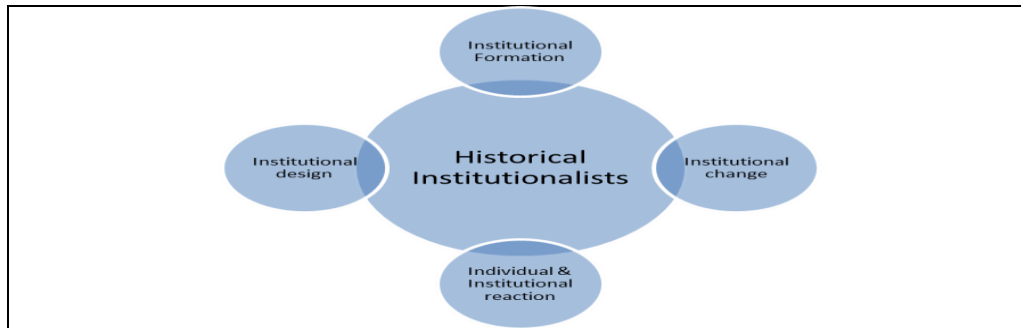
- Inputs are not linked to policy objectives, thus targets are not met;
- Indecisiveness and lack of political will in terms of leading financial institutions to support HDSA companies;

- Delays in transformation and ownership by HDSA;
- Weak monitoring and enforcement measures; and
- Unstructured workshops and lack of proper documentation thereof;
- Policy implementation in the petroleum industry is deemed not effective.

#### **6.4 Best practice and conceptual framework of well-considered institutional architecture construct: Policy Implementation effectiveness**

Based on the findings so far in terms of evaluating policy implementation effectiveness in the petroleum industry of South Africa, the researcher proposes best practice and a considered conceptual framework, with the hope to improve future policy implementation effectiveness. It is clear from the findings that transformation targeted at HDSA is taking a very slow pace and this suggests policy implementation is ineffective. There are a number of reasons unveiled in this study that hamper speedy progress in terms of achieving the goals set by government. To remind the reader, the hypothesis adopted by the researcher is that an approach to tackle transformation in the petroleum industry of South Africa is purely based on historical institutional architecture theorists' point of view in which 'history is used as the foundation to address the challenge of today' without linking input to it. It is paramount that the reader observes the Figure 6.7.

**Figure: 6.7 Policy position to address transformation by HDSA**



*Source: Author's configuration*

With regards to this, the researcher puts forward the following points:

- The inference here is that institutional formation is based on the idea that ‘transformation by 25% targeted at HDSA need to be achieved within 10 years of Liquid Fuels Charter enactment’.
- Institutional design in the petroleum industry is based on what historical institutional theorists presented, thus history matters because it provides facts about the past and this provides an easy way to address it.
- Individuals and institutions respond differently to this; hence transformation takes a very slow pace. Meaning that the norm is not fully institutionalised (interactively socialized).
- Adapting to change comes with unintended negative impact. These unintended consequences are instigated because there is a huge disjuncture between input and policy objective and this put the industry in an unsustainable future. Transformation furthermore does not take full effect because it is dictated from top-down for mainly, historical reasons.

### *Considered Best practice*

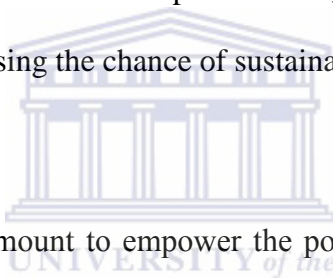
However, while history can never be forgotten, institutional architecture of the petroleum industry of South Africa needs to rise above this and bring a solution to the societal challenges. The challenge with history is that one could hoard it: thus not move beyond this. The researcher therefore brings forth (4C0s) thus; *Communication, Coordination, Collaboration, and Cooperation*, as this seem to be among other things lacking in the petroleum industry. These can be employed through what the researcher dubs ‘Community Driven Development’, which is best in ensuring speedily transformation impact targeted at HDSA. The formula therefore adopted by the researcher, is:  $(C0_4 + (C0_1 + D_2) - HI = PIE)$ . The translation of this formula goes as follows:

*“Communication, Coordination, Collaboration, and Cooperation, (C0<sub>4</sub>); Community (C0<sub>1</sub>) Driven Development (D<sub>2</sub>) minus Historical Institutionalisation (HI) is equal to Policy Implementation Effectiveness (PIE)”.*

To unpack what C0<sub>4</sub> means for the petroleum industry and how this could improve policy implementation effectiveness warrants exploration. The researcher proposes that even with good policies, when there is poor communication from the outset, thus coordination and collaboration is most likely to fail, and as such, no one would feel the responsibility to cooperate. The researcher bases this on the fact that the Department of Energy issues retail licences in high volumes, as observed in the study, but training is not forthcoming to new industry licence holders. This training, according to the researcher, provides a basis for sustainability only if it is infiltrated through Community Driven Development where transformation is needed the most. The formula proposed also says C0<sub>4</sub> is a two-way thing, thus; applicants should also be blamed for not bringing all required information on time. It is understandable that Community Driven Development is not a one-size-fits-all model as it also warrants a fitting context. The advantage

of this approach is that shared principles are applied in working directly with communities, with line ministries, with local elected government, and the private sector, especially the banks.

What gives the researcher the guarantee that this formula will achieve sustainable transformation is that Community Driven Development is grounded on the philosophy of local empowerment and that three other anchors thus; ‘participatory decision-making’, ‘participatory monitoring’ and ‘participatory evaluation’, are crucial into bringing community views into decision-making in the petroleum industry. Some scholars argue that when development interventions align to the priorities of a community, the sense of ownership is induced, and that communities will work to maintain the results, thereby increasing the chance of sustainability.



In the researcher’s view it is paramount to empower the poor to take the lead in transforming their lives applying the ‘self-dependency/ reliant approach’ in the South African petroleum downstream channel. The researcher defines this approach as mainly based on liberalising the petroleum value chain in all forms. It means decentralising the sector to the extent that the central government should play a minimal direct autonomous role in transforming the industry. President Thabo Mbeki introduced a term called ‘*Vuka Uzenzele*’ targeting mainly the ground roots communities who were waiting for government, or any messiah to give hand-outs. The term basically means ‘wake up and do it yourself’. However this does not mean one must reject external help, but that transformation should be driven by internal self-motivation. This is why economists take a more robust view of self-help as ‘helping poor and disadvantaged people to help themselves’ (Charles and Lotsmart, 2003: 196). The Urhoboland in Nigeria was highly neglected by the federal government in terms of resources. Likewise Afghanistan was among the

first countries that took the notion of ‘self-reliance’ into action (Ojameruaye, 2004: 1). Literature also reveals that many countries and groups have adopted the principles of self-reliance in promoting rapid development and this could be used in the South African petroleum sector. The principles of self-reliance are propagated by (Ojameruaye, 2004: 1) and they are as follows:

- The outsider must make a positive difference in the living conditions of the doer (the helped), thus, the impact of the helper must be seen as felt.
- The doer (the helped) must own and implement the program or plan of assistance.
- The outsider must see the world through the eyes of the doer and respect the autonomy of the doer.
- The help or support must not undercut the autonomy of the doer as too much help can make the helped lazy.
- The help must be for a limited period of time, because long-term charity corrupts self-help and undercuts the capacity for development.
- The doer should be able to sustain or continue with the development process if and when the help stops or even terminated abruptly (Ojameruaye, 2004: 2-3).

The challenge currently in the petroleum industry of South Africa is that central government has too much autonomy over policy, regulation and price mechanisms and therefore is deemed by the researcher as too centric. The mere fact that the Controller of Petroleum Products who issues licences is at the central government and done by the Minister stands a huge chance of being politicised. Basically there is no independence and bias is highly probable, in which the politically connected in the petroleum sector would benefit more from transformation. Also the price system mechanism is controlled by central government, in which liquid fuels prices could

fail to accommodate the poor who are still striving to be better off. The benefits of liberalising the petroleum industry can be drawn from the China case prior to government again taking a central leading role. Institutional transformation in China, mainly in the petroleum industry, took hold gradually, eventually indicating the end of Ministries and government's direct control of the oil sector (Francisco, 2013: 9). Furthermore, transformation of the petroleum industry paved a way for the decentralisation of other functions that used to be under the State Council (Francisco, 2013: 9). Operational autonomy given to the National Oil Companies (NOC) included changes in price control mechanisms implemented by government. By slowly integrating domestic and international prices of the petroleum products, the State not only gave decision-making authority over the petroleum industry to NOC, but it propelled them to embrace domestic and global competition (Francisco, 2013:10). So in order for the 'self-dependency/ reliant approach' to promote HDSA transformation, the petroleum industry needs to be decentralised and liberalised, because this was never tried in the South African context of ensuring socio-economic opportunities at grass roots. An applicant has to go to Pretoria to apply for a licence to operate; regionally there should be empowered personnel by the Petroleum Product Act to ensure that licences are issued evenly throughout South Africa. The Department of Energy can then monitor the extent in which transformation occurs annually.

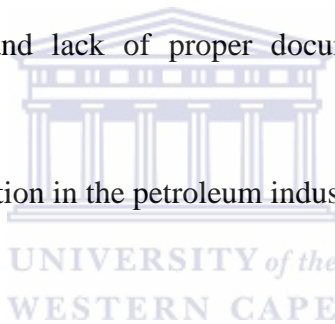
## **6.5 Chapter Summary and Conclusion**

This Chapter presented findings and analysis of selected issues pertaining to the effectiveness of policy implementation in the petroleum industry of South Africa. Findings in this chapter were contextualised according to policy implementation as one of the three components of the study. Here the researcher primarily outlined and analysed the current status of policy implementation,

in relation mainly to HDSA transformation in the petroleum industry. The DoE implements this policy objective through sub-programmes that facilitate licensing and enforce compliance.

Findings in this regard are that:

- Input is not sufficiently linked to policy objectives, leading to missed targets;
- There is indecisiveness and lack of political will to negotiate with financial institutions to support HDSA Companies;
- There are also delays in transformation and ownership by HDSA in general, as the 25% target has not been reached within the enactment of the Charter period;
- There are weak monitoring and enforcement measures in the petroleum industry; and
- Unstructured workshops and lack of proper documentation result in poor learning outcomes;
- Overall, policy implementation in the petroleum industry is deemed not effective.



These findings were authenticated through the use of DAC/ OECD evaluation criteria, which embody relevance, effectiveness, efficiency, impact and sustainability. For example, with regards to relevance the researcher noted that the sub-programmes are aligned with this specific sector and for the purposes that the policy seeks to address. When it comes to effectiveness, the DAC/ OECD evaluation criteria noted that policy implementation is not effective because so many activities did not achieve the set target of 100% within the specified time-frame. On the efficiency aspect, the relationship between resources and results was assessed. In this regard it appeared that the lack of critical resources such as funding, infrastructure and critical skills were the main causes of the petroleum industry lacking in efficiency. Where impact is concerned, the researcher concluded that at this stage it is minimal. The researcher argued that the sub-



programmes could only be sustainable if input challenges are addressed. The researcher examined potential benchmarks for this study, in particular international best practice and well-considered institutional architecture aimed at the implementation of policy objectives. In the next chapter, the study provides findings in the evaluation of legislative oversight and accountability effectiveness in the petroleum industry of South Africa.



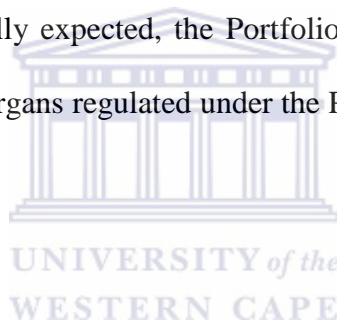
**CHAPTER SEVEN: FINDINGS AND ANALYSIS OF SELECTED ISSUES ON  
OVERSIGHT AND ACCOUNTABILITY EFFECTIVENESS IN THE PETROLEUM  
INDUSTRY OF SOUTH AFRICA**

### **7.1 Introduction**

This chapter evaluates the effectiveness of oversight and accountability in the petroleum industry of South Africa. Evaluation of oversight effectiveness in this current chapter is with regards to the policy objective, which is to ensure transformation targeted mainly at HDSA. In this regard, the function to be assessed monitors the achievement of selected goals set by legislation, including the government's programmes. In this part, it is not the government departments that are evaluated, but rather the role played by PPCE as responsible for rendering oversight and accountability in entrenching a culture of high performance, so that policy objectives make envisaged impact. By overseeing the actions of government, Parliament is able to ensure that service delivery takes place as visualised. Firstly, the current status of oversight and accountability in the petroleum industry of South Africa is discussed. Secondly, data trends in relation to the outcome of activities related to oversight and accountability are unveiled. Thirdly, the study employs the DAC/OECD evaluation criteria to gauge the effectiveness of oversight and accountability over the petroleum industry. Lastly, the paper provides a summary and conclusion.

## **7.2 Oversight and accountability status quo in the petroleum industry of South Africa and analysis of emerging data trends**

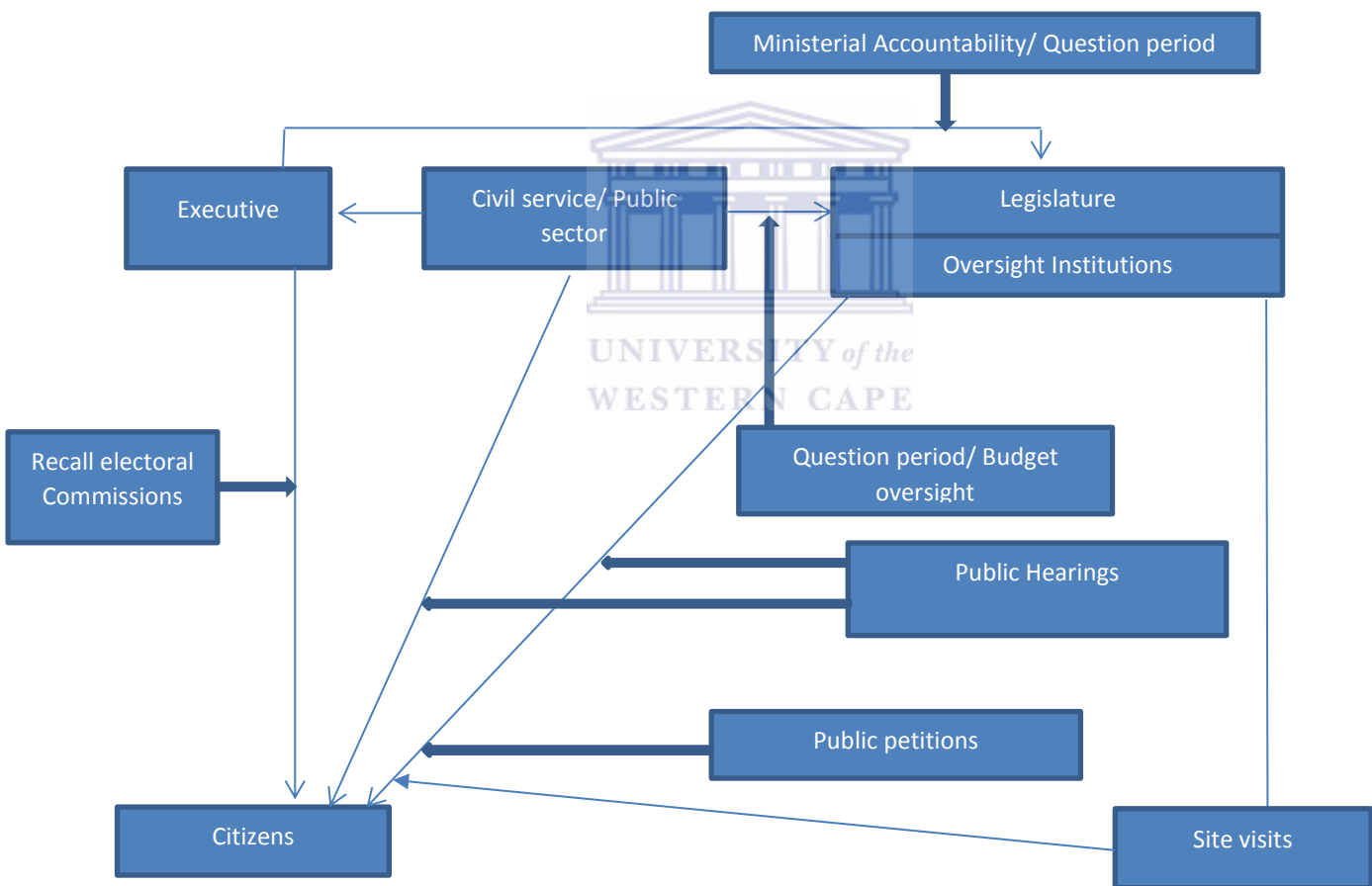
Among the philosophies behind oversight functions is to ensure that policies enacted and authorised by Parliament are delivered timeously as envisaged. As was explained in Chapter Two of this study, South Africa adopted an Oversight and Accountability model, which guides Parliamentarians to conduct oversight. In the South African context, oversight is a constitutionally mandated function of Legislative organs of state to scrutinise and oversee Executive action and any organ of state (Oversight and Accountability Model, 2013). In this regard, the Portfolio Committees wields oversight and holds the Executive branch accountable for performance. As constitutionally expected, the Portfolio Committees also wields oversight and accountability over the State organs regulated under the Public Finance Management Act No (1) of 1999.



The reader should note that in Chapter Two of this current study, accountability and oversight were discussed separately so that a theoretical or conceptual framework underpinning these variables is understood better. As the study put these variables into context, the researcher marries them. The rationale for combining findings on oversight and accountability is that these are blood sisters one cannot separate. The researcher adopts an approach where institutions of accountability and oversight are viewed in collaboration to defuse the notion that certain institutions play a particular role. While there are institutions that play a particular role, they are also not immune to accountability and oversight. The argument that the researcher brings forth is that these two variables coexist because it is a relationship between the principal and the agent in any societal setting. There is therefore a very thin-line between the two concepts. Furthermore,

this relationship happens horizontally, vertically and diagonally along the petroleum value-chain as divergent dichotomies of accountability suggested in Chapter two of this current study. Proponents such as (Stapenhurst, O'Brien and Weber: 2008: 4) puts this in the current environment in which the study is set. Figure 7.1 exhibits this claim.

