



**LOCAL GOVERNMENT RESTRUCTURING AND  
TRANSFORMATION IN SOUTH AFRICA, WITH PARTICULAR  
REFERENCE TO METROPOLITAN GOVERNMENT: POST  
APARTHEID**

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**Abstract**

The transformation of local government in South Africa is by no means an easy task, as will be demonstrated in this paper, discussion, comprehensive and necessary narrative. As a prerequisite to grasping the magnitude of the transformation of municipal structures, it is necessary to understand the type of system of municipal government that existed under the *apartheid* regime and, how municipalities were since transformed and developed, in order to serve the entire population of South Africa and not only the privileged White minority population, under the apartheid regime and, form of government. The paper, therefore assumes significance in relationship to local government restructuring and transformation in the Republic of South Africa, with particular reference to metropolitan government in a post 1994 democratic country and era.

**Keywords:** Local Government, Municipal, System, Magnitude, Restructuring, Transformation, Metropolitan Government, Democracy, Apartheid, Population

**1. INTRODUCTION**

The paper is broken down into three parts. Firstly, it provides a brief history of municipal governments during *apartheid* rule in South Africa. Secondly, it traces the transformation path of municipalities since democracy replaced *apartheid* in 1994. This second aspect deals primarily with the legislative provisions that enabled the transformation of municipalities in South Africa. Thirdly, the emphasis shifts to the 'metropolisation' of South Africa's urban areas, thus paving the way for the understanding of the discussion to be undertaken in this paper.

## **2. THE CONSTITUTIONAL DEVELOPMENT OF LOCAL GOVERNMENT: 1910 TO 1993**

Prior to independence, local government activities in South Africa were undertaken on a small scale, based mainly on the principles of British local self-government (Hattingh 1986, 105). When the Union of South Africa was established on 31<sup>st</sup> May 1910, municipal affairs were made the responsibility of the provincial authorities in terms of the South Africa Act, 1909. For many years thereafter, central government did nothing towards the development of local government and administrative systems that were suitable for South African urban areas (Cloete 1986, 12-13). The said Act did provide that all powers and functions of municipal councils, lawfully exercised, shall continue after the commencement of this Act until varied or withdrawn by a competent authority (Cloete 1982, 243). This meant that there was no improvement in the general *modus operandi* of municipalities. Several decades ago local government in South Africa referred only to White local government. There were no autonomous local authorities for other race groups. The intention, however, had always been to have some form of local government for Blacks, Coloureds and Indians “when they were able to govern themselves to this extent” (Hattingh 1986, 111). Various elementary forms of local government were instituted but always within the framework of the Republic’s policy of separate development (Hattingh 1986, 111). In respect of Black development, numerous attempts were made under *apartheid* to introduce a system of self-management structures for Blacks at local level. To some extent these forms of ‘own local government’ acknowledged the permanent presence of Black people in urban areas. However, they were designed to reinforce the policies of segregation and economic exclusion of Black people while ensuring large labour reservoirs to service white capitalism. These authorities did not have resources to make any real difference to the quality of life of their constituents (Ministry of Provincial Affairs and Constitutional Development, 1998, 1-2). Furthermore, since the Union of South Africa in 1910; local government bodies in South Africa constantly addressed the issue of insufficient revenue (Hattingh 1986, 111).

While certain municipalities prospered because of the *apartheid* factor, these were few and far between. The overall system of local government in South Africa during *apartheid* was therefore inefficient and ineffective<sup>1</sup>.

## **3. THE ESTABLISHMENT AND DEVELOPMENT OF LOCAL GOVERNMENT IN THE CONTEXT OF THE GROUP AREAS ACT**

Certain legislation during the *apartheid* era severely hampered the development of local government. Communities could not evolve or develop because of the constraints *apartheid* legislation brought about. One such piece of legislation was the Group Areas Act 41 of 1950. This Act was the cornerstone of the *apartheid* system. In essence the citizens of South Africa were geographically separated, that is, allocated land, along racial lines.

Towards the end of the *apartheid* era, during the early 1990s, municipalities were on the brink of collapse (Reddy 1999, 201). Many communities did not have any form of municipal government and thereby lacked essential services such as water, electricity, refuse collection, sanitation and housing.

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<sup>1</sup> For further reading on the constitutional development of local governments in South Africa from 1910 to 1993, see David 1999, 9 - 12.

#### **4. THE LEGISLATIVE ROAD MAP TOWARD DEMOCRATISING MUNICIPAL GOVERNMENT**

Municipalities did not serve the majority of South Africans during *apartheid* as they were designed to satisfy the ethos of that regime, which in the main, was separate development for the different race groups. We therefore, provide a detailed review of the legislative process in this regard. It commences with the transitional legislation<sup>2</sup> that was promulgated, which mapped out the process for change; it then addresses the contemporary legislation used to usher municipalities into the 'so-called' final phase of their transformation. The latter legislation underwent a rigorous process of countrywide discussion and debate in pursuit of an 'ideal' system for municipal government.

##### **4.1 Council for the Co-ordination of Local Government Affairs – Local government in the transitional phase**

The establishment of the Council for the co-ordination of local government affairs really demonstrated the seriousness with which all the role players, including the *apartheid* government, felt about the state of Local Government. On 27 March 1992, Minister Wessels, the then Minister of Constitutional Affairs, gave a comprehensive address at the Co-ordinating Councils Meeting in Cape Town. The Minister placed special emphasis on the legitimacy and financial problems being experienced by Black local authorities (David 1999, 39). Such problems did not only affect Black local authorities because much broader socio-economic problems traversed larger regions well beyond municipal boundaries, with a negative impact on neighbouring White local authorities. The question was: How should such problems, in the main be addressed? It became an accepted fact in the local government sphere that there was only one answer, that is, "representative, non-racial, and economically viable local authorities have to be established" (Council for the Co-ordination of Local Government Affairs 1992, 1).

Many small to medium-sized municipalities were established in the country arising out of the *apartheid* system of government (David 1999, 39). These were not representative municipalities but based on the *apartheid* system of separate development. Many were not economically viable. The limited economic framework in the country could not sustain the many hundreds of relatively small municipalities. Some viable municipalities existed next to several poor municipalities. This situation could not prevail forever because even if non-viable municipalities collapsed, their neighbouring viable municipalities would also be negatively affected because economic boundaries are often not aligned to municipal boundaries but expand over a much wider region (David 1999, 39). Residents from the non-viable municipalities contributed to the economy of the viable ones through their labour and other economic activities. Any restructuring of municipalities must prevent the errors of the past. This would be a difficult challenge because in as much as the Group Areas Act has been repealed much of the damage has already been done in the sense that:

- highly valued properties still remain in the hands of Whites;
- the wealth of the country is still in the hands of Whites;

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<sup>2</sup> Reference is made here to the Local Government Transition Act, Act 209 of 1993 described in Section 2.4.3 in this chapter.

- skills are still in the hands of the Whites;
- education is either lacking or of a low standard amongst the Blacks;
- recreational and sports facilities are to be found in areas resided by Whites only; and
- The attitude of both Black and White citizens towards building the new democratic South Africa is changing rather slowly (David 1999, 40).

