

# Chapter 2

## The Challenges of Democratic Governance in South Africa:

### A Closer Look at Parliamentary Oversight, Public Protector, and the Independence of the Judiciary

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#### **ABSTRACT**

*Democratic governance in South Africa is facing multiple challenges, jeopardising the rule of law, constitutionalism, and executive accountability. The erosion of the rule of law and judicial independence emerges as a fundamental challenge. Recent failures to use parliament to hold the executive accountable in both the fifth and sixth parliaments, coupled with the suspensions and impeachments of the former public protector and the Judge President of the Western Cape Division of the high court, are testimony to the erosion of democratic governance in South Africa. So too are the inconsistent judgments of the Constitutional Court and other courts. Corruption and state capture also present formidable obstacles to democratic governance and the rule of law, as the pervasive influence of corrupt networks undermines public trust and transparency in government institutions. The landmark case of *Economic Freedom Fighters v Speaker of the National Assembly* (2016) and other Constitutional Court judgments underscore the significance of judicial oversight in holding the government accountable and preserving constitutional supremacy. The Zondo Commission of Inquiry into State Capture and the *Democratic Alliance v President of South Africa* (2018) case underscore the role of the judiciary in fostering*

DOI: 10.4018/979-8-3693-4346-3.ch002

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*transparency and accountability. Upholding judicial independence, transparency, and accountability remains paramount in fostering democracy and maintaining the rule of law amidst South Africa's evolving political landscape. Concerted efforts are necessary to confront the challenges to democratic governance in South Africa to bolster the rule of law, safeguard human rights, and combat corruption. Using doctrinal legal research which involves examining laws, legal principles, case law, and legal literature to understand and interpret legal concepts and issues. This chapter examines some of the legal challenges facing democratic governance in South Africa and their repercussions on the nation's legal structure and constitutional integrity, post-1994. The chapter scrutinizes the weakening of parliament and the office of the Public Protector, as oversight institutions and the undermining of the independence of the judiciary. Using subtopics, the chapter provides a comprehensive analysis of the legal challenges confronting democratic governance in South Africa, emphasizing the interconnectedness of these issues and the imperative for legal reforms to fortify democracy and uphold the rule of law.*

## **1. INTRODUCTION**

Democratic governance in South Africa refers to the system of government where the citizens exercise power directly or elect representatives from among themselves to form a governing body, such as a parliament (Cheeseman, 2015). This governance structure is characterised by the rule of law, separation of powers, and protection of human rights and fundamental freedoms. In the same vein, South Africa's democratic governance is built on the principles of accountability, transparency, responsiveness, and inclusivity, ensuring that the government acts in the best interests of its citizens (Oversight and Accountability model, 2011). The democratic transition in South Africa began with the end of apartheid in the early 1990s, leading to the establishment of a new constitutional framework in 1994. This framework emphasises a constitutional democracy with a strong focus on the protection of human rights, an independent judiciary, and various oversight institutions such as the Parliament and the Public Protector to ensure checks and balances.

However, Democratic governance in South Africa is beseeched by multifaceted challenges that impact the rule of law, constitutionalism, and the protection of fundamental rights. Despite the country's transition from apartheid to democracy in 1994, persistent issues threaten the effectiveness and legitimacy of democratic institutions. This discussion examines key legal challenges confronting democratic governance in South Africa and explores their implications for the country's legal framework and constitutional order. As far as this research is concerned the focus

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