**Figure 7.1: The Oversight and Accountability Tools and Cycle through the lenses of petroleum industry**



*Source: Original author is Mathews (2006) and further developed by Stapenhurst et al. (2008: 4) edited by the researcher*

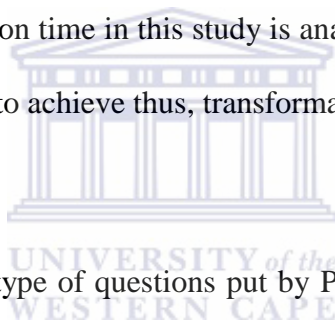
At the apex, oversight and accountability is conducted by Parliamentarians over the Executive body in order to hold the government answerable for how taxpayers' money is spent. Oversight and accountability also entails that Parliamentarians hold the petroleum industry to account for performance. It is important to mention three core main functions of Parliament conducting oversight and accountability, namely that they represent constituent interests, legislation, and overseeing the Executive branch and state-owned Companies for performance (World Resources Institute, 2009: 8). However, the focus of the researcher is on the latter, mainly performance related to HDSA transformation. However, Parliamentary Portfolio Committees are confined to particular activities in conducting oversight to monitor and hold the petroleum industry to account for performance. These mechanisms are not different from the Westminster style of governance, and in South Africa, the Accountability and Oversight Model propagated by South African Parliament is a point of reference. Some of the most common oversight activities used in South Africa, not only to oversee the petroleum industry, but the entire parliament process, are here examined. Thus, Parliamentarians question the Executive branch whenever there is a need to, they conduct hearings through plenary sessions, they process policies and laws, and they conduct site visits to areas where programme/project implementation takes place, among other things. While providing an analysis of these activities, emerging data trends is unveiled that assists the researcher to understand the extent of oversight on the policy objective of ensuring HDSA transformation. Question period is therefore explained and analysed first.

The procedure of putting questions to the Executive in South Africa is one of the ways in which Parliament holds the Executive to account. Parliament holds the Executive to account by questioning and challenging the Executive's policies and actions, and requiring Ministers and

senior government officials, company Chief Executive Officers overseeing state-owned Companies in the petroleum industry, in person, to account publicly for their decisions. The petroleum industry has various policy implementing areas. When they suspect lack of compliance, Parliamentarians would summon companies to account for their actions. The Accountability and Oversight Model (2013), explains that questions can either be put for oral or written reply to the President, the Deputy President and the Cabinet Ministers on matters for which they are responsible for as well. Also during this time the legislature would set aside time for Parliamentarians to question Ministers on issues of clarity, government projects in their constituencies, the performance of Ministries and policy implementation progress. Question time could lead to debates on certain burning issues that need expeditious and collective attention (World Resources Institute, 2009: 8). According to World Resources Institute (2009: 8) on Parliamentary debates, certain mechanisms for conducting oversight and accountability are used. These include the consideration of Committee reports, showcasing, scrutinising and debating the implementation of policy and budget votes, members' statements and questions by members of Parliament, which draws the attention of the Executive to the concerns of members' constituents (Oversight and Accountability Model, 2013).

The researcher holds the view that this process provides maximum opportunity for learning and sharing, which in turn could hone Parliamentarian's oversight and accountability activities. Parliamentarians furthermore scrutinise the budget against activities planned annually, in order to ensure that there is value for money. During the question time, suspicious maladministration issues are scrutinised, and if found to be true, recommendations to reprimand offenders are given. This goes through the process of hearings explored also in this current study. In mature

democratic countries such as America and Britain, recommendations made in this platform are strictly followed in order to maintain public confidence. In South Africa this is still poor due to the insufficient reprimanding of offenders. Poor performing Ministers do not account for their actions, but rather are shifted around to other higher portfolios instead of being fired completely. According to the researcher, it appears as if poor performance is promoted. What can be encouraged however, is that, regardless of weak oversight and accountability, media is normally called in as an independent observer. Thus Parliament's oversight and accountability function is reinforced by publicising what takes place during the question period. In this manner, it appears that indirectly, a culture of transparency is realised, which is highly recommended for the petroleum industry. Of note, question time in this study is analysed based on the policy objective that the petroleum industry sought to achieve thus, transformation geared towards HDSA.



It is paramount to understand the type of questions put by Parliamentarians (MPs) and whether they assist in monitoring the Executive and whether the industry is committed to achieving the selected policy objective. In this instance the researcher compiled all questions enquired by PPCE to be answered by the Executive, as part of conducting oversight and accountability activities. The period assessed is from 2010 to 2014 before the elections. The rationale for selecting this time period is that it marks two decades since the birth of democracy in South Africa and MPs are expected to have learnt more about oversight and accountability at this stage, especially for the industry under scrutiny. It is only reasonable to examine oversight activities for the past five years, in order to contain the study.

### 7.2.1 Question period

The number of questions enquired by National Assembly to the Minister of Energy and the Department are shown in Table 7.1.

**Table 7.1: Total number of questions relating to petroleum sector in the period from 2010-2014**

2010	2011	2012	2013	2014
40	79	98	47	41

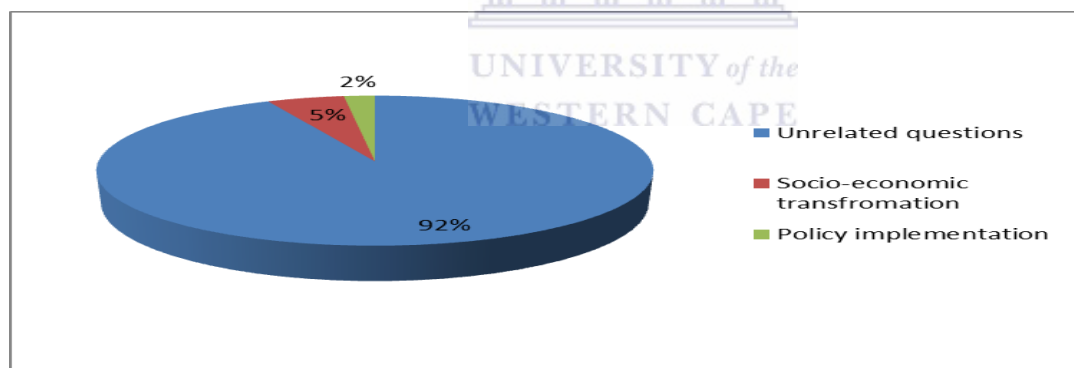
*Source: www.energy.gov.za*

Table 7.1 demonstrates that forty questions were put by the Parliamentarians in 2010. The questions were related to progress made on policy implementation and transformation targeted at HDSA. During this period, thirty-eight questions were enquired by the opposition parties, in which two were with regards to progress made regarding HDSA transformation. In this period, two questions were from the ruling party, which forms majority in Parliament. Of these two questions, one is related to progress made regarding policy implementation and one is with regards to electricity, in which the latter is not relevant to this current study. The researcher's observation is that Parliamentarians during this period placed more focus on overseeing electricity sector. However, there were few enquiries related to policy implementation and socio-economic transformation. There were no questions enquired also on progress made in awarding licences to prospective or aspiring business people, as one of the DoE's sub-programmes that embarks on. The researcher believes that focus should have been placed in tracking progress



relating to this component as well. The implication is that, failure to observe implementation of policy objectives suggests that no one will account for poor performance, nor be awarded for good performance. The 7.2 Figure illustrates this point, portraying that 92% of questions asked in 2010 focused more in electricity, an area that the Department of Energy shares with the Department of Public Enterprise where Eskom reports. The reader should recall that the country was suffering electricity shortages during this time. As Figure 7.2 displays, there were at least 5% of questions related to socio-economic transformation. There was however 2% of questions related to progress made on policy implementation in relation to what the Department of Energy is tasked to do.

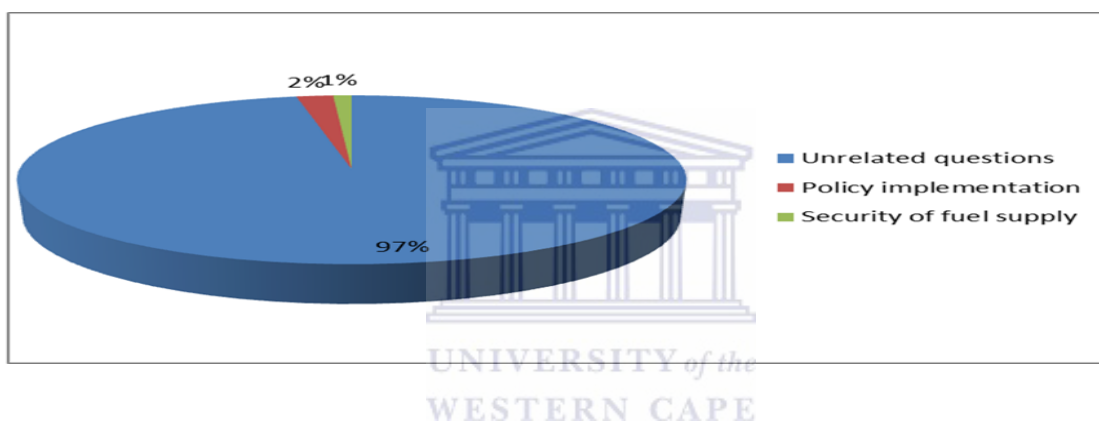
**Figure 7.2: Questions asked by MPs in 2010**



In 2011 the number of questions increased significantly to seventy-nine, in which seventy-seven were not related to transformation targeted at HDSA, but rather on electricity. However, two questions that were asked by opposition parties were related to progress made on Project Mthombo and the reasons for not delivering. Another enquiry was related to the amount of fuel imported from 2010 to 2011, and whether there is compliance around fuel specification. It is

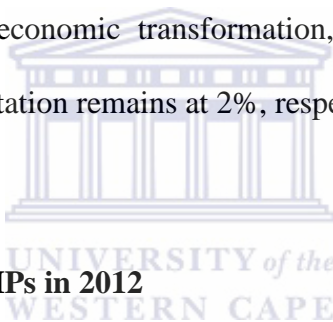
paramount to note that this question is in-line with the activities that the Executive conducts. The percentages depicted in Figure 7.3 suggests that non-related questions to the study increased by 5% from the previous year, at 97%. Progress on policy implementation suggests that enquiries remained few at 2%, similarly to the previous year. However, there were no questions on socio-economic transformation during this year.

**Figure 7.3: Questions asked by MPs in 2011**

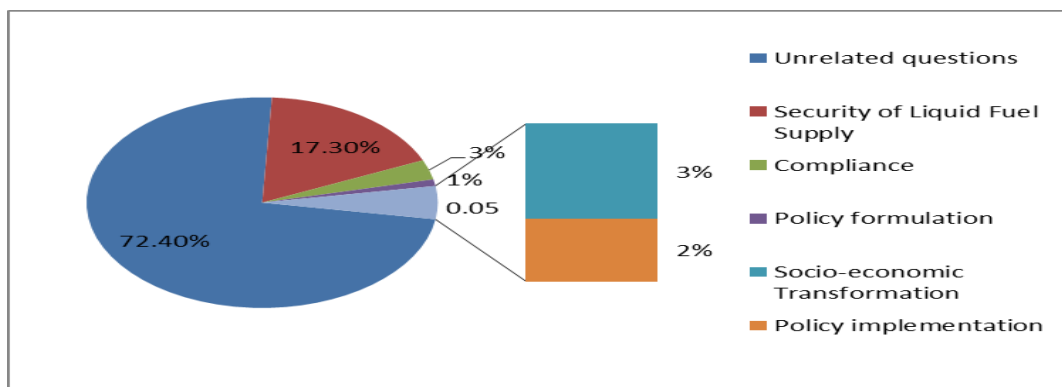


2012 saw a decrease in the number of unrelated questions put to the Minister of Energy and the Department. Ninety-eight questions in total were asked by the Parliamentarians. From these, seventy-one questions were not related to this current study as they focused on electricity. Seventeen questions were with regards to security of liquid fuel supply, and enquiries increased significantly more than the previous years. The increase in focus on liquid fuel supply was instigated by a number of international and local factors, which among others include sanctions imposed by the European Union on Iran, a major source of oil imports for South Africa and also as a result of the scheduled shutdown of local oil refineries. This oversight could be argued to be reactive as it is prompted by exogenous and endogenous shocks. Therefore should there be no

such shocks at all, Parliamentarians would have kept mum on monitoring the policy objective that government must achieve with regards to the industry being examined. Furthermore, Figure 7.4 exhibits Parliamentarians also focusing on compliance enforcement at 3%. This is a giant step that observes oversight gradually growing to maturity in terms of ensuring obedience to policy specifications by implementers. Of note, 1% of questions put related to progress on policy formulation. It is paramount to note that these two variables did not appear in the years analysed already. It appears that as Parliamentarians assess compliance enforcement; they are also aligning themselves to one of the activities placed in the hands of the Executive (DOE) towards ensuring HDSA inclusion by license holders. However, the Figure 7.4 suggests a 2% decline in the focus on oversight of socio-economic transformation, as compared to 2010. Probe on progress made on policy implementation remains at 2%, respectively.



**Figure 7.4: Questions asked by MPs in 2012**

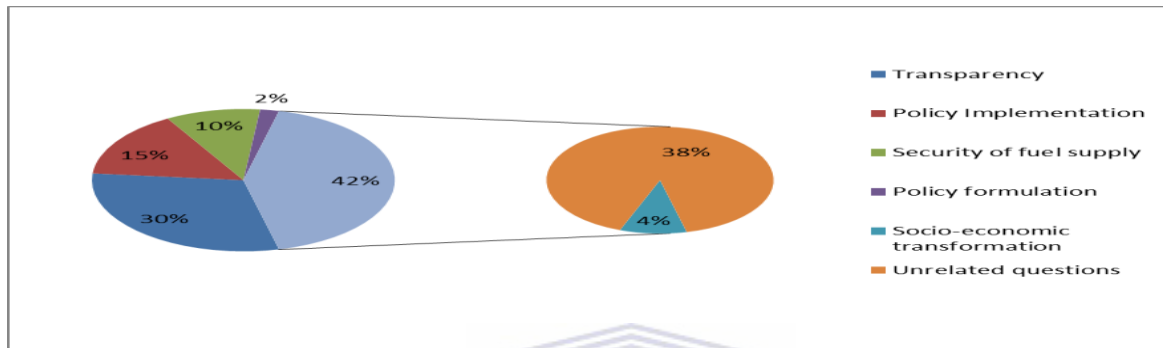


In 2013 however, there is a significant decline in the number of questions enquired by Parliamentarians to the Minister of Energy. This is the time when the Portfolio Committee on Energy had full capacity: report writers, the researcher and content adviser. Forty-seven

questions were put in total during this year. However there was still an increase in the number of questions unrelated to the current study wherein, eighteen questions were put. These questions focused mainly on electricity. Fourteen questions sought to harness transparency which did not appear in all the years previously discussed. It is paramount to note that a focus on transparency was prompted by a number of poor corporate governance issues related to tender irregularities in the petroleum industry around this time. This also shows the reactive nature of oversight and accountability which seeks to clean/ manage the house after the effect. Of importance, transparency is one principal component that heightens confidence and ensures that service delivery is done evenly. This exercise should have been done from the outset. As the reader may observe, there is also increasing progress in monitoring policy implementation. Policy implementation monitoring scored a significant seven questions from Parliamentarians in 2013, while enquiries on security of liquid fuels supply declined. One may wonder why monitoring policy implementation progress became a 'star' during this year. The researcher obtains a view here, that increasing pressure in following up on policy implementation progress may have been the result of oncoming elections, in which Parliamentarian must demonstrate progress made on service delivery to South African voters. This pressure is important because it means that Parliamentarians are obliged to answer to South African citizens who placed them in positions of power, and that they are aware they could be removed easily by way of voting. Service delivery on policy objectives (political ideas) is what prompted votes in the first place, and therefore obtaining more votes is contingent on delivering the promises. Enquiries on socio-economic transformation and policy formulation also grew by 1%, as compared to the previous year. On this front, in 2013 socio-economic transformation enquiries was at 4%, while policy formulation

was at 2%. The latter owes to stagnant policy formulation progress by the Executive (DoE) as there were no policies forth coming to the National Assembly during this time.

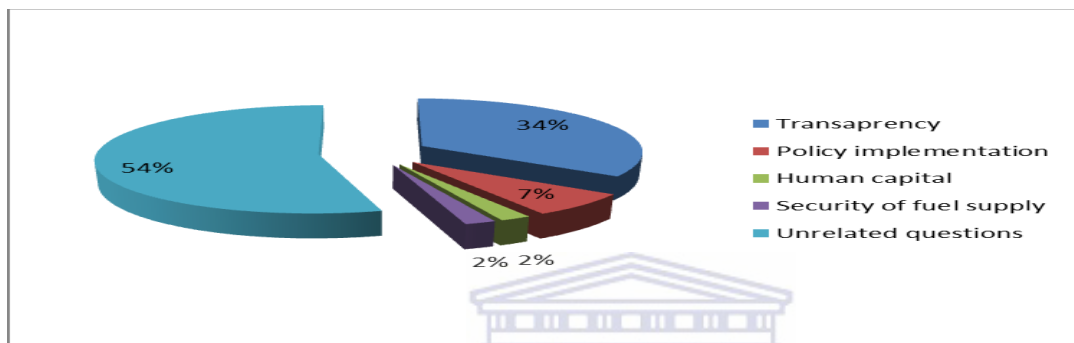
**Figure 7.5: Questions Asked by MPs in 2013**



The declining number of questions raised by MPs to the Minister of Energy continues to persist in the year 2014 as well. Forty-one questions were raised, in which twenty-two were unrelated to the current study as they focused on electricity. Three were enquiries on policy implementation progress, while one question was with regards to beefing-up human capital. The reader must bear in mind that human capacity is one crucial input that assists in achieving policy target. Human capacity also entails bridging the gender imbalance wherein race and disadvantaged people as stipulated in the Affirmative Action Act and in the BEE Code of Good Practice, must benefit in the industry. Seemingly, it was emerging that the DoE was experiencing human capital shortages; hence some of the targets were not fulfilled during this year. In the 2014 period only one question thus far is raised on security of liquid fuel supply, dropping significantly from the previous year. Enquiries related to transparency increased by 4% as compared to the previous year. Of importance to note is that, following up on policy implementation progress has been

seldom at 2% throughout the entire five-year period. What this means is that in the entire five-year period, oversight and accountability on selected policy objective of ensuring HDSA transformation has been very minimal.