These are just some of the ‘ills’ that have been inherited from the *apartheid* government. In such circumstances, to attain ideal “representative, non-racial and economically viable local authorities” is therefore a tall order. Although the process has begun, the complete transformation will take many years or in fact and reality several decades to accomplish, if at all.

The question of how this could be achieved was debated and it was accepted that, in the interim, local authorities had to be amalgamated and, as soon as it became feasible, would be completely restructured. This followed a series of meetings and other activities which culminated in a comprehensive report that paved the way for transformation of Local Government (Council for the Coordination of Local Government Affairs 1992, 3-4). Notwithstanding the complexities of the situation and some disagreements among parties, there was a genuine commitment to transform local governments. A few of the more pertinent issues are mentioned hereunder.

In the background to the report it is mentioned that, *inter alia*, the following resolutions were taken by the Council for the Co-ordination of Local Government Affairs on 27 March 1992 as a direct result of Minister Wessels’ speech, which echoes the observation made earlier about the complexities of the problem, namely:

- “Black local authorities as they are presently demarcated, as well as other smaller local authorities, are not viable on their own and, that ways have to be found to address the problem;
- the problem can only be addressed by way of the establishment of non-racial, economically viable local authorities and encouraging measures are desirable;
- the creation of joint administrations on a voluntary negotiated basis, is a mechanism to reach the goal, but where it doesn’t take place spontaneously before 1 January 1993, certain fiscal measures must be determined to encourage it;
- the principle of uniform trade tariffs is accepted within joint administrative areas with the target date being 1 January 1993 was set; and
- The system of intergovernmental grants for services for residents of Black Local Authorities would be continued until 30 June 1993 as was agreed (see Council for the Co-ordination of Local Government Affairs, Pretoria, 1992).

Most of these issues were embodied in the Local Government Transition Act 209 of 1993.

#### **4.2 The Interim Constitution of the Republic of South Africa, 1993**

Firstly, it must be mentioned that Section 6 of the above Act makes provision for all persons who qualify to vote, irrespective of their race, to vote, in any national, provincial and local government elections. This provision, albeit found in the Interim Constitution of the Republic of South Africa, 1993, fundamentally changed the lives of all South Africans as *apartheid* made way for democracy. All citizens henceforth had the franchise to participate in democratic elections at all levels of government.

#### **4.3 The Local Government Transition Act 209 of 1993**

This was a key piece of legislation that brought about the fundamental transformation of municipalities (David 1999, 44). It was a document put together by the Local Government Negotiating Forum, alongside the national negotiating process (Ministry of Provincial Affairs and Constitutional Development, 1998, 3). It must be pointed out that this Act was not intended to be a blueprint for a new local government system but, was merely introduced to commence the process of change of a rapidly failing local government system prevailing at the time, when other spheres of government were being radically transformed (Ministry of Provincial Affairs and Constitutional Development, 1998, 3). In essence, the aim of this Act was to create a framework for the orderly transformation of local government from *apartheid* to democracy which could simultaneously address the inequalities, structural, financial and other problems such as legitimacy at local level. It was a mechanism to guide transformation immediately whilst, awaiting the final constitutional dispensation for local governments (Secretariat of the Local Government Negotiating Forum 1993, 4).

In terms of the process for the complete transformation of local government, three phases were determined: the **'pre-interim phase'**; the **'interim phase'** and the **'final phase'**. The Local Government Transition Act took local government to the brink of the 'final phase' of its transformation and was repealed to make way for new legislation that once again altered the shape and form of local governments as the 'final phase' was ushered in.

#### **4.4 The Constitution of the Republic of South Africa, 1996**

The aforementioned Act represents the democratic values of the 'New South Africa'. It is an up to date modern constitution of which the government and people of South Africa can be truly proud.

Chapter 40 (1) of the Constitution of the Republic of South Africa, 1996, aptly describes the Government of the Republic as follows: "In the Republic, government is constituted as national, provincial and local spheres of government which are distinctive, inter-dependent and interrelated". This is a fundamental shift from the *apartheid* government in which local governments were treated as the third 'tier' of government rather than a 'sphere' of government, equal in nature and importance as the other two spheres of government. Third 'tier' suggests last in line of a three tier system of government and that two rather important tiers lay ahead of it (Cloete 1982, 247).

The Constitution of the Republic of South Africa, 1996 goes even further in Chapter Seven, which is devoted to local governments (Constitution of the Republic of South Africa, 1996). It is worth noting from this chapter in the Constitution, that the status and objectives of local

governments have been clearly spelt out and are provided for hereunder. This is important within the context of this study,

**“Status of municipalities**

151. (1) The local sphere of government consists of municipalities, which must be established for the whole of the territory of the Republic.

(2) The executive and legislative authority of a municipality is vested in its Municipal Council.

(3) A municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the constitution.

(4) The national or a provincial government may not compromise or impede a municipality’s ability or right to exercise its powers or perform its functions” (Constitution of the Republic of South Africa, 1996).

Broad-based objectives of municipalities are also spelt out in the constitution. These objectives are captured below:

**“Objects of local government**

152. (1) The objectives of local government are -

- (a) to provide democratic and accountable government for local communities;
- (b) to ensure the provision of services to communities in a sustainable manner;
- (c) to promote social and economic development;
- (d) to promote a safe and healthy environment; and
- (e) to encourage the involvement of communities and community organisations in the matters of local government.

(2) A municipality must strive, within its financial and administrative capacity, to achieve the objects set out in subsection 1 (Constitution of the Republic of South Africa, 1996)”.

Further in Section 153 of the Constitution, municipalities are required, *inter alia*, to “structure and manage its administration and budgeting and planning processes to give priority to the basic needs of the community and to promote the social and economic development of the community” (Constitution of the Republic of South Africa, 1996).

Section 160 of the Constitution makes further provisions to enhance municipalities’ decision-making in the following manner:

“Section 160

- (1) A Municipal Council –
  - (a) makes decisions concerning the exercise of all the powers and the performance of all the functions of the municipality;
  - (b) must elect its chairperson;
  - (c) may elect an executive committee and other committees, subject to national legislation; and
  - (d) may employ personnel that are necessary for the effective performance of its functions.
- (2) The following functions may not be delegated by a municipal council:
  - (a) The passing of by-laws;
  - (b) The approval of budgets;
  - (c) The imposition of rates and other taxes, levies and duties; and
  - (d) The raising of loans” (Constitution of the Republic of South Africa, 1996).

Bearing in mind the aforementioned exclusions, a municipal council may delegate its powers and functions to its committees or individuals.

These constitutional imperatives for municipalities lie at the heart of this paper and discussion, in terms of efficiency, effectiveness and economy. The question that the authors of this paper and narrative hope to provide an answer to is crucial: “If these ideals are expected of municipalities, why then are municipalities struggling to cope?”

Further on in the Constitution, Chapter Ten lays out the framework for ‘Public Administration’. Section 196 is important to the discussion in this paper and, therefore, is quoted hereunder in full:

- “196. (1) Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles: -
- (a) A high standard of professional ethics must be promoted and maintained.
  - (b) Efficient, economic and effective use of resources must be promoted.
  - (c) Public administration must be developmentally oriented.
  - (d) Services must be provided impartially, fairly, equitably and without bias.
  - (e) People’s needs must be responded to, and the public must be encouraged to participate in policy-making.
  - (f) Public administration must be accountable.

- (g) Transparency must be fostered by providing the public with timely, accessible and accurate information.
- (h) Good human-resource management and career development practices, to maximise human potential, must be cultivated.
- (i) Public administration must be broadly representative of the South African people, with employment personnel management practices based on ability, objectivity, fairness and the need to redress the imbalances of the past to achieve broad representation” (Constitution of the Republic of South Africa, 1996).

In Subsection 2 of Section 195 of the Constitution, it is stated that these principles apply to administration in every sphere of government (Constitution of the Republic of South Africa, 1996).

#### **4.5 New era legislation to usher in the ‘final phase’ of municipal government**

Notwithstanding the transformation already undertaken, municipalities would still have to be further transformed. The legislation during the ‘pre-interim phase’ and the ‘interim phase’ was merely temporary legislation to start the process of change (Ministry of Provincial Affairs and Constitutional Development, 1998, 3). The relevant provisions of the then Interim Constitution, the Local Government Transition Act and all the proclamations issued, were to cater for special circumstances during the transition to give some legitimacy to a rapidly failing local government system prevailing in the country at that time. That was the period just prior to and after the first democratic elections for both national and provincial governments held in April 1994. The results of the present composition of transitional municipalities were the result of agreements between political parties, even though they had divergent views on the matter. Staff of the former councils was appointed by agreement rather than on merit. The rationalisation of staff is under way, but the right-sizing of councils can only take place at the time of the next general elections (Moosa 1997, 9-11).

It is envisaged that this will be done because municipal council structures will be determined by national legislation after much research and consultation coupled with the experience that has now been gained from the transformed councils. The structures will relate to efficiency and the number of councils. Ultimately councils should be effective service delivery agents with adequate financial and other resources. Of the situation regarding local government, the Minister then observed: “we now have the responsibility of taking a very dispassionate, and if I may say, logical view of exactly what kind of dispensation this country needs at a local government level and it is for this reason we have embarked upon the white paper process...” (Moosa 1997, 10).

##### **4.5.1 An incomplete transition**

When the new South Africa was born in April 1994, transitional arrangements were made for the restructuring of local governments. These were only transitional arrangements with the final dispensation still to come (David 1999, 57). The key legislation that brought about a fair measure of change to municipal government in South Africa has undoubtedly been the Local Government Transition Acts. These were the Local Government Transition Act 209 of 1993



and the Local Government Transition Act Second Amendment Act 97 of 1996. As the word **transition** suggests, both these Acts were temporary pieces of legislation introduced to merely ‘kick-start’ the process of transformation of municipal governments. It was envisaged right at the beginning of the process that these were interim measures until a final dispensation was put into place (David 1999, 57).

The preamble to the Act states, *inter alia*, that the Act is **to provide for the revised interim measures with a view to promoting the restructuring of local government** (Local Government Transition Act 209 of 1993). Further, **PART IV** and **PART V** of the Act provides for the ‘**pre-interim phase**’ and an ‘**interim phase**’ of municipalities (Local Government Transition Act 209 of 1993).

Being mindful of the above, the Ministry for Provincial Affairs and Constitutional Development commenced the process towards what has been labelled the ‘final phase’ of the transformation of municipal government (David 1999, 58).

#### ***4.5.2 The legislative process in the new era***

The Minister of Provincial Affairs and Constitutional Development has deviated somewhat from the usual way in which legislation is prepared and approved by Parliament in South Africa, to prepare for the awaited legislation that would take local government through to the ‘final phase’ of transformation. The said Minister, together with the White Paper Political Committee, had issued a document entitled, “**Towards a White paper on Local Government in South Africa**”. This commenced the legislative process through which key documents were ‘work-shopped’ by key stakeholders to achieve the legislation which took municipal government through to its ‘final phase’ in its transformation. These documents were:

- the ‘Discussion Document’ entitled **Towards a White paper on Local Government in South Africa**;
- the **Green Paper on Local Government**; and
- the **White Paper on Local Government**.

The process culminated in several key acts of parliament which are described in Section 2.5 of the said chapter.

#### ***4.5.2 (a) Towards a white paper on local government in South Africa - A ‘discussion document’***

This document provided an overview of the major issues on which policies were required to be embodied in future local government legislation. This was an extremely important document as it laid the foundation for the formulation and implementation of several Acts of Parliament which would see municipalities move from the transitional phase into a new era of democratically-elected, financially-viable and community-driven entities and from a system of cold, far removed from the community type government, to an internationally recognised system of people-oriented local governance.

With the introduction of this ‘Discussion Document’, the Minister of Provincial Affairs and Constitutional Development constituted two committees known as the ‘White Paper Technical Committee’, and the ‘White Paper Political Committee’. In respect of the Technical Committee, its members were practitioners in local government and its purpose was to assist the White Paper Political Committee with technical aspects of the legislation, including the drafting thereof (Ministry of Provincial Affairs and Constitutional Development and White Paper Political Committee 1997, 4). The White Paper Political Committee was a multi-party Committee that was established to assist and advise the Minister on the drafting of all legislation regarding municipal government (Ministry of Provincial Affairs and Constitutional Development and White Paper Political Committee, 1997, 4).

This said ‘Discussion Document’ addressed, *inter alia*, a vision; the international context; the constitutionality; the role and purposes, the systems, the financial viability and the administration and human resources of municipalities (David 1999, 59-63).

#### ***4.5.3 The green paper on local government<sup>3</sup>***

The debate on the awaited legislation really started to intensify with the release of a document entitled, ‘The Green Paper on Local Government’, in October 1997. It will be fair to say that this document raised more problems than it did solutions (David 1999, 63), but this was the intention. The foreword in the Green Paper written by M. V. Moosa, the then Minister of Provincial Affairs and Constitutional Development, provided a clear intention to search for, *inter alia*, the best possible policy solutions for municipal government in South Africa (Ministry of Provincial Affairs and Constitutional Development 1997, iii-iv).

The ‘Green Paper’ merely paves the way for the ‘White Paper’, which will be a more focussed document (David 1999, 64). It is therefore not necessary to delve too much into the details of this document. What are important; however, are the process and the manner in which the current government views the role and importance of local government and the need to transform local government. Its emphasis on these aspects is such that it goes into a very detailed account of the process bringing about this new legislation. Besides, the ‘Green Paper’ provides insight into some of the thinking behind the current legislation on municipal government (David 1999, 64).