**Figure 7.6: Questions asked by MPs in 2014**



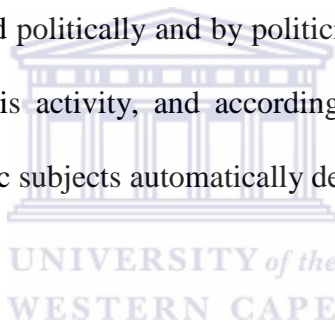
When it comes to question period, the PPCE placed more focus on electricity, and less on oversight over the petroleum industry. Figure 7.1 confirms this claim as 92% of questions placed more focus on electricity. As such, most of the questions related to electricity that were directed to the Minister of Energy were referred back to the Ministry of Public Enterprise for answering. In this regard, the PPCE lacked a clear framework to give effect to policy objectives and its implementation regarding HDSA transformation. There was little emphasis on questions related to this. This means that there is a huge disjuncture between the activities that the Executive branch conducts when it comes to HDSA transformation and the questions posed by Parliamentarians. Furthermore, follow-up questions on licensing, as an engine to ensure transformation, are very seldom throughout the years. In addition, as noted in the study question period, which is part of oversight activity also, must aim at pressuring the Executive branch to

expeditiously table policies before the National Assembly. In this instance there was the expectation that during the five-year period the Executive branch would have tabled a number of policies. Instead in the five-year period, only one policy saw the light of the National Assembly, in order to stabilise governability of the industry. This means that the question period did not benefit policy approval success either. The Report of Portfolio Committee on Energy on its activities undertaken during the 4<sup>th</sup> Parliament (2009-2014: 7) agrees as it points to low rate of inputs on members' statements and motions except for the moderate number of questions to Ministers, which still had a low through-put on energy-specific questions.

Another issue is that the Portfolio Committee on Energy lacked the ability to compare apples with apples in order to improve institutional performance during its question time. Thus, if there are agreed upon performance measures and targets between the Executive and the Parliament, question time should be guided by this in order to unearth relevant questions. The Report of Portfolio Committee on Energy on its activities undertaken during the 4<sup>th</sup> Parliament (2009-2014) admits that the PPCE specifically had no guidance emanating from the signed annual plans committed upon between the Department and its agencies in discharging oversight, and therefore, the ability to hold the Executive to account never materialised at all. Issues underlined here have made oversight and accountability, in terms of questioning, to be minimally felt, especially for the performance of petroleum industry in terms of ensuring HDSA transformation. The next element to be discussed and analysed is committee hearings.

### 7.2.2 Committee hearings

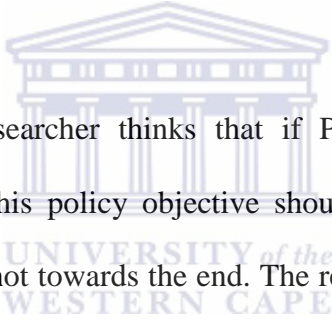
Committee hearings are also a standard tool to wield oversight and accountability over the Executive branch and state-owned Companies. This entails executing inquiries into specific issues which may include taking submissions, hearing witnesses, going through evidence, discussing matters in detail and formulating conclusions and recommendations (World Resources Institute, 2009: 8). However, as the study unfolds it will be demonstrated that even though Parliamentarians give recommendations on certain issues, the Executive branch they monitor barely takes these into consideration. For instance some recommendations are on policy content itself in which Ministerial directive is required. The point of the matter here is that political issues should be addressed politically and by politicians. Committees are therefore seen to be a convenient vehicle for this activity, and according to the World Resources Institute (2009), by concentrating on specific subjects automatically defaults to benefits on specialisation.



The PPCE ran a number of public hearings on topical issues arising in Parliament prior to 2014 elections. In order to ensure that the PPCE had a clear picture in its guidance to the Department of Energy, the Committee facilitated numerous public hearings and stakeholder meetings on selected issues related to upstream and downstream petroleum in the five-year period. The researcher is concerned with the latter stream. In 2010, the PPCE for example held public hearings on the revised Liquid Fuels Charter in order to get input from affected stakeholders. In 2011, however, there were no public hearings conducted by the PPCE. In 2012 three public hearings were held on the electricity distribution industry (not related to the study). In the same year, two public hearings were made on energy efficiency (not related to the study). The PPCE furthermore, in 2012 held energy stakeholder meetings on transformation in the petroleum

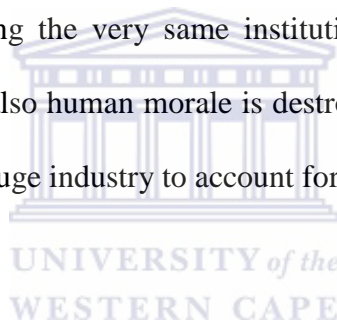


Industry. In 2013, one public hearing was held on energy efficiency. In 2014 one public hearing was made on possible transformation of the oil and gas industry. The PPCE held hearings on the upstream oil and gas industry early in 2014 where industry players were given the opportunity to air their views on matters related to transformation (Report of the Portfolio Committee on Energy on its activities undertaken during the 4<sup>th</sup> Parliament, 2009-2014: 38). In the researcher's view, Committee hearings conducted by PPCE initially were not aligned with policy objectives that the petroleum industry sought to address. However, hearings related to policy objectives such as ensuring HDSA transformation intensified only at the beginning of 2014 when elections were imminent.



While this is not wrong, the researcher thinks that if Parliamentarians are serious about transformation, following up on this policy objective should have been intensified from the beginning of the five-year period, not towards the end. The researcher also recognises the extent to which these committee hearings contributed to the facilitation of policy input from the public and in allowing Parliamentarians to understand policy implementation challenges much better. The Committee hearings are viewed by the researcher as an umbilical cord between the Executive, the Parliamentarians and civil society. However, some challenges faced by Parliamentarians in conducting Committee hearings should also be squarely examined. The main obstacle confronting this crucial role is chronic absenteeism of Committee members, due to multiple memberships of other Committees. The Report of the Portfolio Committee on Energy on its activities undertaken during the 4<sup>th</sup> Parliament (May 2009 – March 2014), voices this frustration, thus “multiple memberships of MP’s to various Parliamentary Committees has deprived the Portfolio Committee on Energy of opportunities to maximise its performance”. This

means that in many instances members are double or triple booked to other Committees where they hold memberships, and wherein they must also wield oversight and accountability. The issue is that even though there are such multiple bookings, it is unrealistic to attend all at once. For example, the researcher observed over the years, a constant attender will be the Chairperson of the Committee and one or two other Parliamentarians to create a forum for discussion. At times there will not be a single member from the opposition parties to harness constructive discussion. The researcher sees this as lack of support from team members because the Chairperson alone does not form a Portfolio Committee, especially in a democratic country like South Africa. Considering the technical nature of the petroleum industry, lack of this crucial support should be seen as harming the very same institutional architecture of oversight and accountability. Not only this, but also human morale is destroyed, because how does one or two Members of Parliament hold this huge industry to account for actions taken?



The implication of this is that since Parliamentarians also have their own schedule of performance which is strictly five years, they may be pressurised at times to vote on crucial issues they have no deep intimacy with. Then the researcher observes an emerging trend thus; ...‘Going with the flow syndrome’ as it appears that present members are seen to represent the views of those that are absent. These emerging behaviours suggests what institutional theorists termed *punctuated equilibria* discussed extensively in Chapter two. The institutional theorists’ view obtains that formal and informal rules could surface within institution because human beings are generally social constructs. As claimed by DiMaggio and Powell (1983: 147) institutions can be found everywhere, from handshakes to marriages to strategic-planning departments, among other things. The study refers to the concept of ‘*uBuntu*’ or ‘oneness’, which

appears to play a big role inside the Parliament. North (1990: 20) admits that formal rules are an important part of the institutional framework, but only a 'part'. To work effectively they must be complemented by informal constraints such as conventions and norms of behaviour. New norms of behaviour are bound to frequently develop because institutions are in a constant equilibrium. However, in harmonising institutional architecture *uBuntu* could be embraced but, politicians may at times fail to draw the line due to the history of the country that it embodies, which instinctively drives them to support each other against the opposition. This is the case in Zimbabwe as the first democratic President is still the President of the country from 1980 until to-date. Opposition parties in Zimbabwe are at times detained, jailed or ousted out of Parliament. In order to achieve this, history is brought to the fore and this cripples every construct of oversight and accountability. The inference is that, conducting robust oversight and accountability could be a frightening activity in such an environment. This suggests that while such rules of action may have connotations of morality, they do not by definition suggest what March and Olsen (2009: 10) term 'moral heroism' because, "rules of appropriateness can also underlie atrocities of action" (North, 1990: 20). The reader should remember the argument made by historical institutional theorists in Chapter Two, that critical junctures or significant change is hard to alter because of resistance that it may experience. It is a challenge in South Africa to employ oversight robustly because psychologically the enemy (which is the opposition) is seen to want to return to the past. Therefore, *uBuntu* is shown towards fellow 'comrades,' while this indirectly weakens oversight and accountability. A challenge in balancing formal and informal institutions is furthermore observed as it appears that informal rules take precedence. As Parliamentarians also process legislation in conducting activities in the petroleum industry, the next discussion unpacks this component.

### 7.2.3 Processing legislation

Policies and legislation are compiled by government officials at the Executive branch even though they are initially political ideas. Upon given a go ahead by the Executive branch, the legislation will be tabled before the PPCE for consideration. In so doing, the PPC initially coordinates public hearings for policy input or proposed Bills and Charters. In order to ensure that policy input receives attention to the intended groups, the PPCE would place advertisements in national newspapers and regional newspapers, calling for written submissions. The Committee, furthermore, paves a way for different stakeholders to make oral presentations on their written submissions. However, in certain circumstances the Portfolio Committees would facilitate workshops on the legislation in order to enhance its understanding of the policy content, and in the petroleum industry this is important due to the technical and complex nature of the sector. Once all processes are finalised and parties agree to policy content (sometimes not all agree), the Chairperson of the Portfolio Committee would table the policy before the National Assembly for further debate and consideration. Subsequent to this, the relevant Minister will seek approval through voting in the National Assembly, before the policy goes to the President for signing it into law. The challenge is that on numerous occasions, even with little debate on the proposed legislation, the National Assembly would allow policy to go through voting. And because the ruling party holds a strong two-third majority, this means that policies do not get stuck at this stage. The researcher views this on its own as oppressing constructive debate, as this would benefit policy more. Bryan and Hoffman (2007: 34) agree, arguing that the ruling party domination within Parliament prevents further development of a culture of critical oversight and accountability. It is paramount to know how the PPCE has performed in terms of processing legislation that impact on the petroleum industry of South Africa in the past five years.

The PPCE over the 2010-2014 period conducted extensive work in processing policies, regulations and strategies that impact the petroleum industry of South Africa in order to ensure that they are aligned with national development imperatives, such as the Millennium Development Goals, Government Outcomes and the Strategic Outcomes-Orientated Goals and the Strategic Integrated Projects, including directives from State of the Nation Address, mainly on energy related issues (Report of the Portfolio Committee on Energy on its activities undertaken during the 4<sup>th</sup> Parliament, 2009-2014: 30). The PPCE furthermore focused on the Independent System and Market Operator Bill, outstanding legislation and policy documentation with regard to energy planning, electricity and hydrocarbon policies. According to the Report of the Portfolio Committee on Energy on its activities undertaken during the 4<sup>th</sup> Parliament (2009-2014: 30) the Committee processed the Petroleum Regulation and assessed petroleum licensing, pricing and compliance. The PPCE also assessed related policy instruments such as the Liquid Fuels Infrastructure Roadmap, the Basic Fuel Price, the Biofuels Strategy and the Liquefied Petroleum Gas Regulation (Report of the Portfolio Committee on Energy on its activities undertaken during the 4<sup>th</sup> Parliament, 2009-2014: 38). It is important to note that, as these policy instruments are compiled by the Executive branch, processing them is done in conjunction with affected stakeholders.

Overall, the majority of the engagements of the PPCE stems from the Energy Act of 2008, as it encompasses the objectives of the State to ensure energy security and diversity for economic growth and poverty alleviation (Portfolio Committee on Energy Legacy Report: 41) through transformation. The PPCE claims that it assessed the programmes and alignment of the programmes to the Energy Act. Throughout the five-year period, the PPCE was also regularly

briefed on the formulation and review of the Energy policies by the DoE during regular quarterly report updates and annually during the presentations of their annual reports and five-year strategic plans (Portfolio Committee on Energy Legacy Report, 2009-2014: 42). Output achieved with regard to legislation processing is discussed next.

The output of the legislation process conducted by the Portfolio Committee on Energy is portrayed in Table 7.2. In 2010 and 2011 there were no policies introduced to MPs by the Executive branch. In 2012, one policy document (ISMO Bill) dragged up to 2014 in which it was finally recommended to the National Assembly



**Table 7.2: Legislation processing in relation to transformation**

Year	Name of legislation	Tagging	Objectives	Completed/ not completed	Targeted on transformation
2009/10	N/A	N/A	N/A	N/A	N/A
2010/11	N/A	N/A	N/A	N/A	N/A
2011/12	1	S75	To provide for the establishment of an Independent System and Market Operator as a state-owned entity which will provide an independent system operation to ensure safe, secure and efficient operation of the integrated power system, trading of	Completed (reported on the Bill to the House)	N/A

			electricity at wholesale level		
2012/13	N/A	N/A	N/A	N/A	N/A
2013/14	1 (recommitted)	S76	(Same as above) (ISMO)	Completed (reported on the Bill to the House)	N/A

*Source: Portfolio Committee on Energy Legacy Report (May 2009 – March, 2014: 54)*

The Legacy report of the Portfolio Committee on Energy (2009-2014) contends that the DoE, on a number of occasions, delayed the processing of Bills, which resulted in many Bills remaining unprocessed. This means that amendments to the PLFC were not completed either, thus holding implementing institutions back where HDSA transformation is concerned. Of note, processing policies by Parliamentarians involves the past two activities already discussed as well. This means that no matter how hard Committee hearings and questioning were conducted; they did not deter poor performance by the Executive branch. It is here that the Executive must account for poor performance, but the Parliamentary Committee appears to be lacking teeth in enforcing this. Accountability should be the pillar of legitimate and effective public administration and good governance (Blind, 2014: 84). This means that where accountability is weak, poor performance and governance is highly likely to persist.

There are other challenges that the PPCE faced during the five-year period in processing legislation. Among these is the disjointment of policies tabled by the Executive branch with the expectation of the ruling party policies and strategies (Report of the Portfolio Committee on Energy on its activities undertaken during the 4<sup>th</sup> Parliament, 2009-2014: 8). To remind the reader, Parliamentarians represent interests of their constituencies, hence it is important that party wishes are translated into policies. It becomes apparent that delays in processing Bills are caused by prolonged debates and disagreements in finding a common ground between the Executive and Legislative branch, or between the policy formulator and the implementer. The PPCE had the biggest challenge therefore in making meaningful and envisaged output, where legislation processing is concerned. Next, oversight visits as one of another way of wielding oversight and accountability is assessed.



#### **7.2.4 Oversight visits**

Oversight visits in the petroleum industry are one way of monitoring compliance to policies as outlined in the National Energy Act and Liquid Fuels Empowerment Charter, among other statute. As noted earlier in the study, the Charter outlines how transformation targeted at HDSA must benefit South Africans evenly. Oversight visits entails that Portfolio Committees would visit areas where implementation takes place so that they have a practical view of progress made with regards to policy objectives. Oversight visits also suggests that Parliamentary Portfolio Committees are able to communicate with affected communities to gauge whether promises made by licence holders are adhered to as per the LFEC, among other things. Upon finding non-compliance Committees recommend redress and have powers to summon offenders to Parliament for questioning. In cases where non-compliance persists in terms of policies



pertaining to the petroleum industry, the Committees have powers to apply for the withdrawal of licence. The criteria for oversight visits in South Africa are three-pronged: visit the targeted project, meet the service providers, and meet the local community ([www.pmg.org.za](http://www.pmg.org.za)). The latter is very important in the sense that communication barriers are surmounted between government and its citizens. Also it allows the legislative branch to assess the impact of programme/project implementation to the intended groups. As Committees conduct sites visits they also assess value for money in order to determine not just whether funds were spent appropriately, but whether government programmes/projects obtained their anticipated results within the available funds.

It is paramount to specifically unpack areas visited for oversight as this will provide an opportunity to assess whether the conducted visits were in-line with the policy objectives such as ensuring HDSA transformation. Evidence shows that indeed the PPCE conducted oversight visits in various areas all over South Africa in the fourth sitting of Parliament. Among the areas visited include the British Petroleum (BP) and Easigas, as part of research for the Gas Amendment Bill (Oversight Forum: Committee News From the People's Parliament, Parliament of the Republic of South Africa, 2013: 18). The Committee visited state-owned and funded enterprises such as the Medupi power station, the Gautrain, the Bus Rapid Transit System, Nissan SA in Gauteng, and the Small Enterprise Finance Agency to monitor their impact on local economic development (Oversight Forum: Committee News From the People's Parliament, Parliament of the Republic of South Africa, 2013: 20). Some visits conducted sought to assess availability and distribution of Liquefied Petroleum Gas, particularly for the indigent communities. Furthermore, visits were made to assess the distribution of infrastructure in the entire Liquefied Petroleum Gas value-chain, mainly in informal settlements. The PPCE assessed implementation of the Liquefied

Petroleum Gas Regulations and conducted oversight visits on two pilot projects implemented in Atteridgeville and Tweefontein (Oversight Forum: Committee News From the People's Parliament, Parliament of the Republic of South Africa, 2013: 36). The Portfolio Committee on Energy furthermore conducted oversight visits on indigent households using Liquefied Petroleum Gas for cooking purposes and further visited gas distribution companies to gain some insights into the issues related to gas distribution in South Africa. More oversight visits were conducted to relevant institutions of learning that have installed technology for educational purposes in order to attract learners to study petroleum industry specifics.