The document spelt out a vision for local government. For the first time in South Africa, local government as a whole has a vision (David 1999, 64). This vision is incorporated into the current legislation on municipal government (see, for example, Section 152 of The Constitution of the Republic of South Africa, 1996). The said vision is quite elaborate and therefore not repeated in this thesis but can be found in the Green Paper on Local Government (see Ministry of Provincial Affairs and Constitutional Development, 1997, 1).

It is common because that municipal government is the closest form of government to the people on the ground. It touches their lives. If any form or sphere of government can tackle the challenges of re-building a divided nation, then certainly local government must be at the forefront of this enormous challenge. It is in this regard that the following issues were also addressed in the Green Paper: ‘The current reality’; ‘Co-operative Government’; ‘Development Local Government’; ‘Institutional Systems’; ‘Political Systems’;

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<sup>3</sup> See Section 6.4 in Chapter Six for a critique on Local Governments in South Africa.

'Administrative Systems' and 'Finance' (Ministry of Provincial Affairs and Constitutional Development, 1997, 3-88).

#### ***4.5.4 Local government white paper – An introduction to metropolitan governments<sup>4</sup>***

The White Paper on Local Government was released in March 1998; institutional systems for municipalities were further clarified and concretised here. Special attention was paid to 'metropolitan governments' (Ministry of Provincial Affairs and Constitutional Development, 1998, 56-68).

## **5. RECENT LEGISLATIVE/ POLICY DEVELOPMENTS**

There are several Acts of Parliament that emanated from the White Paper on Local Government, which are discussed below.

### **5.1 Local Government: Municipal Demarcation Act 27 of 1998<sup>5</sup>**

Spatial segregation at local level was really the cornerstone of the *apartheid* system of government. "Through separation, influx control and a policy of 'own management for own areas', the *apartheid* regime aimed to limit the extent to which affluent White municipalities would bear the financial burden for servicing disadvantaged Black areas" (SALGA 1998a, 3). This type of practice, that is, spatial segregation along racial lines, led to first world and third world standards within the same country. Many of the old boundaries and even some existing boundaries do divide settlements, thereby disempowering municipalities which seek to provide for the needs of communities within the integrated social and economic area of the settlement (SALGA 1998a, 3).

In terms of the Constitution of the country, there would have to be an independent authority established, that will demarcate municipal boundaries and also provide criteria and procedures for the purposes of demarcation (The Constitution of the Republic of South Africa, 1996, see Section 155 (3) (b)). The statute governing demarcation provides for the establishment of a Demarcation Board to undertake the task of demarcating municipal boundaries (Local Government: Municipal Demarcation Act 27 of 1998, see Part 1). It is this Board that is the independent authority referred to in the Constitution of the Republic of South Africa, 1996.

#### ***5.1.1 Demarcation is necessary for transforming local government***

From what has been stated thus far in this discussion, it is clear that local governments in the country underwent radical transformation. The demarcation or re-demarcation of its municipal boundaries was key to the transformation. According to (SALGA)<sup>6</sup>, one instrument for achieving democratic and accountable municipalities that are financially viable is to demarcate municipal boundaries that empower the municipalities to operate effectively (SALGA 1998a, 3).

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<sup>4</sup> See Section 2.6 in Chapter Two 'METROPOLISATION: A MOVE FROM THE FRAGMENTED SYSTEM OF MUNICIPAL GOVERNMENT UNDER *APARTHEID* TO DEMOCRATIC INSTITUTIONS'.

<sup>5</sup> When demarcating metropolitan areas it is important to understand the characteristics of such areas. In this regard see Section 3.9.1 on 'The Demarcation' and figures 2 and 3 in Chapter Three for a perspective on national and international trends.

<sup>6</sup> SALGA is the acronym for the South African Local Government Association.

In other words, the most appropriate boundaries that would make municipalities function effectively must be established. The broad aims of taking a fresh look at municipal boundaries is to redress spatial segregation, establish financially viable municipalities, enable redistribution and allow municipalities to play a positive role in the nation's economy and well-being (SALGA 1998a, 3).

### **5.1.2 Objectives of demarcation<sup>7</sup>**

Section 24 of 'The Local Government: Municipal Demarcation Act' spells out the following objectives for the demarcation of municipal areas, namely,

- a) enable the municipality for that area to fulfil its constitutional obligations which, *inter alia*, includes –
  - (i) the provision of democratic and accountable government for the local communities;
  - (ii) the provision of services to the communities in an equitable and sustainable manner;
  - (iii) the promotion of social and economic development; and
  - (iv) the promotion of a safe and healthy environment.
- b) enable effective local governance;
- c) enable effective local governments that will possess the capacity, both financial and human, to deliver services on a sustainable basis. That local government will also be effective in creating the environment that will sustain the economy;
- d) enable integrated development of areas that share common systems and bases such as transport systems and the same economic base; and
- e) possess a tax base that is inclusive as possible of all users of municipal services within the municipality (Local Government: Municipal Demarcation Act 27 of 1998).

This means that the Demarcation Board should strive to establish municipal areas that are democratic, accountable, financially sound, able to provide adequate services that are sustainable, and able to develop its entire area (SALGA 1998a, 6). In order to meet the objectives spelt out in Section 24 of 'The Local Government: Municipal Demarcation Act,' the outcome of the demarcation process should in essence support good governance and the efficient allocation of resources.

This is far different from the *apartheid* style of demarcating municipal boundaries where such boundaries were drawn to divide communities along racial lines. Under the *apartheid* government, all communities could not develop nor were municipalities held

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<sup>7</sup> See Section 3.9.1 in Chapter Three, 'The Demarcation' on how Durban was demarcated.

accountable to the communities they served. The majority of citizens in the country suffered tremendously without basic services such as electricity, sanitation, refuse removal and clean running water.

Under this new Municipal Demarcation Act, the Demarcation Board has a mandate to establish municipalities that will be functional, democratic and accountable, that will not try to be exclusive but rather inclusive. In order to achieve this, the following factors, provided for in the Act, must be taken into account when municipal boundaries are demarcated:

- the movement of people into the area: where they work, recreate and conduct their economic activities;
- how goods are transported and services rendered in the area;
- who provides the services;
- the need to integrate areas and to avoid fragmentation, with specific mention of metropolitan areas;
- the financial and administrative capacity of the municipality, which is important to the performance of municipal functions;
- functional boundaries, which will, *inter alia*, include voting and magisterial districts, health, transport, police and census boundaries;
- land use, both current and in the future;
- the drawing of boundaries such that municipalities, provinces and the national government who provide services of a national interest such as health care, must be able to work together;
- typographical, environmental and physical characteristics of an area must be considered;
- demarcation could impact on the creditworthiness of municipalities and create all kinds of administrative problems of the municipalities and their staff; and
- the number of municipalities has to be rationalised: the Minister of Constitutional Development and Planning can make regulations prescribing targets for the rationalisation of municipalities (SALGA 1998a, 7).

In many instances, a fair measure of discretion may be exercised by the Demarcation Board.

## **5.2 Local Government: Municipal Structures Act 117 of 1998**

The Local Government: Municipal Structures Act 117 of 1998 has been a much-debated and long-awaited piece of legislation. Against the background that the *apartheid*-based local government structures were collapsing and the interim arrangements made via the Local

Government Transition Act were inadequate, this Act was intended to strike at the very heart of the problem, which was to institute municipal structures to enhance municipal service delivery such as water, electricity, refuse removal, sanitation and housing. This Act provides a framework for the restructuring of municipalities and will impact on the lives of every citizen of the country and beyond.

Restructuring first started out when the Ministry for Provincial Affairs and Constitutional Development released a document entitled, “*South Africa’s Local Government - A ‘Discussion Document’ - Towards a White Paper on Local Government in South Africa*”. This document kicked off a series of debates and discussions around the country. Unfortunately this and all the documents that followed had strict timeframes attached. Then the actual Green Paper followed, which was formulated with input from the previously mentioned ‘Discussion Document’. The Green Paper also underwent through a rigorous process of public debate and discussion before the White Paper and Bills were released, also for public scrutiny. On 18 December 1998, the Local Government: Municipal Structures Act 117 of 1998 was assented to by the State President.

This Act provides, *inter alia*, for the establishment of municipalities in accordance with the requirements relating to the categories of the municipalities as stipulated in Section 155 (1) of the Constitution of the Republic of South Africa, 1996. The Act further defines the types of municipalities to be established within these categories per requirement of Section 155 (2) of the Constitution (Constitution of the Republic of South Africa, 1996).

Sections 2 to 6 of the Act provides for the categories of municipalities whilst Sections 7 to 10 cover the types of municipalities that could be established within each category. Section 11 places the onus on the provincial legislature to “determine for each category the different types of municipality that may be established in that category in that province” (Local Government: Municipal Structures Act 117 of 1998: Section 11).

### ***5.2.1 Categories of municipalities***

The Local Government: Municipal Structures Act 117 of 1998 provides for the establishment of several categories and types of municipalities.

“There are the following three categories of municipalities: -

#### **Category A: -**

This category is the ‘Metropolitan area’; one municipality that has the exclusive authority to administer and make rules in its area.

#### **Category B: -**

This category is the ‘Local Municipality’; it shares that authority in its area with the ‘District Municipality’ of the district in which it falls.

#### **Category C: -**

This category is the ‘District Municipality’; it has authority to administer and to make rules in an area, which includes more than one local municipality” (SALGA 1998b, 4).

In terms of Section 155 (2) of the Constitution, **“national legislation must define the different types of municipalities that may be established within each category”** (The Constitution of the Republic of South Africa, 1996). Furthermore, Section 155 (3) states, *inter alia* that, **“national legislation must –**

**(a) establish the criteria for determining when an area should have a single category A municipality or when it should have municipalities of both category B and category C”** (Constitution of the Republic of South Africa, 1996).

In this regard the Local Government: Municipal Structures Act 117 of 1998 provides for the following:

**“2. An area must have a single category. A municipality if that area can reasonably be regarded as-**

- (a) ... a conurbation featuring –**
  - (i) areas of high population density;**
  - (ii) an intense movement of people, goods and services;**
  - (iii) extensive development; and**
  - (iv) multiple business districts and industrial areas;**
- (b) a centre of economic activity with a complex and diverse economy;**
- (c) a single area for which integrated development planning is desirable; and**
- (d) having strong interdependent social and economical linkages between its constituent units.”**

Other than the existing metropolitan municipalities in the country, there are other cities in the country that could possibly qualify for being classified as Metropolitan areas, such as Port Elizabeth, Bloemfontein and Pietermaritzburg. These will be difficult choices that the Minister will have to make.

### ***5.2.2 Types of municipalities***

It is necessary here to understand the difference between categories and types of municipalities. In this regard, **‘category’** refers to the “constitutional brand of municipality, dependent on the existing situation in that area (is it a big city, a desolate rural area or something in-between?)” (SALGA 1998b, 4). **‘Types’** in contrast, refers to the way of structuring a municipality: for example, will it have ward committees or not, will it have an executive mayor or not? The types of municipalities will be determined by the provincial government (SALGA 1998b, 4).

Section 7 of the Act defines the types of municipalities that may be established within each category of municipality. The following systems of the municipal government or combinations of those systems are applicable in the various categories, namely,

**“(a) Collective executive system which allows for the exercise of executive authority through an executive committee which the executive leadership of the municipality is collectively vested”.**

*Most municipalities operate the collective system currently. Each council within the Durban Metropolitan area currently has an executive committee.*

**“(b) Mayoral executive system which allows for exercise of executive authority through an executive mayor in whom the executive leadership of the municipality is vested and who is assisted by a mayoral committee”.**

*The mayoral executive system is a new system and introduced in legislation for the first time in South Africa. In this type of system the executive committee is replaced by the executive mayor. Proponents of this system believe that decision-making will be much quicker.*

**“(c) Plenary executive system which limits the exercise of executive authority to the municipal council itself”.**

*This is to cater for very small councils with no more than 10 councillors. It would be pointless in this instance to have a committee structure.*

**“(d) Sub-council participatory system which allows for delegated powers to be exercised by sub-councils established for parts of the municipality”**

The situation currently in South African metropolitan municipalities is that there are metropolitan local councils which are fairly autonomous in terms of possessing executive and administrative authority. They have their own powers and functions, revenue source, budgets, integrated development plans and so forth. In terms of the Local Government: Municipal Structures Act, there are two points to make: firstly, from the eight types of category A municipalities under Section 8 of the Act, only the types mentioned in Section 8 (b), (d), (f) and (h) qualify to establish metropolitan local councils and secondly, it is at the discretion of the metropolitan council whether or not it wishes to exercise its right to establish metropolitan sub-councils. The powers and functions of the sub-councils will be determined by the respective metropolitan councils and instituted by a by-law (Local Government: Municipal Structures Act 117 of 1998, Section 72-78).

**“(e) Ward participatory system that allows for matters of local concern to wards to be dealt with by committees established for wards”** (Local Government: Municipal Structures Act 117 of 1998, Section 7).

The above systems of the municipal governments create eight possible options for Metropolitan governments. The choice of these options will be made by the relevant Member of the Executive Committee in each province. These options are simplistically stated in the Act and because they require no further elaboration, they are quoted in full:

“8. There are the following eight types of category A municipality:

**“(a) a municipality with a collective executive system;**



- (b) a municipality with a collective executive system combined with a sub-council participatory system;**
- (c) a municipality with a collective executive system combined with a ward participatory system;**
- (d) a municipality with a collective executive system combined with both a sub-council and a ward participatory system;**
- (e) a municipality with a mayoral executive system;**
- (f) a municipality with a mayoral executive system combined with a sub-council participatory system;**
- (g) a municipality with a mayoral executive system combined with a ward participatory system; and**
- (h) a municipality with a mayoral executive system combined with both a sub-council and a ward participatory system”** (Local Government: Municipal Structures Act 117 of 1998, Section 8).