In order to bring closure to audit findings and implementation of recommendations made on Liquid Fuels Charter Audit Report of 2011, the PPCE continuously visited various site areas to assess whether transformation was made, particularly in relation to skills, technology transfer and B-BBEE procurement (Oversight Forum: Committee News From the People's Parliament, Parliament of the Republic of South Africa, 2013: 34). With regard to this, the Committee engaged the industry players and experts regularly, with the aim of understanding implementation hurdles from a stakeholder point of view. Oversight was also conducted on the downstream liquid fuels sector with input by wholesalers, storage sub-sectors and retailers (Oversight Forum: Committee News From the People's Parliament, Parliament of the Republic of South Africa, 2013: 34). Indeed, the Committee managed to visit areas that were specifically relevant with regards to policy objectives of ensuring HDSA transformation. However, the problem is that the Committee took a random approach in conducting site visits with no specific template to guide it, so that it can notice change. The challenge with this is that historical development impact is untraceable. The researcher's view is that activities conducted by the

Executive branch should provide the PPCE a starting point in order to track whether licences issued are put to use. In this manner there is an ability to track sub-programme linkages to output. Table 7.3 captures the output of what the PPCE achieved in the past five years in relation to HDSA transformation, mainly for the petroleum industry of South Africa. Following this the study reflects oversight and accountability on the DAC/ OECD evaluation criteria. It is paramount to note the below suggested logframe.

**Table 7.3: Suggested logframe to unpack performance by PC on Energy**

<b>PC on Energy Strategic Mandate</b>	<b>Component</b>	<b>Indicators</b>	<b>Means of verification</b>	<b>Assumptions</b>
<b>Goal</b>	-Promote the design and implementation of broad based sector or industry empowerment programmes with clearly defined targets based on agreements between stakeholders enactment.	-Ensure 25% ownership by HDSA.	-Portfolio Committee on Energy Legacy Report, (2009-2014). -Petroleum Liquid Fuels Empowerment Charter. -Department of Energy website.	-The legacy to show areas of improvement where transformation is effected.
<b>Purpose</b>	-Transformation by HDSA within 10 years of Liquid Fuels Charter enactment	-Number of beneficiary site areas visited from 2009-2014.  -Number of monitored areas for progress made on the utilization of Liquefied Petroleum Gas as well as transforming the sector.	-Site visits to premises where transformation is implemented.  -Portfolio Committee on Energy Legacy Report, (2009-2014)	-The business or skills of each beneficiary will continue into the future.  -Accurate recording of all areas visited and site reports are updated at the Parliamentary Monitoring Group (PMG) website.
<b>Output</b>	-In relation to HDSA transformation in the liquid fuels sector, the	-Number of actual visited areas where transformation took	-Committee Oversight visit reports.	-Accurate recording of all areas visited and site reports are updated at

	number of site areas visited from 2009-2014 are: 17	place.		the PMG website.
<b>Activities</b>		<b>Inputs</b>		
	1. Question period	<ul style="list-style-type: none"> <li>▪ Credible information</li> </ul>	<ul style="list-style-type: none"> <li>▪ PMG website</li> </ul>	Data of questions is accurately captured
	2. Committee hearings	<ul style="list-style-type: none"> <li>▪ Funding</li> <li>▪ Venue</li> <li>▪ Supporting staff</li> <li>▪ Industry experts</li> </ul>	<ul style="list-style-type: none"> <li>▪ Advertisements of hearings are sent out nationally and regionally to the public.</li> <li>▪ Committee reports.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The public attends hearings</li> <li>▪ There is record of attendance</li> </ul>
	3. Processing legislation	<ul style="list-style-type: none"> <li>▪ Experts in the area of petroleum.</li> <li>▪ Credible input from affected stakeholders.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Table the Legislation before the National Assembly for noting.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Public hearings are held whenever there is legislation to be processed.</li> </ul>
	4. Oversight visits	<ul style="list-style-type: none"> <li>▪ Experts to explain operations.</li> <li>▪ Community members are required to explain if service delivery is indeed impacting on their lives.</li> <li>▪ Transport to communities</li> <li>▪ Language</li> </ul>	<ul style="list-style-type: none"> <li>▪ Site visits Committee reports.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Availability of experts</li> <li>▪ Availability of community members (i.e Chiefs)</li> <li>▪ Accurate recording of site visits available at PMG.</li> </ul>

		<ul style="list-style-type: none"> <li>translators</li> <li>▪ Funding</li> </ul>		
	<p>5. Recording and capturing of Portfolio Committee meetings and site visits reports.</p>	<ul style="list-style-type: none"> <li>▪ Recording and report writing staff</li> </ul>	<ul style="list-style-type: none"> <li>▪ Portfolio Committee on Energy Legacy Report (2009-2014)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Report accurately captured and records available on PMG website</li> </ul>

*Source: Author's configuration*

### **7.3 OECD/ DAC evaluation criteria of oversight and accountability effectiveness in the petroleum industry of South Africa**

The researcher here evaluates oversight and accountability effectiveness utilizing the OECD / DAC Evaluation criteria. All five measurement tools will be used, thus relevance, effectiveness, efficiency, impact and sustainability. It should be noted that Parliamentary Portfolio Committees do not have performance contracts where for example indicators and baseline information would be traced in order to assess its performance. So, in terms of evaluating performance of oversight and accountability wielded by PPCE using the DAC/ OECD evaluation criteria, the evaluation will be based on the gap between output and outcome of activities conducted. The Report of the Portfolio Committee on Energy on its activities undertaken during the 4<sup>th</sup> Parliament (2009-2014) will assist the researcher to supplement required information in this regard. In future the OECD / DAC evaluation criteria would enable Parliamentarians to track where they can make improvements in terms of wielding oversight and accountability in the petroleum industry of South Africa.

**Table: 7.4 DAC/ OECD evaluation criteria of oversight and accountability effectiveness in the petroleum industry of South Africa**

<b>Strategic Mandate of PC on Energy</b>	<b>Relevance</b>	<b>Effectiveness</b>	<b>Efficiency</b>	<b>Impact</b>	<b>Sustainability</b>
Promote the design and implementation of broad based sector or industry empowerment programmes with clearly defined targets based on agreements between stakeholders enactment.	-Highly relevant.	-Partially achieved.	-Partially achieved.	-Partially felt.	-Promoting empowerment programmes should entail addressing challenges on time for future sustainability.
<b>Question period</b>	-Partially relevant to the petroleum industry where HDSA transformation is concerned.	-Output partially achieved.	-Partially focused on petroleum industry where HDSA transformation is concerned: 2010: 5% 2011: 0% 2012: 3% 2013: 4% 2014: 0%	-Minimally felt.	-When there is lack skilled supporting staff such as Content Advisers and experts, PPCE may not get accurate advice on the questions to ask. This in turn provides minimum oversight on HDSA transformation, threatening its sustainability.
<b>Committee hearings</b>	-Partially relevant to the petroleum industry where HDSA transformation is concerned.	-Output partially achieved.	-Partially focused on petroleum industry where HDSA transformation is concerned:	-Minimally focused to the petroleum industry	-Sustainability will be realised only if more focus is placed on HDSA transformation.

			<p>2010: 1</p> <p>2011: 0 on HDSA transformation</p> <p>2012: 6 but 1 on HDSA transformation</p> <p>2013: 0 on HDSA transformation</p> <p>2014: 1</p>		
<b>Processing legislation</b>	-Partially relevant to the petroleum industry where HDSA transformation is concerned.	-Output partially achieved.	<p>-Partially processed all Bills through to the National Assembly (NA):</p> <p>From 2010 - 2014 only one Bill recommended to NA out of five.</p> <p>Amendments to the PLFC are not effected.</p>	-Partially felt.	-Governability of the petroleum industry is based on Laws and if these are missing sustainability is threatened.
<b>Oversight visits</b>	-Highly relevant to the petroleum industry where HDSA transformation is concerned.	-Objectives met (Portfolio Committee on Energy Legacy Report 2009-2014: 46).	<p>-Achieved: Objective to focus on petroleum industry where HDSA transformation is concerned, is met:</p> <p>2010: 2</p> <p>2011: 6</p> <p>2012: 2</p>	-High impact.	-Availability of funds to conduct oversight effectively.

			2013: 6		
			2014: 1		

*Source: Author's configuration*

### **7.3.1 Relevance**

According to the researcher the specific strategic mandate placed upon the Portfolio Committee on Energy to monitor the petroleum industry is highly relevant in the sense that it is in line with the policy objective of ensuring HDSA transformation. However the activities on their own lack focus on these policy objectives due to output received. When analysing relevance it is crucial to unpack why certain issues lack the necessary relevance. When it comes to question period it becomes clear that the focus is heavily embedded on electricity. The mere fact that question time on HDSA transformation received a total of 12% of attention throughout the five year period, against the rest given to electricity for the same period, demonstrates partial relevance to this crucial policy objective. Furthermore, the DAC/ OECD evaluation criteria demonstrated above claims minimal relevance of Committee hearings when it comes to the petroleum industry, mainly on HDSA transformation. For example, throughout the five-year period, Committee hearings focusing on HDSA transformation were 3 out of 6. On the legislation processing front, relevance is judged by the ability of Committees to process successfully all policies tabled before it. The DAC/ OECD evaluation criteria shown above suggest a huge gap between envisaged output and the actual outcome. For instance, there are about six policy instruments during the five year period in which the Committee had to push for these documents to appear before the National Assembly. Out of these policy instruments only one, (thus, ISMO Bill) received recommendation to be tabled at the National Assembly during the five-year period,



which in itself has yet to be enacted in law. Site visits show high relevance to the policy objective of ensuring HDSA transformation. A total of seventeen site visits were conducted in the five-year period. The researcher acknowledges this success as Parliamentary rules allow only four site visits for the entire five-year period ([www.parliament.org.za](http://www.parliament.org.za)). Next, effectiveness of oversight and accountability is analysed.

### **7.3.2 Effectiveness**

In terms of analysing the effectiveness of oversight and accountability it becomes apparent, from the DAC/ OECD evaluation point of view, that the PPCE partially achieved output since oversight is placed less on the petroleum industry of South Africa relating to the three components of: question period, committee hearings and legislation processing. To be frank, the performance of the PPCE has been generally poor and is deemed ineffective. This is in relation to the policy objective of ensuring HDSA transformation. It should also be noted that the PPCE achieved its objective related to site visits. To make this achievement the Portfolio Committee on Energy was clear on what to oversee, namely, evidence that shows where implementation of HDSA transformation took place. Next efficiency of oversight and accountability is unpacked.

### **7.3.3 Efficiency**

However, while oversight activity may have contributed meaningfully in acquiring first-hand knowledge and in fostering a culture of performance when it comes to site visits, financial challenges, absence of prominent community leaders to accompany the PPCE to areas where transformation took place and general poor cooperation by various stakeholders, hampered this activity (Report of the Portfolio Committee on Energy on its activities undertaken during the 4<sup>th</sup>

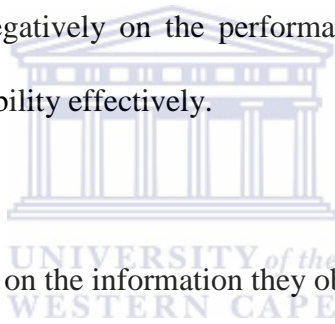
Parliament, 2009-2014: 68). This lack of cooperation demonstrates that relationships between the PPCE and communities were not built from the outset. Other challenges that faced the Committee relate to both of technical and operational issues, and these prevented the Committee working to its full potential. Some challenges however relate to poor planning and the organisation of personnel to accompany the Committee to implementation sites (Portfolio Committee on Energy Legacy Report, 2009-2014: 68) so that they give explanation of what has changed since implementation commenced. In some cases the Committee experienced language barriers in which translators had not been arranged. There were also situations where there was not enough information available on the sites being visited, and this made oversight visits a challenging exercise (Report of the Portfolio Committee on Energy on its activities undertaken during the 4<sup>th</sup> Parliament, 2009-2014: 68). Furthermore, the researcher observes that the PPCE overlooked the rural areas where actual problems that involve the middle-man are rife (explained in the previous chapter). Politicians are supposed to conduct workshops in rural areas, to among other things educate the poor about their economic rights so that they can participate meaningfully in the petroleum industry.

It is furthermore paramount to note skills shortages as another challenge faced the Committee in its attempt to wield efficient oversight and accountability. The composition of the Parliamentary Portfolio Committee overseeing and holding the industry to account warrants unravelling. In the Parliament prior to May 2014 Committee members for the PPCE were twelve, whereby the African National Congress (ANC), a party that holds majority seats in Parliament was led by seven members, while five were the members of opposition parties. Within the Portfolio Committee on Energy is the ANC Study Group on Energy, which studies policy related issues,

aimed at ensuring alignment of petroleum industry policies with the ANC policies, the Freedom Charter, decisions taken at Cabinet Lekgotla and various party resolutions emanating from decisions made in conferences. Such study groups are crucial as they monitor policy relevance in terms of meeting desired outcomes. It is the duty of politicians to monitor the progress of policy implementation so that citizen's needs are delivered as promised. In South Africa, Parliamentary Portfolio Committees are an institution which is seen to be the only effective way to organise and coordinate their involvement in this complex industry.

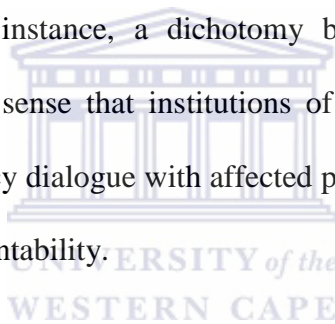
However, there is no prescribed formula in electing public officials such as Parliamentarians that conduct oversight. As such, education background is not a prerequisite for Parliamentarians in South Africa. However, technical knowledge of the industry is required so that oversight and accountability is channeled correctly. For example, under normal circumstances Parliamentarians will not have acquired technical knowledge such as that Geologists would have. As such, this knowledge would require an external expert to be part of supporting staff to the Portfolio Committee. Among other things, the importance of experts provides a stamp of authority since their views are more likely to be taken seriously by Parliamentarians. The researcher furthermore holds a view that, as Parliamentary Portfolio Committees also oversees government budget, public finance knowledge is essential so that they can interrogate the balance sheet presented to them by institutions they monitor. This knowledge requirement prompted other nations to have a Budget office in which independent advice and support to Members of Parliament is provided (National Audit Office, 2011:11). In South Africa the Auditor General's annual report is subject to the Standing Committee on Public Accounts scrutiny and so are those of departments and Committees.

Parliamentarians must also be familiar with the policy processes of this industry, from policy formulation, to policy implementation, monitoring and evaluation. This knowledge may assist Parliamentarians to assess promptly, whether policy objectives speak to input and activities, and whether these policy objectives are yielding the intended outcome. Furthermore, Portfolio Committees require high-quality report writers to compile reports on activities conducted, conclusions and recommendations made during Committee meetings and upon conducting site visits where implementation takes place. Furthermore, while the PPCE later had supporting staff, this took too long to materialise. For example, the Committee started its office in the 2009/10 financial year, but it had no researcher and no content advisor until later in 2012. This is one of the impediments that impacted negatively on the performance of the Portfolio Committee in conducting oversight and accountability effectively.



Furthermore, Parliamentarians rely on the information they obtain from the Departments or state-owned Companies they oversee. The independence of the Auditor General in terms of scrutinising the budgets for example, is noted. However, Parliamentarians may not have independent scrutiny of documents unrelated to finances and those that are technical. This argument is based on what the researcher observed, wherein, MPs lacked technical knowledge of the industry operations especially during the early months of taking office. For example, some MPs could not understand what to drill a ‘well’ entails, because ‘well’ on its own is a common English vocabulary used daily in forming a sentence. Therefore, to effectively conduct oversight in this regard, simple to understand and credible information is among other enablers. Personnel that must wield oversight need to be capacitated with correct technical and non-technical information in order to ensure that oversight and accountability is channeled to the intended

direction. Lahn et al. (2009: 55) concurs; in the petroleum industry, the investors/operators provide the information and feedback to enable appropriate regulatory standards and policies. There is also people/society contribution to policy-making debates, which are seen to be ultimately responsible for the approval of the chosen policy, assist in the monitoring and regulation of operations in the sector through media investigation, industry analysis and direct communication with the sector (Lahn et al., 2009). This does not end there; the researcher observes information about company performance disseminated through quarterly business updates and other communication channels provided by companies. This entails debates about how far the company is in implementing government mandates and what challenges it faces as implementation unfolds. In this instance, a dichotomy between institutional versus social accountability is observed in the sense that institutions of accountability such as Parliament among many others, facilitate policy dialogue with affected parties, in which the media may play a significant role in exacting accountability.



So the input highlighted by the researcher sought to support effective oversight and accountability over the performance of petroleum industry of South Africa, so that policy objectives such as ensuring HDSA transformation is realised. With regard to input so far financing, skilled personnel and credible information has prevented MPs from discharging their role efficiently. Next, impact is discussed.

#### **7.3.4 Impact**

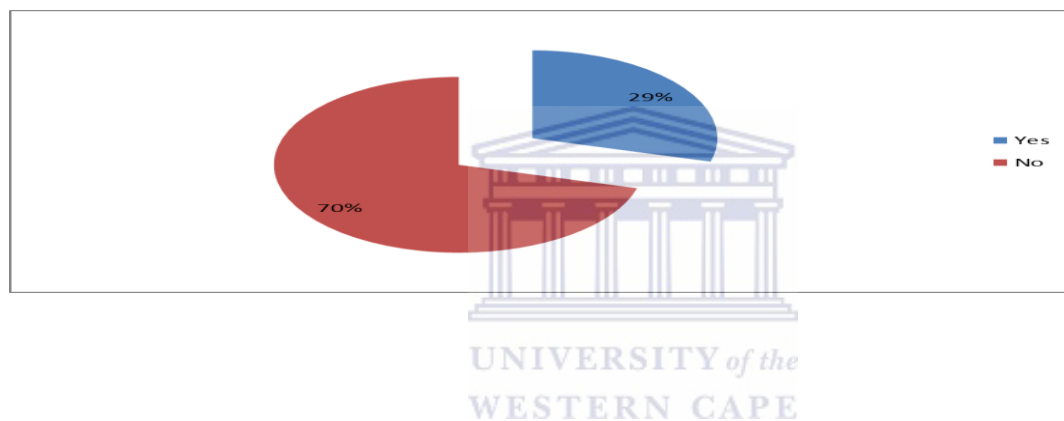
Furthermore, when it comes to activities such as question time, committee hearings and legislation processing impact has been minimally felt. The latter activity is dependent entirely on

the Executive branch in which it appears that no one is held to account for this poor performance. Site visits also could not deter non-compliance at times and has not resulted in effective performance in the petroleum industry of South Africa, at all. The researcher further states that balancing oversight and accountability may depend upon deep knowledge that Parliamentarians have with that particular sector, as this determines their focus. The implication of this is that institutions are not held to account in areas that receive poor or no oversight.

Furthermore, Parliamentary Portfolio Committees summon offenders to Parliament for answering whenever there is a need. However, observations noted by the researcher in oversight activity placed on Parliamentarians is indecisiveness or weakened authoritative power to assist institutions when experiencing challenges during policy implementation phase and neither are punitive measures employed where there is poor performance, especially with regard to HDSA transformation. The Report of the Portfolio Committee on Energy on its activities undertaken during the 4<sup>th</sup> Parliament (2009-2014) also notes that at times it receives partial responses from the Department of Energy on issues recommended by the Committee through Parliament. Its oversight power has proven to be weak in this regard as the Executive branch does not always take cognisance of the recommendations given by the Portfolio Committee. The question time, committee hearings, legislative processing and oversight visits are also confirmed by the respondents to be weak in terms of unlocking policy implementation hurdles. For example, sixty-six respondents were interviewed about the ability of these activities to assist policy implementation progress in the petroleum industry of South Africa. Figure 7.7 shows that 29% argue that there is impact made by these activities, in terms of unlocking challenges the industry faces, as some issues were escalated to the political level. Seventy percent of respondents argued

otherwise, as they stated that impact of oversight activities have not managed to unlock policy implementation challenges they experience. This means that there is a disjuncture between oversight activities and policy objectives in the sense that, employing these activities did not assist the industry to implement policy objectives effectively. Sustainability of oversight and accountability is next discussed.

**Figure 7.7: Ability to unlock policy implementation challenges**



### **7.3.5 Sustainability**

When it comes to sustainability it is clear that the role of Parliamentarians to provide oversight and accountability over the petroleum industry will still continue in the future. However, certain areas need to improve if the direction of policy implementation is to be sustainable, especially where HDSA transformation is concerned. In this regard, the researcher notes issues that threaten sustainability of the petroleum industry itself under Parliamentary monitoring in achieving HDSA transformation in the future. What threatens sustainability is a poor focus on this strategic policy imperative, as the study unveiled. One of these issues is the extent into which resources reach the intended beneficiaries in the process of transforming the industry. For example, some institutions implement this policy through what is called Corporate Social Investment (CSI).

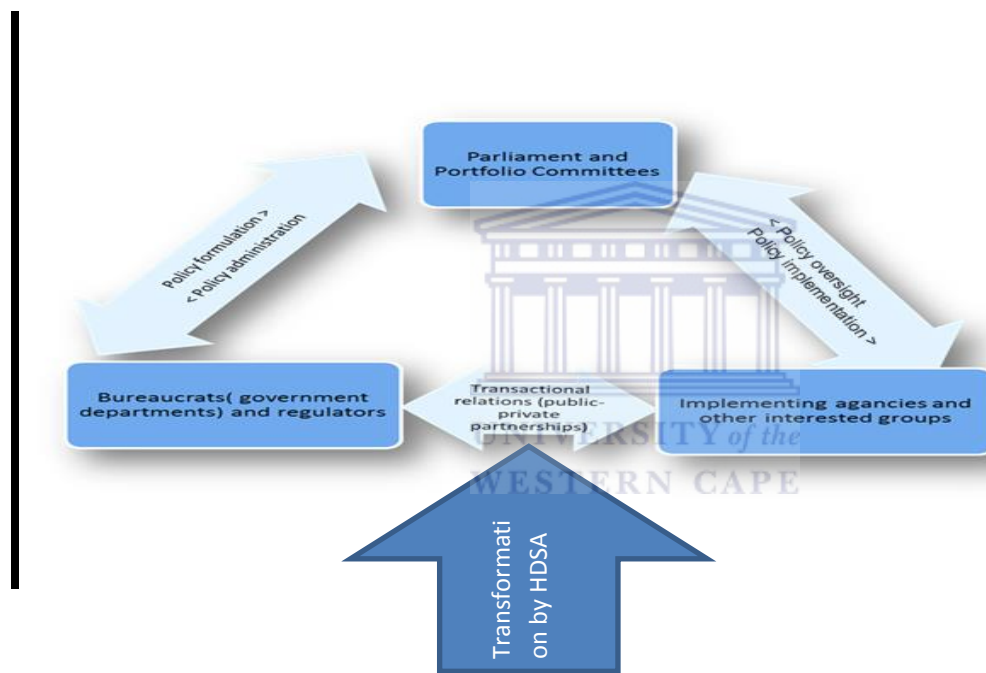
Amundsen (2011: 8) posits that activities and funding schemes labelled corporate social responsibility have a potential to add to the corruption problems of the petroleum industry. While this may look like a noble idea, according to Amundsen (2011: 8), donations by multinational petroleum companies have a profit-maximisation motive and rationale. The argument is that, through branding and reputation management, involvement in social projects can improve their reputation and thereby make it easier to win contracts (Amundsen and Wiig, 2008: 6 cited in Amundsen, 2011). In other words this appears to be an institutionalised way of facilitating bribery, which many Parliamentarians fail to recognise. Basically, what Amundsen (2011) is trying to show here is that it is relatively easy to manoeuvre social projects into serving the political interests of the ruling party and the government, while camouflaging behind what is termed 'Corporate Social Responsibility', which is highly promoted by the King III Report on Good Corporate Governance. The real challenge is that Parliamentarians who conduct oversight may not be privy to company's information in order to detect and prevent these issues before they happen. This is so because information about oil companies' social activities is quite opaque, and it is difficult to monitor what the oil companies are doing (Amundsen, 2011: 9). In this way resources are likely to be driven towards unintended directions and thereby would not achieve policy objective of ensuring HDSA transformation. This threatens the sustainability of transformation.

The next issue that requires attention is the business transactions under the umbrella of public-private-partnership and the ability to discharge oversight and accountability effectively and in a sustainable manner. For example, this is the space where B-BBEE converges with bigger players and the public sector through the means of procurement. According to World Resources Institute



(2009: 14), opportunities for corruption in the petroleum industry are probable and they begin at the contracting or procurement phase where there are public-private partnerships. This is so because contracting and procurement in the industry is often done under a blanket of secrecy, with a potential to cause a triangle-conflict demonstrated in Figure 7. 8.

**Figure 7.8: Triangle-conflict in petroleum industry**



*Source: Author's configuration*

What the triangle above shows is that government delegates to institutions the implementation of policy objectives, such as HDSA transformation. This means a contract is between the government and service provider, and further between the multinational oil company, joint venture and or local BEE or B-BBEE Company. The Corruption Perception Index (2013: 5) claims that oil and gas companies often hire third parties to manage their on-the ground

transactions. It is here that Parliamentarians are not privy to information and so, legislative oversight particularly is heavily prevented because; exercising control over third parties is a significant challenge. For example, numerous attempts made by opposition parties in the past five years to get transparency and access to these third party transactions failed, regardless of availability of Access to Information Act.


Corruption Perception Index (2013: 5) shows that procurement is a key bribery and corruption risk area for the sector due to the high levels of expenditure involved in oil and gas projects. It is in this space that senior political leaders are viewed to take advantage by simply manipulating tenders to benefit large logistics companies for their private gain, and officials would give preference to companies owned by their cronies (Amundsen, 2010:14). The borderline is that companies require government permits and licences as a prerequisite for operations in the petroleum space. In so doing, companies are compelled to engage local government officials to secure and retain leases in order to conduct activities such as drilling, construction and the use of state-owned infrastructure (Corruption Perception Index, 2013: 9). Furthermore, companies in the petroleum industry must acquire Environmental Impact Assessments, Social Labour Plans and water licences in order to be allowed to operate. At most, the maximum waiting period for the facilitation of these licences is three months. Price Waterhouse Coopers (2013) agrees, as contenting that something that should take two days to go through government would take three months instead. The researcher's assertion is that, while these laws are critical in conducting good corporate activities, there is a danger of falling into a trap as companies may be exposed to government officials seeking bribes in return for these licences. Furthermore, not only government officials may solicit bribes, influential and vocal community leaders, who may be

major communication points in the obtainance of these licences, may too seek bribes. Companies may fall into pray as they attempt to bypass customs bureaucracy inefficiencies and the related cost of delays to companies (Corruption Perception Index, 2013: 9).

The researcher's claim therefore is that oversight conducted by Parliamentarians may notice these activities less if there is a general lack of awareness about the operations of the industry and the Laws governing it. The researcher highlights this point because this means that those who have huge amount of money to solicit licences through bribery, stand a better chance of getting licences much quicker than those who may lack funds. In addition, weak monitoring of this area means that the poor remain poorer, while the rich are getting richer and this is what oversight and accountability should guard against. The institutional architecture should protect the poor by ensuring that resources are shared evenly, because this in turn bruises the policy objective goals of ensuring HDSA transformation. Parliamentarians need to strongly monitor policy implementation process. This means knowledge of the industry needs to be enhanced so that when Parliamentarians conduct site visits, they are aware of what to observe. In so doing, Parliamentarians need to know the dynamics that comes with the process of implementing government policy in the petroleum industry, so that oversight is wielded to counteract unintended negative outcomes. It should be noted that a challenge relating to corruption is that it induces disinvestments and may lead to job loss, thereby perpetuating the cycle of poverty.

It is important to acknowledge that in South Africa the actions for Parliamentarians are regulated by Ethics Code of Conduct with regards to financial interests, gifts disclosures and disclosure of conflicts of interests among other things. Furthermore, companies that report to government are

required to abide by and apply similar Ethics Codes in conducting business. A point to note is that, regardless the existence of these rules of engagement, poor corporate governance does persist. For instance, PetroSA Board of Directors in 2010 fired its CEO due to tender-rigging and financial mismanagement. At the time the whistle-blower evidence showed links between politicians, businessmen and PetroSA Directors (Mail and Guardian, 26 April 2013). Similar incident happened in 2013 in the same company, which is dubbed by Mail and Guardian, 'Oilgate Two'. Hence some commentators view the oil industry as an 'oily' business. Additionally, the mere fact that a similar incident happened in the same company shows the extent of how weak oversight and accountability is, because these issues should have been detected as they were forthcoming. The issue at hand here is explained by Hughes (2012), thus;



*“It is thus probable that any emerging upward mobile economic class will exhibit some political affinity with the ruling party. The distinction in South Africa is the degree of party elite and new business elite alignment. Party membership, support and alignment are seen by many as an important element in securing financial success in both the private and public sectors. This phenomenon has given rise to the term ‘tenderpreneurs’, thus those who make a practice of winning lucrative contracts (including extractive sector) by virtue of their political connections,”*  
Hughes (2012: 3).

This on its own may redirect resources that were meant for the HDSA, to those who are politically connected. In the National Budget Vote Speech (2013), furthermore, the cumbersome nature of procurement services in South Africa is noted. The National Budget Vote Speech (2013) explains that in the present system, procurement transactions take place at too many localities and most contracts are short-term. Consequently, there are hundreds of thousands of transactions from a multitude of centres, in which there is little visibility over all these transactions (National Budget Vote Speech, 2013). Oversight becomes worse wherein company

operations are in remote areas since monitoring procurement controls are difficult. Corruption Perception Index (2013: 8) argues that often these sites are not connected to corporate systems and electronic controls and this limits management control.

Lack of transparency basically is a major obstacle for effective oversight and accountability in the petroleum industry. It is apparent that transparency along the entire petroleum value-chain is essential in improving the governance and management of the industry in order to achieve policy objectives to the targeted groups. The researcher contends that where there is lack of transparency there cannot be any oversight and accountability and thereby the Parliamentarians role is made impossible. Transparency facilitates trust and legitimacy, which in turn opens various opportunities crucial in conducting business in the petroleum industry, because it induces investor confidence. However, some scholars argue that transparency in the petroleum industry is impossible due to the competitive nature of the business. Where competition is heightened, vested interests are likely to take centre stage and this is what the petroleum industry is fraught with. Vested interests rife in the industry are to be noted in the study as they disallow effective oversight and accountability.

Furthermore, Parliamentarians themselves may not be immune to such vested interests because they are human beings who are social constructs, who at times may not know how to balance their oversight and accountability role. The researcher argues that it is highly probable that Parliamentarians may find themselves caught up in this web because they also form part of the society and they always face an uncertain future due to the fact that they are only employed for a period of five years contractually. The researcher puts this out as numerous Parliamentarians

who were overseeing the petroleum industry in the past have themselves turned out to be entrepreneurs in the same space after their five year period elapsed. Some even resigned from their Parliamentary role for similar reasons. Scholars such as Marquard (2006) agree that the industry is impacted heavily by vested interests. A further example of vested interests in the petroleum industry could be drawn also from the Nigerian situation wherein multinational oil companies in 2013 were lobbying hard to have proposed fiscal terms in the Petroleum Industry Bill watered down, while politicians fought over how much the oil-producing community should directly benefit from production (Rice, 2013: 1). Similar to the Mineral Petroleum Development Bill of South Africa, the Petroleum Industry Bill of Nigeria has also been delayed and there is no certainty when it will be passed into law. This is the case because the petroleum industry is highly competitive and oil companies do not want to share wealth with communities where operations are, in order to address transformation objective. But government on the other hand has a role to protect communities by ensuring that policy directives address poverty in its different forms. While poor transparency and vested interests ravage the petroleum industry, coordination among institutions is paralysed.

The inference is that the evolution of the industry complicates coordination, because the lines between private and public sector are becoming indistinct, causing oversight and accountability to be an extremely challenging exercise. The argument is that, while the relationship between private and public sector is supposed to be reciprocal, on the other hand coordination between institutions becomes more complex and complicated, and so, oversight and accountability is compromised. This is also in consideration of less attention paid by oversight on the petroleum

industry. Of importance to note is that this is the area paramount for driving transformation in the petroleum industry of South Africa and requires robust oversight and accountability.

Summary of issues highlighted:

- Resources to support oversight and accountability to operate in full capacity are weak and they are not linked to policy objectives;
- Parliamentary Portfolio Committee on Energy oversight and accountability activities is partially linked to policy objectives such as HDSA transformation in the petroleum industry as more focus is placed on electricity;
- Oversight over the petroleum industry is reactive and weak especially in monitoring activities in rural areas;
- The complex nature of the industry disallows coordination among various institutions and this makes oversight and accountability an impossible activity to conduct;
- Lack of transparency and vested interests disallows Parliamentary Portfolio Committees to employ oversight and accountability objectively and effectively;
- Lack of knowledge about the petroleum industry deprives it effective oversight and accountability;
- The Portfolio Committee on Energy lacks coercive or enforcing capacity and in turn, there is no answerability for poor performance by the Executive branch;
- There is generally lack of independent oversight over the policy objective (HDSA transformation) because this role is given to the Minister of Energy and through her/him to Parliament.

Best practice and conceptual framework of well-considered institutional architecture construct:

Oversight and Accountability effectiveness is discussed in the next section.

## 7.4 Best Practice and conceptual framework of well-considered institutional architecture

### **construct: Oversight and Accountability effectiveness**

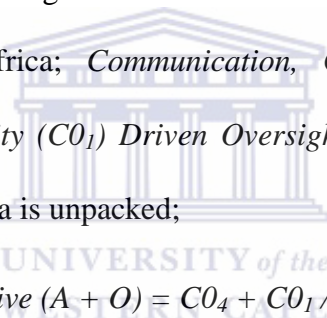
The issue is that even though there is separation of power in South Africa it cannot be ignored that the Executive branch (Minister in particular) is not politically inclined with the legislative branch. There is basically no clear-cut independence of the two, politically, because the Executive branch reports to the majority party. According to the researcher this is what weakens oversight and accountability in the petroleum industry of South Africa, among other things. Furthermore, it could be argued that behaviours such as: secrecy and vested interests fraught in the petroleum industry display some form of path dependence, because they have been in existence since institutional formation. These behaviours continue to exist in the current petroleum industry space and they threaten oversight and accountability sustainability. There appears to be a new behaviour named: *uBuntu*, which has been in existence in Africa for a while, but was hardly exercised in the petroleum industry space, mainly, inside Parliament. The new conduct of *uBuntu* converges with the old behaviours, further causing complications in managing institutional architecture, particularly where oversight and accountability is concerned, for improved policy implementation towards ensuring HDSA transformation.

It should also be noted that in South Africa the constitution changed during a critical juncture (post-apartheid), wherein a constitutional democracy was adopted. However, it is clear from the findings gathered in the study that oversight and accountability wielded in the petroleum industry is driven more by a context of country's political history than by designs of scripts associated with international best practice. This is with regards to oversight and accountability to monitor the Executive in implementing policy objective of ensuring HDSA transformation. This



oversight and accountability is wielded through the tools that are used by most Commonwealth countries. This on its own bears some characteristics of path dependence. However, it cannot entirely be ignored that some good results have been achieved as seemingly, the petroleum industry of today is much better than the petroleum industry prior to 1994. This is with regards to the extent of transformation attained so far. However, one could argue that more still needs to be done in terms of meeting the government's goal of ensuring that poverty is alleviated through transformation, to which HDSA ownership should be observed.