In terms of Section 155 (2) of the Constitution, it is clear that the Constitution “instructs the national legislator to define the types of municipalities that can be established” (SALGA 1998, 50). Sections 8, 9 and 10 of the Local Government: Municipal Structures Act, Act No. 117 of 1998 lists all the possible types of relevant Members of the Executive Committees responsible for local government in each province, to decide on the type of each municipality when the municipality is established, subsequent to it being demarcated by the Demarcation Board (SALGA 1998b, 5).

In a nutshell, the Constitution provides for three broad **categories**, as Section 155 (1) reveals. The Local Government: Municipal Structures Act 117 of 1998 provides the possible **types** (referring to structure) of the municipalities applicable to each category and the relevant member of the Executive Committee in each province will determine which **type** from among those listed in the Act he/she will choose when establishing a municipality.

### ***5.2.3 Establishment of municipalities***

When the demarcation of a municipality has been completed by the Demarcation Board, the Member of the Executive Committee must then establish the municipality in terms of Section 12 of the Local Government: Municipal Structures Act 117 of 1998. He/she would have to provide a notice in the Provincial Gazette to this effect and the issues to be covered in the notice are specified in Section 2 of the Act. These issues include, *inter alia*, the following: the category of municipality that is established (which has been decided upon by the Minister), and type, boundary, name and number of Councillors of the municipality (Local Government: Municipal Structures Act 117 of 1998, Section 12).

The Member of the Executive Committee has certain other duties to perform when establishing a municipality such as consulting with organised local government in the province concerned and dissolving the old municipality or municipalities that the new one replaces (SALGA 1998b, 8).

Section 16 of the Act (Local Government: Municipal Structures Act 117 of 1998) provides for amendments by the Member of the Executive Committee to a Section 12 notice. This is to enable the Member of the Executive Committee to allow for changing circumstances in a particular municipal area. The issues that could change include, *inter alia*, the following:

- changing the municipality from one type to another;
- changing the name of the municipality; and
- regulating the changing of boundaries.

Like in the case of a Section 12 notice when publishing an amendment to the Section 12 notice, the Member of the Executive Committee must undertake the necessary consultation with existing municipalities and organised local government in the province. Prior to finally publishing any such notice, the Member of the Executive Committee must publish particulars of any proposed notice to enable members of the public to comment (Local Government: Municipal Structures Act 117 of 1998). Whilst the Act makes provisions for consultation to take place between the Member of the Executive Committee and organised local government in the province, there are no provisions in the Act to deal with disputes should such arise. What happens if there is a dispute between the Member of the Executive Committee and organised local government or the existing municipality on a particular issue, while the Member of the Executive Committee enters into consultation with these bodies prior to establishing a municipality? A municipality could demand the Executive Committee system whereas the Member of the Executive Committee may provide for an Executive Mayor. It would appear from the Act that the final authority rests with the Member of the Executive Committee to determine the type of the municipality (Local Government: Municipal Structures Act 117 of 1998). However Section 151 (3) of the Constitution states that, “**A municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the constitution**” (Constitution of the Republic of South Africa, 1996).

#### ***5.2.4 Municipal councils***

*Section 18 of the Act requires that every municipality must have a municipal council* (Local Government: Municipal Structures Act 117 of 1998). Every municipal council is to meet at least quarterly. The Member of the Executive Committee must determine the number of councillors and publish same in the Provincial Gazette. There is also provision in the said Act empowering municipalities to designate councillors determined by the Member of the Executive Committee for local government as full-time. In this regard, the Member of the Executive Committee must comply with the policy framework which the Minister will determine after consulting with the Member of the Executive Committee for local government (Local Government: Municipal Structures Act 117 of 1998, Section 18).

The policy on composition, membership, operation and dissolution of municipalities appear in Part 1 of Chapter Three of the Act (Local Government: Municipal Structures Act 117 of 1998). It must be stated here that the national government has certainly, in all its activities, treated local governments as part of the government machinery rather than as some distant agency to be taken care of by provincial governments, which was the position during *apartheid*. Certain practices at other spheres of government have been embodied in local

government legislation to emulate their features. One of these practices is the *privileges and immunities* clause found in Section 28 of the Local Government: Municipal Structures Act 117 of 1998. This clause is a directive from Section 161 of the Constitution (Constitution of the Republic of South Africa, 1996).

### **5.2.5 Objectives of municipalities**

Section 19 (1) of the Act (Local Government: Municipal Structures Act 117 of 1998) refers to the clear objectives (quoted earlier) as provided for in Section 152 of the Constitution of the Republic of South Africa, 1996. Over and above those objectives mentioned in Section 152 of the Constitution of the Republic of South Africa, 1996, Section 19 (2) of Act further stipulates that municipal councils must annually review:

“19 (2) ...

- (a) **the needs of the community;**
- (b) **its priorities to meet those needs;**
- (c) **its process for involving the community;**
- (d) **its organisational and delivery mechanisms for meeting the needs of the community; and**
- (e) **its overall performance in achieving the objectives referred to in subsection (1)”** (Local Government: Municipal Structures Act 117 of 1998, section 19).

To recap, Section 152 of the Constitution of the Republic of South Africa is community focused, particularly Section 152(1) (e), in terms of involving communities in the matters of local government. In the above extract from Section 19 (2) of the Act, it is clear that municipal government has to be community-focused. In this section of the Act, ‘**community**’ is mentioned no less than three times. Still further in respect of the ‘**community**’, Section 19(3) of the Act requires municipal councils to “**consult the community and community organisations in performing its functions and exercising its powers**” (Local Government: Municipal Structures Act 117 of 1998, Section 19).

During the *apartheid* era, it was not obligatory upon municipalities to consult with their communities. If they did it was purely out of goodwill. Consulting with the communities has both advantages and disadvantages. Some of these are mentioned below.

### **5.2.5 (A) Advantages of consulting with the communities**

Apart from consultation with communities being a legal requirement, there are distinct advantages to consulting with communities on matters that affect them. Some of these are listed below.

- Provides a sense of belonging to communities. In other words, if communities are consulted there is a sense of ownership and pride;

- Communities assist with the prioritising of needs;
- Communities get what they need in terms of priorities; and
- By participating in decision-making, communities are more likely to pay for services because they understand the inner workings of municipalities better and the system of prioritising projects (David 1999, 91).

#### **5.2.5 (b) Disadvantages of consulting with the communities**

There are also some disadvantages to consulting with communities. Some of these are listed below.

- Delays in decision-making;
- Over-consulting (consultative paralysis), also leads to delays in decision-making;
- Identifying community leaders;
- People have hidden agendas;
- Roles are often confused – for example, the role between the elected community leader (councillors) and the non-elected community leader; and
- Financial impact of consulting must be considered: consulting not only takes time, it also costs a lot of money (David 1999, 91-92).

It must be stated, however, that the advantages of consulting far outweigh the disadvantages of consulting, particularly on major decisions. The difficulty for the eThekweni Municipality, however, is that it has a large diverse population with innumerable groupings and a massive area to cover.