The researcher argues that, if oversight and accountability is to be effective at all in the petroleum industry of South Africa; *Communication, Coordination, Collaboration, and Cooperation, (C0<sub>4</sub>); and Community (C0<sub>1</sub>) Driven Oversight and Accountability (D<sub>1</sub>OA)* with communities is crucial. This formula is unpacked;



$$\begin{aligned}
 \text{Effective } (A + O) &= C0_4 + C0_1 / D_1OA \\
 (A + O)^e &= C0_4 + C0_1 / D_1OA \\
 (A + O)^e &= C + C = C^2 \text{ and } 0_4 + 0_1 = 0^5 / D_1OA \\
 (A + O)^e &= C^2 + 0^5 / D_1OA \\
 (A + O)^e &= C^2 0^5 / D_1OA
 \end{aligned}$$

The researcher's assertion is that at the political level alone it is implausible to provide absolute effective oversight and accountability over the industry that is so complex. Currently in South Africa oversight and accountability over the petroleum industry is supply-driven (top-down). In Chapter two of this current study, *diagonal accountability* was introduced as accountability driven by citizens among whom oversight committees are established at local or community level. The researcher argues that in order for oversight and accountability in the petroleum

industry to be effective *supply-driven* and *demand-driven* oversight and accountability should be acknowledged to complement each other. This claim is supported by Goetz and Gaventa (2001: 57) as stating that “internal (government) and external (citizens/civil society) mechanisms of accountability can and should be mutually reinforcing”. Figure 7.1 demonstrates this claim deeply as it shows that accountability and oversight is a two-way response. Therefore in strengthening legislative oversight and accountability and links between parliamentarians, citizens and civil society organisations are important ways to enhance social or diagonal accountability.

The Housing Sector of South Africa, for example, has a body dubbed ‘*Abahlali Basemjondolo*’ that provides social accountability. In this instance communities work as an umbilical-cord that bridge oversight and accountability between government and communities. In the petroleum industry of South Africa there is SAPIA which coordinates policy input directly with industry players and government and it plays an instrumental role in facilitating HDSA transformation. But this body is not an oversight and accounting body and its independence is questionable by some scholars. It was noted in the study that the Portfolio Committees does random oversight visits to communities where policy implementation takes place. But the PPCE at times does not know where to start, nor does it get reliable people that can accompany it to implementation sites. Even so, the researcher thinks that this is not enough because it is oversight and accountability that is done from top-down. However, some lessons could be learned from other countries that have put citizens at heart of transforming lives through the adoption of diagonal accountability in the petroleum sector. The diagonal accountability approach can also be applied

in the petroleum industry of South Africa as well for the purpose of ensuring HDSA transformation is achieved.

In Ghana, for example, there is Ghana Public Interest Accountability Committee (PIAC) which is a legally constituted body that brings together representatives of academia, NGOs, churches, traditional authorities and think-tanks to monitor and report on the oil sector (Shepherd, 2013: viii). The PIAC was established by the Ghanaian Petroleum Management Act to monitor compliance with the law, to act as a forum for public debate on oil issues and to undertake regular and independent assessment of management and spending of revenues. To show effectiveness of this body some key mile-stones warrant recognition. In its 2012 Annual Report for example, the PIAC identified gaps in both surface rental payments and receipts from the Saltpond oil field. According to Bauer (2014: 1) citing Tayou (2012), action towards this was taken within two days, wherein “the Ministry of Energy issued a statement offering new information on royalty amounts paid in 2011 and the unpaid surface rental bill”. Furthermore, the 2012 PIAC Annual Report raised concerns about overly optimistic petroleum revenue projections, which allowed for greater spending under Ghana’s fiscal rule (Bauer, 2014: 1 citing Tayou, 2012). Ever since this information emerged the Ministry of Finance sought to address this issue, in which the 2013 projections were generally considered to be more realistic (Bauer, 2014: 1 citing Tayou, 2012).

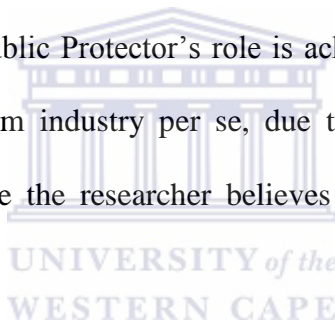
Chad also has Collège de Contrôle et de Surveillance des Ressources Pétrolières (CCSRP) which has a multi-stakeholder oversight committee with similar function to that of Ghana. It has a principal objective to ensure oil revenues are used to fight poverty (Shepherd, 2013: viii). This

oversight committee approves expenditures from the Chad fund and oversees the management and use of revenues from the Chad-Cameroon pipeline (Shepherd, 2013: viii). The CCSRP's broad powers are enshrined in law as well, mainly to monitor production, budget and spending, among other things. Further to this, in the 2005 Annual Report of CCSRP highlighted 'wells' and schools that were paid for, but not completed and inflated costs of computers (Shepherd, 2013: viii). This was a key factor that convinced the World Bank to suspend its programme in the country (Gary and Reisch, 2005 cited in Bauer, 2014: 2). This shows how strong this body is in ensuring answerability, which in turn will prevent future unwarranted behaviours. Furthermore, the Prince William Sound Citizen's Advisory Committee in Alaska was established to educate the public on issues related to oil spill and on general oversight over the petroleum industry (Shepherd, 2013: viii). The more frequently noted success stories that have been able to use the wealth that comes with natural resources to build a positive future for their populations with social harmony and relatively good governance include: Norway, Botswana, Chile and Indonesia (Shepherd, 2013: 6). Selected founding principles of some of these social oversight and accountability institutions are noted:

- ***A credible and stable cadre of technocrats who hold some influence with political leaders*** was built (Shepherd, 2013:14). The rationale for the development of this body is that government needed to have access to informed views, either from within the traditional civil service, or from ad hoc advisory bodies, and to give specialists sufficient backing to ensure that their voice is heard (Shepherd, 2013:14). The issue was that the technical nature of industry would not provide transparent and clear messaging around this. This can be adopted in South African petroleum industry in order to ensure that

credible information is obtained for the purposes of HDSA transformation and also that technical challenges that come as a result of this complicated industry are unpacked in a more easy to understand language.

- ***Independent oversight mechanism is encouraged.*** In Ghana transparency was informed by the establishment of an independent body to exercise oversight of the sector, along the lines of Ghana's PIAC or Chad's CCSRP (Shepherd, 2013:14). This approach would be useful for the South African context which has a legacy of secrecy in the petroleum industry. The South African legislation currently is not outspoken or considers the formation of an independent oversight and accountability body specifically for the petroleum industry. The Public Protector's role is acknowledged, but may lack capacity in monitoring the petroleum industry per se, due to technical challenges or resource constraints. In this instance the researcher believes that Ghana offers South Africa a model to consider.
- ***Ensuring impartial oversight and accountability.*** It comes as a concern to the researcher that the Petroleum Products Act empowers the Petroleum Controller (who is the Minister or anyone empowered by the Minister) to issue licences for wholesale, retail and site. In turn the Minister must also monitor compliance on this as well. The researcher observes significant ambiguities, mainly over the relationship between this body (Petroleum Controller) and the Minister where oversight and accountability is concerned. On the contrary, the Petroleum Agency of South Africa (PASA) plays a similar role in the upstream petroleum market and is independent of due influence by the Executive branch or political elite. Furthermore, Parliamentarians cannot conduct robust oversight and accountability on their own by only receiving information from the Executive branch



(mainly the Minister), especially with regard to licensing, this is with consideration of political ties that the two have. Lessons could be learnt in this regard in ensuring impartial oversight and accountability. South Africa must have empowered transformation agents by law in each district municipality especially where the HDSA communities are, to continually report to the Portfolio Committee (MPs), quarterly on transformation progress by petroleum industry. In turn this will break communication and trust barriers between communities of concern and MPs.

- ***Institutional arrangements.*** The researcher suggests that oversight and accountability should be both supply-driven and demand-driven so that share-values are promoted and enhanced. The Portfolio Committee on Energy supply oversight and accountability, but this could work well if communities who demand this do the same. A notion that some institutions play a particular role should be diffused because everyone is accountable if oversight is not done promptly.
- ***Importance of social capital in facilitating effective oversight and accountability.*** The researcher is of the view that the concept of oversight and accountability could be facilitated effectively through embracing the notion of social capital. The conviction held by the researcher is that social capital can foster cooperative behaviour and ease coordination challenges in this complex industry, especially maintenance of links with government's objectives. To be frank, Bourdieu and Wacquant (1992: 32) define social capital as the totality of all actual and potential resources associated with the possession of a lasting network of more or less institutionalised relations of knowing or respecting each other. In addition the researcher contends that the aim of social capital in the

petroleum industry of South Africa is important, since people and organisations influence their responses to economic opportunities as social constructs.

Overall, issues that are analysed in this study are tabled to better shape future focus of oversight and accountability discharged by Parliamentarians over the petroleum industry of South Africa, so that its teeth are felt. This is with regards to HDSA transformation. In the researcher's view, oversight and accountability are part of democratic growth through inclusivity in policy-making, implementation, monitoring and robust answerability.

## **7.5 Chapter Summary and Conclusion**

In this current chapter, the study dealt with evaluating oversight and accountability effectiveness in the petroleum industry of South Africa. In so doing, the current status core of oversight and accountability in the petroleum industry was analysed. Data trends were developed and explained so that the extent to which oversight and accountability have evolved in the petroleum industry with regards to HDSA transformation is understood better. The DAC/ OECD evaluation criteria, which embody relevance, efficiency, effectiveness, impact and sustainability was utilised to measure oversight and accountability effectiveness. In terms of relevance, a partial link between the activities performed by Parliamentarians to the petroleum industry where HDSA transformation is concerned was observed. This is so because focus on oversight is placed more on electricity. When it comes to effectiveness, the study again saw this to be done partially. However this changed when it comes to site visits as objectives were achieved on time. It was noted further that oversight and accountability could have been done efficiently if credible information, financial support and human capital were provided on time. This has resulted in a

partial impact mainly for the petroleum industry where HDSA transformation is concerned. When it comes to sustainability it was stated that indeed Parliamentary activities will always be there in future, but minimum oversight and accountability over the petroleum industry in ensuring transformation may not be sustainable. To support this claim it was argued that oversight and accountability is basically channeled in the wrong direction in which many areas where HDSA transformation could be achieved received no oversight at all. For instance, the CSI area provides rigorous transformation that requires oversight; the public-private-partnerships provide ownership through procurement in which legislative oversight is hardly done at all. It appears from the research that Parliamentarians depend on the information that the Executive body or state-owned Companies give. It was discussed in the study that this information may lack objectivity because there is no third party who reviews it. In turn this may disallow constructive oversight and accountability. Lack of transparency and vested interests was deliberated. Lastly, bench-making and a well-considered conceptual framework, workable for the petroleum industry of South Africa was discussed. The conclusion and thoughts on further research is next provided.



## CHAPTER EIGHT: CONCLUSION AND RECOMMENDATIONS

### 8.1 Introduction

This study critically evaluates the institutional architecture for effective policy implementation, oversight and accountability in the Energy Sector of South Africa, focusing on the petroleum industry. In so doing the researcher selected one policy objective: HDSA transformation. Effective policy implementation, oversight and accountability to ensure HDSA transformation are evaluated, utilising the DAC/ OECD evaluation criteria. The motivation for embarking on this study arises from the observation that, even two decades after the end of the apartheid era, little headway towards achieving this policy objective has been achieved in South Africa's petroleum industry. A chapter-by-chapter summary of the study follows.



**Chapter one:** This Chapter justified the need for the overall study by exploring the transformation journey and revealing four challenges for investigation:

- Unsustainable funding support;
- Weak institutional capacity to drive the transformation agenda;
- Poor capacity to develop and undertake programmes/projects that implement policy, mainly HDSA transformation;
- Ill-focused and weak oversight and accountability over the petroleum industry.

It was found that partial oversight and accountability has resulted, inter alia, in ineffective policy implementation in the petroleum industry of South Africa. The study bases its argument on the assertion that these components should first be grounded on commitment to transparency and

supporting input in order to be executed effectively. Other relevant concepts were described and explained.

**Chapter Two:** This Chapter explored concepts and theories that could serve to help understand the phenomena being explored in this study. Two theories were analysed: historical institutionalist and, rational choice institutionalist. The rationale for choosing these theories is that they have been proven to be key models for ideological debate and research in public administration studies. Each provides a different but complementary understanding of the nature of institutions. The central argument posited by historical institutionalists is that past events matter in designing better ideas of today. Being designed by people, these ideas, when translated into policy, in turn constrain people's behaviour. The rational choice institutional theorists share similar sentiments, though the translation of these ideas is supported by the idea of utility maximisation. In this theory, institutions make rational choices based on the dynamics existing between principal and agent. The principal is portrayed as protagonist in idea/ policy initiation, giving order for the agent to implement. The agent is expected to cooperate by carrying out the principal's instructions, in the process achieving the fulfilment of its own interests.

The three major components of this study – policy implementation, oversight and accountability – were analysed within these theoretical constructs. The theoretical understanding of accountability suggested different things to different authors. Multiple, divergent accountability dichotomies, that come in horizontal, vertical and diagonal angles, were analysed, using examples to provide context. Central to accountability is the principal-agent interplay, wherein the agent must account to the principal for non-cooperative behaviour. It was argued that

accountability should not be seen as something that others have, i.e. in the sense of ‘power’, but rather should be seen as showing how players discharge their responsibilities to be accountable, and how this helps to improve efficiency and efficacy. Similarly, the theoretical understanding of oversight is centred on the principal-agent nexus, which observes the principal discharging this role with the aid of *ex ante* and *ex post* oversight mechanisms. It is the effectiveness of these mechanisms that determine whether unwarranted activities are detected and acted upon with the appropriate sanction.

The study went on to review available literature on policy implementation and the challenges thereof. This review revealed two primary directions that policy implementation takes: top-down, or bottom-up. The 4C0s (*Communication, Coordination, Collaboration, and Cooperation*) were accepted by the researcher as a foundation for this theoretical development, since they are critical to policy facilitation, oversight and accountability. At this point, the researcher explored the literature on monitoring and evaluation, in particular the difference between these two concepts. This resulted in the researcher focusing on the evaluation concept, being in line with the study. The researcher adopted the Development Assistance Committee (DAC) / Organisation for Economic Cooperation and Development (OECD) evaluation criteria as an analytic tool that fit this study. These embody relevance, effectiveness, efficiency, impact and sustainability, key aspects in evaluating programme/project impact.

**Chapter three:** This Chapter explored pieces of legislation and regulations relevant to policy objectives, in particular with reference to HDSA in the petroleum industry of South Africa. The legislation and regulations explained in this chapter support the institutional theory asserting that

history matters in developing a better society for the present. As such, at the heart of the policies discussed is an attempt to redress past racial sidelining. The policy objective: HDSA transformation was conceived to dismantle apartheid institutionalised ideology. It was further noted that the petroleum industry operates within a national policy agenda, which sets out national goals, priorities and direction. Since the study aims to evaluate the effectiveness of the institutional architecture to implement policy, and provide oversight and accountability in the petroleum industry, the first part of the study examined the ANC Freedom Charter whose vision is to ensure that all South Africans should benefit equally from the economic activities derived from its natural resources. The South African Constitution, as the supreme body of law, supports this dream and key areas relevant to this study were selectively explained. This was followed by a discussion of the White Paper on Energy Policy 1998, the National Energy Act of 2008, the Company's Act, the Preferential Procurement Policy Framework Act and the development of a Monitoring and Evaluation Framework in South Africa. It was observed that certain parts of the regulations are not applicable to the private sector, though this is a significant stakeholder in the petroleum industry. In conclusion, the potential for biased treatment and an unlevelled playing-field is highly probable at the policy-making level.

**Chapter four:** This Chapter discussed and analysed the current institutional architecture for petroleum governance. Primarily, the researcher explored those international and regional institutions that impact on the governance of the petroleum industry as whole. This approach was chosen to show that the petroleum industry of South Africa does not operate in isolation from the rest of the world, even though not all international guidelines are adopted in South Africa. For example, South Africa does not have memberships with Publish What You Pay and Extractive

Industries Transparency Initiative. These are both initiatives aimed at promoting transparency and good governance in the petroleum industry, so that natural resources can be of economic benefit to the poor. However, this does not mean that South Africa does not share similar sentiments with regards to transparency and good governance. South Africa mirrors the adoption of these initiatives through the King III Report on Good Corporate Governance, among others. Furthermore, South Africa cooperates well with regional bodies such as NEPAD and SADC, an indication that institutions are gaining in influence and are driving towards common ground.

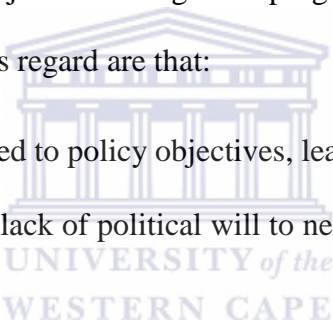
Institutional architecture governance in the South African front was furthermore discussed in relation to the three critical governance drivers that are the focus of this study: accountability, oversight and policy implementation, in which selected few were analysed. Where accountability is concerned, it became clear that both *ex ante* and *ex post* mechanisms, as carried out by the Auditor General and the Public Protector, are developed to ensure protection of democracy and enhance legitimacy. Upon investigation, it was found that these institutions encourage transparency through public reporting, amongst other actions. Institutions that conduct oversight, such as the Parliamentary Portfolio Committee and the Department of Energy, were also investigated, and *ex ante* and *ex post* mechanisms were found to be in place. The central argument in this part of the study is that transparency is essential in improving governance and in allowing the oversight bodies to know what they are overseeing. The room for improvement observed is that both the accountability and oversight roles of the relevant legislative bodies are limited to recommendations and therefore lack teeth. Mechanisms to enforce compliance also do not carry weight, except through the summoning of offenders to Parliament. Policy implementation instruments such as the National Development Plan, and the Department of

Energy, among others were discussed as well. The last part analysed institutional power relations in the petroleum sector. Here the researcher disagrees with the theory that agents should take instructions from the principal and implement them. Institutional power-relations are altered when the principal has minimal technical know-how of the industry. In situations like this the industry's agents may take the lead in policy development and direction. This in turn allows the agents to instruct the principals on what should be done. Given this advantage, the agent is positioned as an idea initiator, a point missed in the explanation given by institutional theorists.

**Chapter five:** This Chapter described the process undertaken by the researcher in gathering information for this study. A qualitative research paradigm was explored as a first approach. The three components of this study: policy implementation, oversight and accountability, operate in a natural setting involving human interaction as social constructs. The researcher found that the aspects involving human interaction fit well into the qualitative-triangulation research paradigm and this was thus used in the entire research gathering process. The research suited this approach due to its versatility in obtaining various forms of data in order to enhance validity and reliability. As such, qualitative-triangulation embodying ethnographic, case study and historical research was used to collect information to support this study. Ethnography for example, was useful as it sought to understand the relationship between culture and behaviour, with culture referring to the beliefs, values, and attitudes of a specific group of people. Case study research allowed the investigation of contextual realities and the gathering information on the differences between what was planned and what actually occurred. Historical method was also seen to be useful in establishing baseline information prior to observing and interviewing participants.