#### **5.2.6 Internal structures and functionaries**

The way municipalities were structured, in terms of the Act, is very interesting. The categories and types of municipalities were discussed above (as dealt with under Chapter One of the Act). Chapter Four unpacks this further by describing the internal structures and functionaries of municipalities. There are three categories of municipalities and within each category there are several types of municipalities. Since the focus in this study is on metropolitan government only, the types available to category 'A' municipalities, as covered in Section 8 of the Act (quoted in full earlier), will be elucidated.

The two broad types of category 'A' municipalities will be the **executive committee type** and the **executive mayor type**. Both these broad types are covered in Parts 1 and 2, respectively, in Chapter Four of the Act. Each of these types of municipalities may operate as a type of municipality within category 'A' or with Metropolitan sub-councils or ward committees or both Metropolitan sub-councils and wards. Metropolitan sub-councils have been described under Part 3 of Chapter Four of the Act, while ward committee have been

addressed under Part 4 of Chapter Four of the Act (Local Government: Municipal Structures Act 117 of 1998).

The said Structures Act makes provision for many other internal structures and functionaries such as a Municipal Speaker (Local Government: Municipal Structures Act 117 of 1998). Given the context of this study and research paper, it is necessary to elaborate on metropolitan sub-councils and ward committees.

### **5.2.6 (a) Metropolitan Sub-councils**

Only certain types of metropolitan municipalities may establish metropolitan sub-councils. These have already been described earlier and can be found under Sections 8 (b), (d), (f) and (h) of the Act. In the current system of metropolitan government which is structured and operates primarily under the Local Government Transition Act, metropolitan municipalities have been established with sub-structure councils by the relevant Member of the Executive Committee in each province that has metropolitan municipalities.

Under this new Act, that is, the Local Government: Municipal Structures Act 117 of 1998, only those municipalities established under Sections 8 (b), (d), (f) and (h) of the said Act may choose to establish metropolitan sub councils. In other words, the option to have sub-councils will be provided to the metropolitan municipalities and it is up to the said municipality whether or not it chooses to exercise this option (Local Government: Municipal Structures Act 117 of 1998, Section 8).

If a metropolitan municipality decides to establish metropolitan sub-councils, it must do so by passing a by-law. The procedure to do this is outlined in Section 62 of the Act, which also makes provision for a process of public consultation prior to passing the by-law. The opening provision in Section 62 (2) is rather peculiarly worded and, therefore must be quoted directly from the Act:

**“62. (1) If a metropolitan municipality decides to establish metropolitan sub councils, it must do so by passing, after a process of public consultation, a by-law ...”** (Local Government: Municipal Structures Act 117 of 1998, Section 62).

Public consultation is required for all major decisions. It seems strange that the legislation is drafted in this fashion because it must be interpreted to mean that should a metropolitan council decide **not** to establish metropolitan sub-councils, then it need not consult with the public. It must only consult should it indeed decide to establish such sub-councils. It would be wise for a council to consult on this issue of establishing sub-councils prior to taking any decisions on this matter (Local Government: Municipal Structures Act 117 of 1998, Section 62).

Section 62 (2) continues as follows:

**“... (a) determines the number of sub-councils to be established;**

**(b) determines for each sub-council an area within the municipality consisting of a cluster of adjoining wards;**

**(c) establishes in each area a sub-council under a distinct name;**

**(d) provides an equitable financial framework in terms of which the sub-councils must function; and**

**(e) regulates any other relevant matters”** (Local Government: Municipal Structures Act 117 of 1998, Section 62).

It could be gleaned from the above quotation that all aspects pertaining to the substructures fall squarely on the shoulders of their metropolitan councils.

The interesting difference between the transitional structures and what is embodied in the Local Government: Municipal Structures Act 117 of 1998, is that, in the transitional structures, the relevant Members of the Executive Committee merely established the existing structures whereas future municipal structures will have local input as well as the final decision on whether or not the decision to establish metropolitan sub-councils is vested with each Metropolitan Council (Local Government: Municipal Structures Act 117 of 1998, Section 62).

#### **5.2.6 (b) Ward committees**

Ward committees are a new type of structure introduced in the Act to encourage participation by local communities in the affairs of municipal government. This falls under Part 4 of Chapter Four of the Act. Only certain types of municipalities are permitted to establish ward committees as stipulated in section 72 (1) of the Act (Local Government: Municipal Structures Act 117 of 1998, Section 72).

In terms of Section 8 of the Act, it is possible that a metropolitan council could be structured in one of the following ways:

- a single municipality with its own committee structures (the conventional way);
- a municipality with metropolitan sub-councils;
- a municipality with ward committees; or
- a municipality with both metropolitan sub-councils and committees.

The procedure to establish such ward committees is provided for under Section 73 of the Act. The ward councillors must be the chairperson of the ward committee. The ward committee must have not more than 10 persons serving on it. The metropolitan council must make rules under which ward committees may be elected and administered (Local Government: Municipal Structures Act 117 of 1998, Section 73). The main purpose of these committees would be to act in an advisory capacity on matters affecting its ward (SALGA 1988, 14). In terms of Section 74 of the Act, these committees will have functions and powers to the extent that the metropolitan council may see fit to delegate to such committees (Local Government: Municipal Structures Act 117 of 1998, Section 74).

### **5.3 Local Government: Municipal Systems Act 32 of 2000**

Whereas the Local Government: Municipal Structures Act 117 of 1998 provides essentially for the structuring of municipalities, the Local Government: Municipal Systems Act 32 of 2000, which complements the Act, caters for the creation of systems to enable the vision of **‘developmental local government’** to be achieved. With this and other related legislation, the legislature attempted to achieve, through local government, the following objectives for all the citizens of the country:

- Provision for basic development rights;
- The governance and developmental objectives of local government;
- The principles of a people-orientated public administration;
- The core principles, mechanisms and processes that are to enable municipalities to move progressively towards the social and economic upliftment of communities; and
- Ensure universal access to quality services which are affordable to all (Local Government: Municipal Systems Act 32 of 2000).

With this Act, the Municipal Demarcation Act 27 of 1998 and the Local Government: Municipal Structures Act 117 of 1998, the legislature sought to take municipal government in South Africa into the new era of democracy. The legislation itself is world class and comparable to any other democracy across the globe. Whether or not South Africa was ready for such advanced legislation so new into democracy, is quite the challenge that will come to the fore in subsequent chapters of this research project.

Traditionally there have been two key role players within the local context, namely, the political component, or the elected Council and its administration, the appointed officials. This Act expands the definition of a municipality to “include residents and communities within the municipal area, who are to work in partnership with the municipality’s political and administrative structures. The core processes of municipal government, which include *inter alia*, planning, performance management, resource mobilisation and organisational change have been provided by a simple enabling framework in the Act” (Local Government: Municipal Systems Act 32 of 2000).