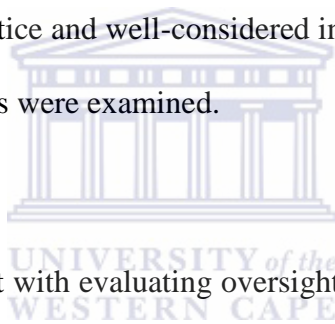
Scheduled interviews, observation and document analysis were used as research tools. The study focused on the petroleum industry, rather than more broadly on the energy sector.

**Chapter Six:** This Chapter presented findings and analysis of selected issues pertaining to the effectiveness of policy implementation in the petroleum industry of South Africa. Findings in this chapter were contextualised according to policy implementation as one of the three components of the study. Here the study primarily outlined and analysed the current status of policy implementation, in relation mainly to HDSA transformation in the petroleum industry. The DoE implements this policy objective through sub-programmes that facilitate licensing and enforce compliance. Findings in this regard are that:

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- Input is not sufficiently linked to policy objectives, leading to missed targets;
  - There is indecisiveness and lack of political will to negotiate with financial institutions to support HDSA Companies;
  - There are also delays in transformation and ownership by HDSA in general, as the 25% target has not been reached within the enactment of the Charter period;
  - Unstructured workshops and lack of proper documentation result in poor learning outcomes;
  - Overall, policy implementation with regard to HDSA transformation in the petroleum industry is deemed not effective.

These findings were authenticated through the use of DAC/ OECD evaluation criteria, which embody relevance, effectiveness, efficiency, impact and sustainability. For example, with

regards to relevance the researcher noted fit of the sub-programmes for the specific sector and for the purposes that the policy seeks to address. When it comes to effectiveness, the DAC/ OECD evaluation criteria noted that policy implementation is not effective because so many activities did not achieve the set target of 100% within the specified time-frame. On the efficiency aspect, the relationship between resources and results was assessed. In this regard it appeared that the lack of critical resources such as funding, infrastructure and critical skills were the main causes of the petroleum industry lacking in efficiency. Where impact is concerned, the study concluded that at this stage it is minimal. It was further noted that the sub-programmes could only be sustainable if input challenges are addressed. Potential benchmarks for this study, in particular international best practice and well-considered institutional architecture aimed at the implementation of policy objectives were examined.



**Chapter seven:** This Chapter dealt with evaluating oversight and accountability effectiveness in the petroleum industry of South Africa. An approach similar to that used in the previous chapter was employed in order to attain information in support of the study. The current status of oversight and accountability in the petroleum industry was analysed and contextualised. Data trends were developed in relation to oversight and accountability, in respect to ensuring HDSA transformation as a policy objective. The DAC/ OECD evaluation criteria, which embody relevance, efficiency, effectiveness, impact and sustainability was used to validate the findings. Where relevance, efficiency and effectiveness are concerned, there is however a partial link between the activities performed by Parliamentarians and that conducted by the petroleum industry, particularly when it comes to HDSA transformation. This is the case because of the lack of oversight given to the petroleum industry over the preceding five years; thus from 2010



to 2014. It is only through site visits that Parliamentarians achieved the intended objectives. Among the obstacles, lack of credible information to assist MPs channel oversight in the right direction was found, financial support has been minimal, and skilled human capital took long to emerge. While MPs have no direct implementation role, weak oversight and accountability resulted in inefficiency and minimal impact on HDSA transformation. Furthermore, while the sustainability of the MPs' activities is almost guaranteed, the same cannot be said about oversight and accountability, in particular in terms of ensuring the performance of the industry to transform people's lives. This can only take place with a complete re-focus within the petroleum industry. The researcher also provided bench-marking and a workable conceptual framework, with the hope that it might be applied to improved oversight and accountability over the petroleum industry of South Africa.



**Chapter Eight:** In this chapter conclusion and recommendations are drawn. This chapter also outlines future direction and further research recommended by the researcher. Prior to undertaking this journey the researcher brings forth the major intention of this study, which is ‘A CRITICAL EVALUATION OF INSTITUTIONAL ARCHITECTURE FOR EFFECTIVE POLICY IMPLEMENTATION, OVERSIGHT AND ACCOUNTABILITY IN THE ENERGY SECTOR OF SOUTH AFRICA: A PETROLEUM INDUSTRY PERSPECTIVE’. Specific objectives are:

- To develop a sound theoretical framework;
- To discuss legislative basis for understanding institutional architecture in the petroleum industry;

- To analyse key institutional architecture, their roles and challenges in the petroleum industry sector, and its implication on effective policy implementation, oversight and accountability;
- To examine and analyse emerging trends from data collected for improved policy management. In so doing, DAG/ OECD evaluation criteria to assess policy implementation, oversight and accountability effectiveness in relations to transformation targeted at HDSA is used;
- To propose best practice and conceptual framework of well-considered institutional architecture construct, that will forge and strengthen strong petroleum sector vision;
- Conclusion and recommendations.



## **8.2 Recommendations**

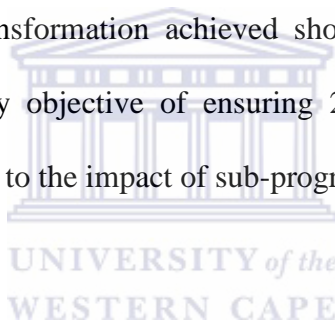
The study provides some practical recommendations to improve the effectiveness of institutional architecture in relation to the performance of policy implementation, oversight and accountability, so that HDSA transformation in the petroleum industry is speedily realised and sustained. The first part puts forth recommendations on the improvement of policy implementation and the second on oversight and accountability.

### **8.2.1 Policy implementation improvement**

#### **a) Link policy objective to input/ enablers**

When the political landscape changed in South Africa after 1994, the petroleum industry took an historical institutional approach to address transformation, without adequately involving input and or enablers. Alignment with emerging developments and systems in order to meet the

desired goals is paramount if the dream to ensure HDSA transformation is to be realised. The delivery of services in the petroleum industry seems to be organised around sub-programmes, but people's needs do not necessarily fit within the sub-programme categories. For instance, currently the government's main role seems to be limited to issuing retail, wholesale and manufacturing licenses with no financial linkages to aspiring HDSA entrepreneurs. The extrapolation is that licences acquired to operate do not automatically suggest entrepreneurship and or transformation. One can be a licence holder but lack the means to realise this benefit. This means that this is rather just one small part of the bigger picture. The performance of sub-programmes/ projects should indeed be linked to the number of licences issued within a specified time-frame, but the extent of transformation achieved should be included in the evaluation measures. In this way, the policy objective of ensuring 25% HDSA transformation within Charter enactment would be linked to the impact of sub-programme/projects.



The process to secure funding for HDSA is currently complicated as these companies must meet certain requirements. In numerous situations the investor holds funds, but lacks confidence in the emerging HDSA companies. Furthermore, emerging entrepreneurs lack skills to demonstrate that they are able to sustain complex operations within the petroleum industry, and this on its own is an impediment that government takes little cognisance of. The inference is that the 4C0s that the researcher recommended in the study depends on sufficient and sustained resources such as human, financial and infrastructure in order to carry out the necessary work. Without proper resources, collaboration does not solve complex problems such as those encountered in the petroleum industry. It does not make sense to enforce compliance in a situation where policy requirements can't be acted upon due to lack of resources. Therefore, since it is the government's

mandate to ensure HDSA transformation, responsibility for the funding of HDSA companies should be at the apex of sub-programme/ projects. The child that government gave birth to must be nurtured with proper nutrition in order to achieve the envisaged results. To leave funding role solely to third parties does not solve financial challenges facing the emerging HDSA companies. However, the study recognises the argument that government cites relatedly, namely its inability to play a direct funding role. Another recommendation to consider is presented next.

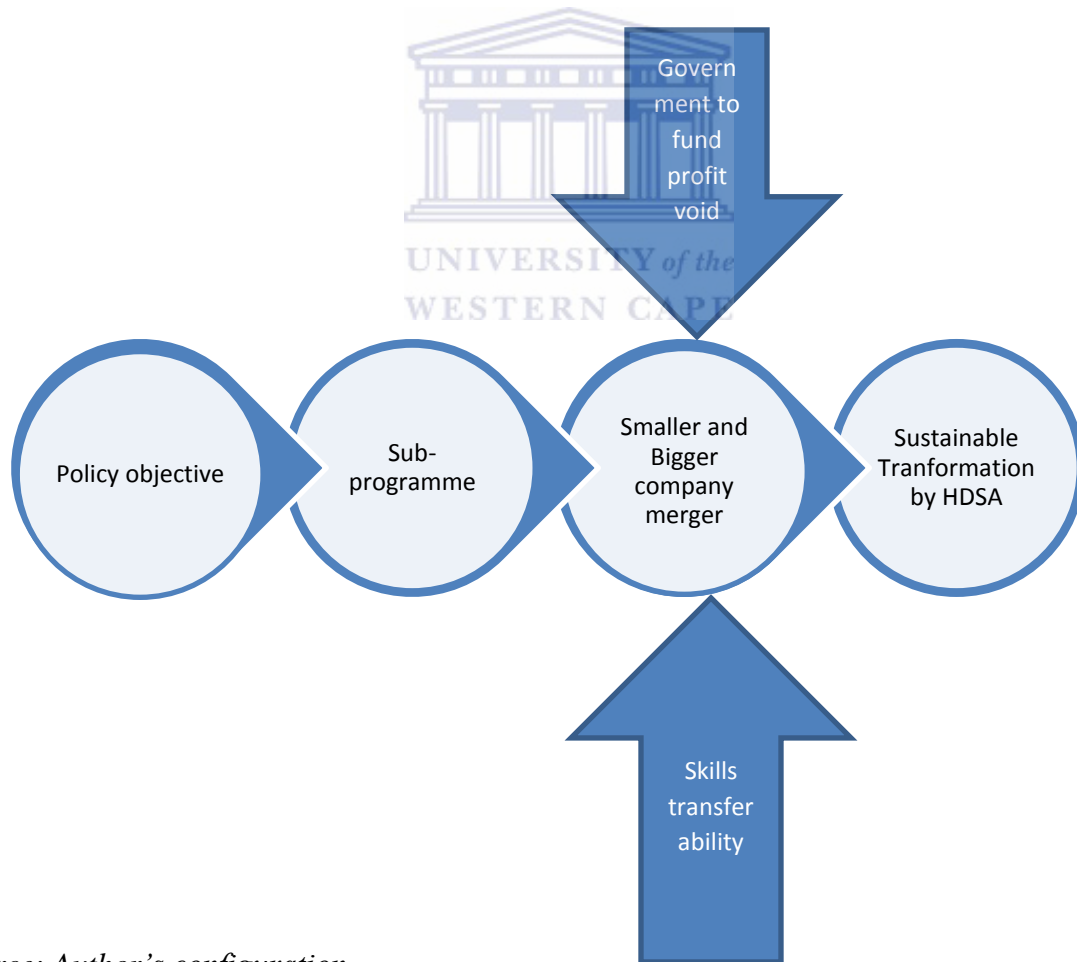
#### **b) Incentives for funding HDSA Companies**

The crippling factor in the petroleum industry is that funding institutions place stringent restrictions on specific outcomes tied to the funding, because large amounts are at stake and risk needs to be contained. Furthermore, investment returns are not that attractive, especially for emerging HDSA companies, and this reduces the chances of securing funds to sustain their businesses. On the other hand larger companies have an advantage that their infrastructure is well developed, can adjust well when the funding environment changes, and even have access to funding not available to emerging HDSA companies. This study holds a view that this gap provides more opportunities than risks.

For example, bigger companies that are more powerful can go into a joint venture partnership with the smaller HDSA Company, with the proviso that the returns yielded as a result of this partnership must benefit smaller company fairly. Potential conflict can arise when the bigger company chooses to maximise profit as its main goal. In this regard the researcher sees a role that can be played by government in terms of filling a certain percentage of the profit deficit by

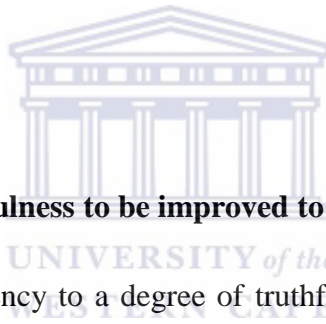
the bigger company. In this case, there is a win-win outcome if a partnership with government, business integration, sustainable transformation, profit maximisation and skills transferability can be achieved. Investing in mentoring new entrants to the industry is emphasised since it will greatly ensure the sustainability of transformation. In a nutshell, while the policy idea came from the top, its implementation process intimately involves all actors including government, businesses and civil society. In order to derive at this, 4COs introduced by the researcher must be applied to meet the government mandate of ensuring HDSA transformation. The pictorial view of this argument is demonstrated in Figure 8.1.

**Figure: 8.1 Incentives for funding the HDSA Companies**



*Source: Author's configuration*

To note is that this partnership can be time-framed until there can be traceable development of the HDSA Company. Once this stage is reached the HDSA Company can be allowed to stand on its own feet, but in turn must continue empowering another HDSA Company. There is indeed no approach that does not have flaws and these must be addressed. The researcher acknowledges that access to funding depends on the funding agency having a sound understanding of the issue and why they are important. For example, if the funder is not clear about the context of work to be carried out, then the risk of not securing funding is high. Hence, by bringing in the approach recommended, the aim is to bridge this impediment by taking advantage of the well-known bigger company's existing reputation. However, transparency induces confidence and this is discussed next.



**c) Transparency and truthfulness to be improved to enhance governability**

The researcher compares transparency to a degree of truthfulness that goes beyond legislation. The known factor is that the petroleum industry is fraught with vested interests and this on its own perpetuates lack of communication and reporting. Basically, vested interests, corruption, the mismanagement of revenue and inability to reach common ground on policy issues are what lead to distrust on the part of the providers of finance, whether government or independent investors. These are prominent players that the petroleum industry needs dearly. Not being truthful before them dents any opportunity for their involvement in this business. The researcher recommends that for the purposes of the petroleum industry, the South African government needs to consider joining the likes of the EITI international initiatives demonstrated in Chapter Four of this current study. Joining these transparency initiatives improves legitimacy and thus the possibility of gaining the investor's attention. For example Ghana joined the EITI in 2011, amending its

Petroleum Revenue Management Act, which allowed for the publication of records of petroleum receipts in the newspapers and online, among other measures. However, even though the South African government may have its reasons for not being part of these initiatives, it would likely benefit HDSA transformation, amongst other things. The important aspect of this is that where there is transparency there is a greater chance of wielding oversight and accountability effectively. Next it is shown how oversight and accountability can improve in the petroleum industry.

## **8.2.2 Oversight and accountability improvement in the petroleum industry**

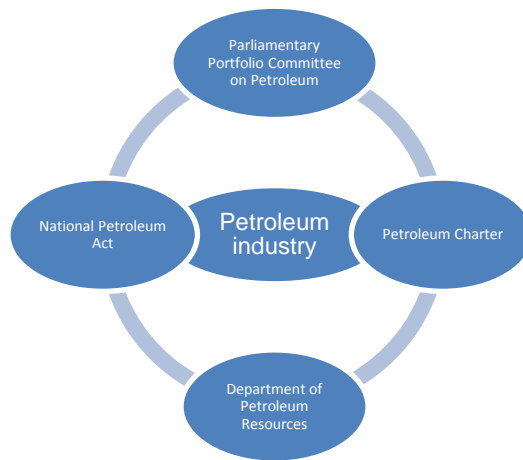
### **a) Give the petroleum industry undivided oversight and accountability**

Commitment to the empowerment of a broad base of previously disenfranchised South Africans is the responsibility of all actors in the petroleum industry, including the Parliamentary Portfolio Committees. The research gathered through this study has found minimal oversight and accountability over the petroleum industry of South Africa, in particular in terms of HDSA transformation. Of importance to note is that this is just one part of the industry under scrutiny. There may be other areas that the study did not focus on, which may also be deprived of oversight and accountability. Certainly, legislative attention has been placed more on electricity generation and distribution, and this led the researcher to conclude that the petroleum industry did not receive adequate attention from parliament. It is understandable that the Parliamentary Portfolio Committee on Energy oversees a very broad sector, and hence oversight is not given equally to all sectors. The researcher has a proposal in this regard.

Government must address legislative issues first. South Africa needs to have a ‘National Petroleum Act’ in order to enhance attention in this crucial industry. But what justifies this proposal? The National Petroleum Act should consider that the petroleum industry is upstream, mid-stream and downstream. The National Petroleum Act should link these three streams and also show explicitly how each stream must address HDSA transformation. Currently, South Africa demonstrates transformation of down-stream petroleum through the Liquid Fuels Charter and the Upstream Petroleum through the Mining Charter. All of the transformation achieved came through mining minerals, not mining petroleum. Consequently, the researcher was limited to examining transformation in the downstream petroleum industry, not the petroleum industry in its entirety. A similar development resulted from the Mineral Petroleum Resource Development Act of 2002, which seemingly governs the upstream petroleum industry, while mining is regulated under the Ministry of Mineral Resources. This means that both downstream and upstream petroleum companies are likely to receive minimal policy attention. There has been confusion on the part of Portfolio Committee on Energy on how to monitor this complex sector. The researcher therefore puts forward a workable structure that will see oversight and accountability over the petroleum industry improved, including policy implementation with regards to HDSA transformation. Effective oversight and accountability is proposed next in this study.



**Figure 8.2 Proposed structure for improved oversight and accountability in the petroleum industry**



*Source: Author's configuration*



**b) Align legislative oversight activities to the deliverables of the Executive branch**

In the researcher's view, it appears that the PPCE, in conducting site visits, has no clear strategy or guidelines in terms of what it should be overseeing and holding the industry to account for. The PPCE took a general unfocused approach in observing whether implementing institutions are in-line with the PLFC. This is understandable because the National Energy Act is too broad. The researcher argues that visiting site areas obtains first-hand information on progress made on policy implementation by third parties. However, as the PPCE provides oversight and accountability on the Executive branch or SOEs activities, with regards to petroleum industry (particularly with respect to HDSA transformation) it should rather assess the following;

- Is petroleum licensing progressing as envisaged? (because it is the assumption of DoE that the more these are rolled out the more transformation is achieved)

- Does the Executive branch conduct compliance monitoring and enforcement effectively?  
(this would fast-track compliance enforcement to standard rules)
- Does the business and general stakeholders comply on fuel price regulation by business?  
(this will enable the Committee to learn more about the third-party service providers who exploit the poor in remote areas and find ways to address this)
- Does the Executive branch conduct stakeholder awareness workshops to intended areas and effectively? (This would ensure general awareness is obtained by stakeholders regarding all of the above)
- Track and report in the Annual Report the number of Black owners per year who venture in the petroleum industry. The declaration put forth is that the DOE needs to go beyond issuing licences since this does not necessarily translate to transformation. (This would assist in assessing whether the above activities are achieving the policy objective of ensuring HDSA transformation). The idea of tracking this within 10 years of Charter enactment is not ideal.

By focusing on these indicators would mean that the Portfolio Committee on Energy is in-line with the sub-programmes that the Executive forges towards ensuring HDSA transformation. Furthermore, this would mean that when Parliamentarians conduct site visits are able to gather compliance to PLFC (HDSA transformation). The activities that the Executive conducts to ensure policy objectives are achieved should provide a starting point for Parliamentarians to conduct oversight visits and to hold the Executive to account where there is weak performance. However the researcher notes that, even though the PPCE has a mandate to stress focus in overseeing the petroleum industry with regards to policy objectives mentioned, this Committee

faced a huge challenge in the sense that there are many other areas that needs its attention, such as: electricity, nuclear, Liquefied Petroleum Gas, Shale Gas, retail, wholesale and manufacturing sites, among many others. According to the researcher, poor concentration, coordination and organisation are likely to hamper this activity, because in each stream, the Committee must take cognisance of policy objective it seeks to fast-track before it can be established what needs oversight.

### **c) More robust legislative oversight and accountability where PPPs are concerned**

As was discussed by the researcher in the previous chapter, oversight and accountability is less effective in a situation where there are multiple actors. Actors in the petroleum industry include government, private companies, state-owned Companies and general communities. The result is many conflicting stakeholder demands, and oversight and accountability tends to respond to exogenous and endogenous shocks. When oversight and accountability is induced by events there is less opportunity for learning in order to prevent similar occurrences. Hence, the formula:  $(A + O)^e = C^2O^5 / D_1OA$ , adopted in this study, seeks to ensure that oversight and accountability is tackled from all angles so that the dream to ensure HDSA transformation is speedily more realised. While a published registry list is proposed by the researcher in order to expose offenders, also incentivizing those hard working and truthful community groups would enhance the level of oversight and accountability in the petroleum industry of South Africa. The researcher holds the view that Esprit De Corps must be induced through monetary means at the community level as well since this would ensure that all stakeholders work enthusiastically towards the common cause. In this manner oversight and answerability would have teeth both before and after incidents occur.

**d) Legislative oversight and accountability must be balanced to improved Executive performance**

Where the ruling party holds a two-thirds majority, oversight and accountability are hardly effective. Many scholars have identified this issue as crippling constructive debates in Parliament. Most developing countries experience this challenge where there is a dominant party, especially where the ruling party also dominates the Parliamentary Portfolio Committees. The concentration of the researcher is not in this political imbalance part, but the ability of the Parliamentary Portfolio Committee to oversee the petroleum industry in terms of HDSA transformation. Overseeing the Executive branch with regards to this does not suggest that this role is for the dominant party, but rather the Committee capacity in its entirety has failed. It is in this respect that the researcher blames lack of deep-seated knowledge of the petroleum industry, which deprived it effective oversight and accountability. The researcher suggests that Committees must be properly resourced and its research capacity must be strengthened. Its powers must be more than recommending and summoning offenders to Parliament, because this is weak oversight and accountability. It must embody a punishable component especially if issues are understood so that the country can move forward with regards to HDSA transformation. Next, future research is proposed.

### **8.3 Future Research**

The researcher has hinted in the study that there is minimal policy concentration on mid-stream and upstream petroleum in terms of HDSA transformation. Researchers may select one stream for full concentration and interrogation of the sector. With regards to the latter sector, a clue is the Shale-gas that has started to make some noise in the South Africa shores. For example, the

Shale Gas to be explored in the Karoo region is seen as next South African game-changer in economic terms. But the same must be uttered where HDSA transformation is concerned. Thus, to what extent does Shale Gas mean when it comes to HDSA transformation, what does it mean for the poor, is the legislation clear on this front? Future researchers may wish to ensure that transparency is emphasised in order to allow effective and measurable oversight and accountability timeously. So, legislative concentration, policy implementation, oversight and accountability remain relevant in this aspect as well. Concepts proposed by the researcher could also be integrated and developed further.



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## APPENDIX I

### Interview Schedule

#### Portfolio Committee on Energy (PPC on Energy)

##### *Evaluating oversight and accountability effectiveness element*

Dear respondent

The interview questions below seek to evaluate *oversight* and *accountability* mechanisms effectiveness in relation to implementation activities and compliance of the petroleum industry on governance. The first part bares interview questions that focus on oversight element and the second part carries questions focusing on accountability. The Portfolio Committee on Energy (PPCE) is requested to assist in this interview so that it gives an account on its perspective as an oversight body in this sector. Information given on this questionnaire will assist the student in the completion of PhD studies in the field of Public Administration. The results given by the respondents will be compiled and interpreted for the same reasons. The University of the Western Cape School of Government has given permission to the student to conduct this research. There will be no need for the respondent to reveal their names. As such, participating in this study will not impact negatively on your job. You are kindly requested to answer all the questions.

##### *1. Element one: Evaluating Oversight effectiveness*

1.1 Identify frameworks for roles and responsibilities relating to oversight that are embedded on PPC on Energy, focusing mainly in the petroleum industry?

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1.2 Explain how these frameworks assist the PPC in effectively conduct its responsibility as oversight body in the petroleum industry?

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1.3 To what extent is the PPC on Energy comply with the requirements embedded on it, especially in the petroleum industry?

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1.4 Are there any institutions that the PPC on Energy collaborate with in its oversight role in the petroleum industry? (i.e PetroSA has Ethics and Social Committee, DoE has Oversight on SOE's unit)

Yes



No

1.5 If the above answer is yes, what are the terms of reference/ systems for collaboration in conducting oversight in the petroleum industry?

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1.6 Is there any established independent oversight mechanism/ body?

Yes

No

1.7 If the above answer is yes, what are shared structures, forms, norms and mandate of an independent oversight mechanism/ body?



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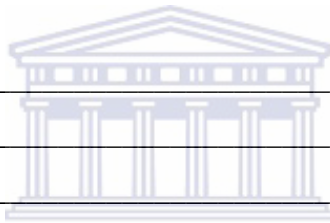
1.8 To what extent is authorities' capacity in managing and overseeing fully, in order to analyse the petroleum industry that encourages good governance and transparency?

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1.9 There are some instances whereby policies overlap with other portfolios; in such a situation what the structures in place that enables PPC on Energy to remain in control of its oversight role over the petroleum industry?



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1.10 Explain the main challenges related to oversight and give recommendations for your ideal oversight mandate that will suit the petroleum sector environment and space?

***2 Element two: Evaluating effectiveness of accountability***

2.1 Identify frameworks for roles and responsibilities related to accountability that are embedded on PPC on Energy in the petroleum industry?

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2.2 Explain how these frameworks assist the PPC on Energy in effectively conduct its responsibility as an accountability body in the petroleum industry?

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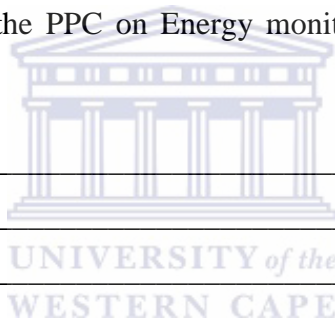
2.3 To what extent is the PPC on Energy comply with the requirements embedded on it, especially in holding the petroleum industry accountable?

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2.4 Which other institutions that the PPC on Energy monitors and hold accountable for non-compliance on agreed standards?



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2.5 Explain how the PPC on Energy treat these institutions partially in the light of vested interests that are rife in the petroleum industry in ensuring that all offenders are held accountable?

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2.6 What are the forums established in the sector other than PPC on Energy in which it shares accountability roles?

	<b>Yes</b>	<b>No</b>
Joint sector reviews		
Sector working committees		

Sector ethics committees		
State other		

2.7 Explain the nature of collaboration between the forums and PPC on Energy, i.e monthly or meetings?

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2.8 Are there terms of reference articulating shared accountability objectives between these institutions?

Yes



No

2.9 If the above answer is yes, please articulate.

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2.10 Elaborate how the petroleum industry complies with accountability objectives as expected by the PPC on Energy?

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2.11 To what extent are accountability roles embedded on PPC on Energy assists this industry in developing a culture of good governance and effective service delivery?

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2.12 Explain the robustness of PPC on Energy's independence and accountability systems in the petroleum industry?

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2.13 Are there monitoring systems that assesses the performance of PPC on Energy on its accountability roles?

Yes

No

2.14 If the above answer is yes, explain the monitoring systems? (For example specify if there is a schedule for reviewing and documenting progress and specify the frequency of reviewing)

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2.15 Explain the design of governance systems that guide the PPC on Energy to detect and prevent poor governance and ineffective service delivery in the petroleum industry?

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2.16 Explain the extent into which the PPC on Energy conduct domestic and external stakeholder workshops on accountability, in order to educate and ensure alignment?

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2.17 To what extent does the PPC on Energy have the capacity to manage and interpret a comprehensive analysis of the accountability mechanism environment?

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2.18 To what extent is the PPC on Energy’s capacity to develop and manage accountability mechanisms in order to ensure formulation of clear and transparent policies and strategies?

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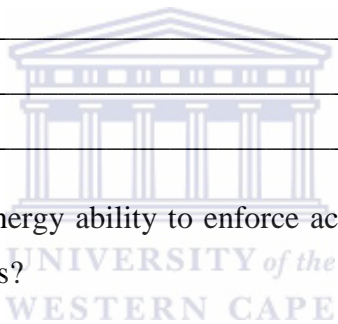
2.19 To what extent does the PPC on Energy’s capacity in developing strategies that actively discourage ineffective service delivery and provide channels for redress?

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2.20 Elaborate how the PPC on Energy ability to enforce accountability mechanisms regarding policy implementation effectiveness?



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2.21 To what extent does the PPC on Energy have capacity to create accountability mechanisms for monitoring and evaluation?

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2.22 To what extent does the PPC on Energy assesses its compliance with international agreements, frameworks, norms, and standards related to accountability?

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2.23 Explain the challenges and opportunities in providing accountability activities for the petroleum industry?

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2.24 Give recommendations on the best accountability measures that you will see work in the petroleum industry?

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**Your cooperation is highly appreciated!**

**APPENDIX II**

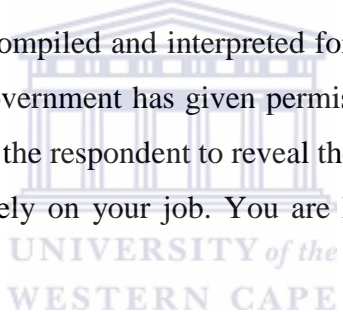
**Interview Schedule**

**Department of Energy Oversight Unit**

*Evaluating oversight and accountability effectiveness*

Dear respondent

The questions below seeks to evaluate oversight and accountability mechanisms effectives in relation to implementation activities and compliance of the petroleum industry. The Department of Energy Oversight Unit is requested to assist in this interview so that it gives an account on its perspective as an oversight body in this sector. Information given on this questionnaire will assist the student in the completion of PhD studies in the field of Public Administration. The results given by the respondents will be compiled and interpreted for the same reasons. The University of the Western Cape School of Government has given permission to the student to conduct this research. There will be no need for the respondent to reveal their names. As such, participating in this study will not impact negatively on your job. You are kindly requested to answer all the questions.



***1. Element One: Evaluating effectiveness of oversight mechanisms***

1.1 Identify frameworks for roles and responsibilities relating to oversight that are embedded on DoE oversight unit to monitor the petroleum industry?

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1.2 Explain how these frameworks assist the DoE oversight unit in effectively conduct its responsibility as oversight body in the petroleum industry?

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1.3 To what extent is the DoE oversight unit complies with the requirements embedded on it, especially in the petroleum industry?

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1.4 Are there any institutions that the DoE collaborate with in its oversight role in the petroleum industry?

Yes

No

1.5 If the above answer is yes, what are the terms of reference/ systems for collaboration in conducting oversight in the petroleum industry?

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1.6 What are the shared values, norms and standards among these institutions?

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1.7 What are the challenges in this collaboration/ partnership?

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1.8 Is there any established independent oversight mechanism/ body that oversee effectiveness of this collaboration?

Yes

No



1.9 If the above answer is yes, what are shared structures, forms, norms and mandate with that of an independent oversight mechanism/ body?

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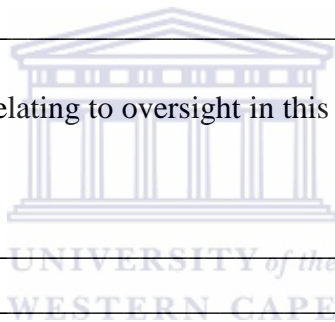
1.10 To what extent do authorities' capacity in managing and overseeing comprehensive situation analysis in the petroleum industry in enabling effective oversight?

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1.11 Explain the main challenges relating to oversight in this industry and give recommendations for an ideal oversight structure?



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**2. Element two: Evaluating effectiveness of accountability mechanisms**

2.1 Identify frameworks for roles and responsibilities relating to accountability that are embedded on DoE oversight unit in the petroleum sector?

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2.2 Explain how these frameworks assist the DoE in effectively conduct its responsibility as an oversight body in the petroleum industry?

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2.3 To what extent is the DoE comply with the requirements embedded on it in terms of accountability, particularly the petroleum industry?

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2.4 Which other institutions that the DoE Oversight unit monitors?

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2.5 Explain how the DoE treat these institutions partially in the light of vested interests rife in this industry?



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2.6 What are the forums established in the sector other than PPC on Energy that it shares accountability roles with?

	Yes	No
Joint sector reviews		
Sector working committees		
Sector ethics committees		
State other		

2.7 Explain the nature of collaboration between these forums and the DoE oversight unit in providing accountability roles in the petroleum industry?

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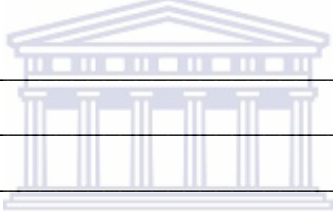
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2.8 Are there terms of reference articulating shared accountability objectives between the institutions?

Yes

No

2.9 If the above answer is yes, please elaborate on them?



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2.10 Elaborate how the petroleum industry complies with accountability objectives as expected by the DoE Oversight unit?

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2.11 To what extent are accountability roles embedded on DoE Oversight unit assists this industry in developing a culture of good governance and effective policy implementation?

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2.12 Elaborate on the monitoring systems in ensuring that the petroleum industry complies with good governance and policy implementation commitments?

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2.13 Specify if there is a schedule for reviewing and documenting progress made in the industry when it comes to policy implementation and good governance. Postulate the frequency of reviewing?

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2.14 Explain the design of governance systems that guide the DoE Oversight unit to detect and prevent poor performance and governance?

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2.16 To what extent does the DoE assist institutions that are performing poor or do not comply with set standards?

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2.17 Explain the extent into which the DoE engage domestic and external stakeholders in the process of developing accountability mechanisms for education and alignment purposes?

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2.18 To what extent does the DoE oversight unit have the capacity to manage and interpret a comprehensive analysis of the accountability mechanism environment?

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2.19 To what extent is the DoE oversight unit capacity to develop and manage accountability mechanisms to ensure formulation of clear and transparent policies and strategies?

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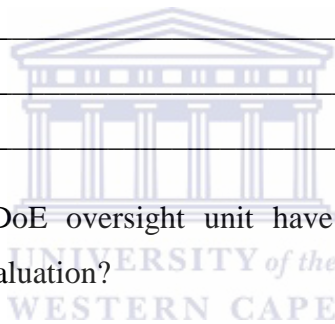
2.20 To what extent does the DoE oversight unit capacity in developing strategies that actively discourage ineffective service delivery and poor governance?

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2.21 To what extent does the DoE oversight unit have capacity to create accountability mechanisms for monitoring and evaluation?



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2.22 Who monitors and evaluate the implementation of accountability mechanisms? Briefly elaborate on the measurement criteria that are used.

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2.23 To what extent does the DoE assesses its compliance with international agreements, frameworks, norms, and standards in relation to accountability?

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2.24 What are punishable offences in situations where there is no compliance and explain how this is enforced in a balanced manner, spanning the entire petroleum value-chain?

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2.25 Explain the challenges and opportunities in providing accountability activities to the petroleum industry?

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2.26 Give recommendations on the best accountability measures that you will see work for the petroleum industry?



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**Your cooperation is highly appreciated!**

### APPENDIX III

#### Interview Schedule

##### Evaluating policy implementation, oversight and accountability effectiveness

Dear respondent

The questions below seeks to evaluate policy implementation, oversight and accountability effectiveness in the petroleum industry in relation to Historical Disadvantaged South Africans (HDSA) transformation. Information given on this questionnaire will assist the student in the completion of PhD studies in the field of Public Administration. The results given by the respondents will be compiled and interpreted for the same reasons. The University of the Western Cape School of Government has given permission to the student to conduct this research. There will be no need for the respondent to reveal their names. As such, participating in this study will not impact negatively on your job. You are kindly requested to answer all the questions.



##### *Evaluating policy implementation effectiveness*

1. Explain the underlying reasons for lack of funding in the petroleum industry, particularly towards the HDSAs.

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2. Rate the extent to which policy objective to ensure HDSA transformation in the petroleum is achieved.

Rate	Yes	No
Successful		
Partially successful		

Not successful		
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2.1 Explain further the answer you have selected above.

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3. Explain the extent to which legislative oversight and accountability unlock policy implementation challenges in the petroleum industry of South Africa, in order to ensure HDSA transformation is achieved timeously.

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**Your cooperation is highly appreciated!**