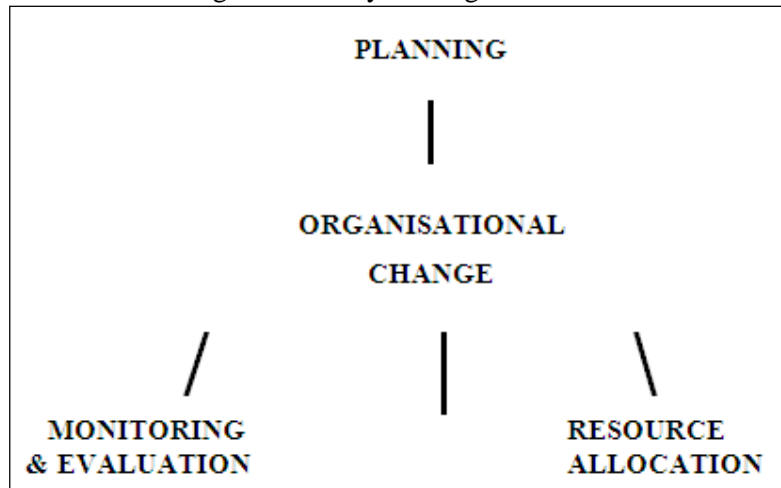
These core processes underpin developmental local government. Under the *apartheid* system, local government adopted a heavy top-down approach which was highly regulated. This Act attempts to undo this by increasing the resident’s knowledge of municipal plans and targets, enabling residents to evaluate and compare performance thereby driving a bottom-up process (Local Government: Municipal Systems Act 32 of 2000). The Local Government: Municipal Systems Act 32 of 2000 has been promulgated in the year 2000 and some of the pertinent chapters have been expanded on here.

The intention of the legislature in promulgating the Local Government: Municipal Systems Act was to implement the White Paper’s vision of developmental Local Government. It hence adopted the following principles:

- Regulates core municipal systems such as developmental planning, public participation and partnerships;
- Empowers people, that is, the general public; and
- Adopts a bottom-up approach.

Figure 1 below depicts the policy making framework.

Figure 1: Policy making framework



(Oliver, Kwanaloga, Annual General Meeting, 1999)

The key chapters of the Local Government: Municipal Systems Act is described below.

### ***5.3.1 Legal nature and rights and duties of municipalities***

Section 4 in this chapter confers the right upon municipalities to govern on their own initiative the affairs of their local communities and to exercise their executive and legislative powers without unreasonable interference (Local Government: Municipal Systems Act 32 of 2000, Section 4). This is strikingly different from how municipalities operated under *apartheid*. This means that municipalities are no longer a ‘step-child’ of government as was the case under *apartheid*, but very much a part of the government machinery of the country. In this chapter the rights and duties of local communities are also clarified.

### ***5.3.2 Community participation***

The Local Government: Municipal Systems Act 32 of 2000 paves the way for a new concept of municipality which is people-driven. This concept is evident throughout the Act. Section 5 in Chapter Two spells out the rights and duties of residents and communities. Chapter Four of the said Act is dedicated to public participation. Here the shift is from representative government to participatory governance. The Act goes so far as to require municipalities to cater for the special needs of people who cannot read or write, people with disabilities and other disadvantaged groups, as in Section 17(3) of the Local Government: Municipal Systems Act 32 of 2000. The principle of ‘*Batho Pele*’ or ‘people first’ is strongly carried out through



Chapter Four of this Act. There is a fundamental shift from the *apartheid*-based municipalities of that era.

It is important, however, that the size of the municipality is not a deterrent to proper community participation. De Visser (2005, 274) notes that “the need for critical size must be balanced against the requirement of citizen participation”. Undoubtedly, a large municipality with a centralised administration will face serious challenges in terms of citizen participation (De Visser 2005, 274). The situation in Durban is further exacerbated with some of its other shortcomings such as large population with thousands of communities, characterised by poverty and illiteracy.

### **5.3.3 Integrated development planning**

This section discusses Integrated Development Planning (Local Government: Municipal Systems Act 32 of 2000, Chapter Five), covering the following issues in the Act:

- Five planning cycles linked to the term of office of councillors; and
- Core planning processes, which involve the following steps:
  - determine priorities;
  - integrated strategies;
  - projects and programmes;
  - resource allocation;
  - delivery mechanisms; and
  - monetary and review.

The said Act spells out a one-year, a five-year and a twenty-five-year planning framework which must be linked to the financial plans of the municipality. Table 1 below illustrates this process.

Table 1: Development planning

<b>25 Years</b>	<b>Vision</b>	
<b>5 Years</b>	<b>IDP</b>	<b>Fin. Plan</b>
<b>1 Year Plan</b>	<b>Annual Plans</b>	<b>Annual Budget</b>

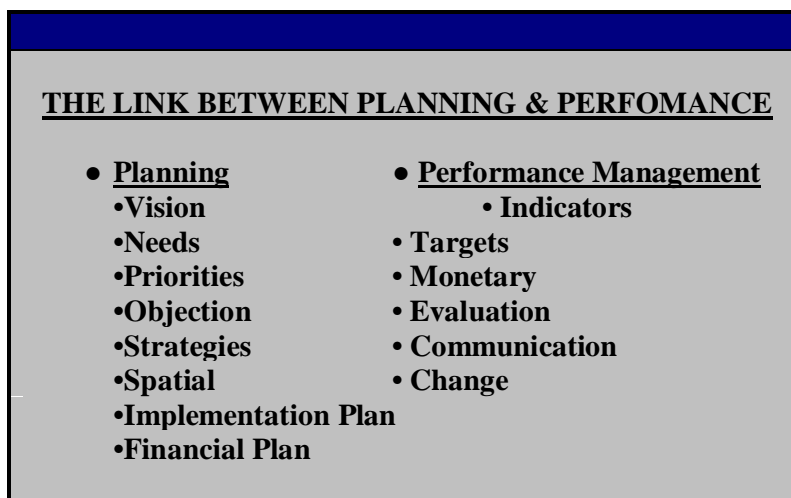
Olver, Kwanaloga, Annual General Meeting, 1999

Under *apartheid*, municipalities did minimal planning mainly on an *ad hoc* basis and each department planned in isolation from other departments. A further problem during the *apartheid* era was that municipalities were fairly small but whatever planning they did, was done in isolation from neighbouring municipalities (David 1999, 39). Therefore ‘integrated development planning’ is a new concept in South African local government and administration. The integrated development plan of a municipality is the key instrument that drives every activity in a municipality (Subban 2008, 33).

#### **5.3.4 Performance management**

Chapter Six of the Local Government: Municipal Systems Act 32 of 2000 deals with Performance Management. This aspect in municipal administration was unfortunately lacking during *apartheid* rule. It would be pointless to have an integrated development plan embodying a series of plans without a plan that measures and monitors performance against predetermined performance indicators or targets. Planning and performance must be linked but must be realistic.

Figure 2: A planning and performance management framework



Olver, Kwanaloga, Annual General Meeting, 1999

The point being made in Figure 2 above is that performance management should not be an afterthought but a consideration during the planning process so that performance management is built into the plan.

#### **5.3.5 Local public administration and human resources**

Chapter Seven covers Local Public Administration and Human Resources (Local Government: Municipal Systems Act 32 of 2000), with the following aspects:

- culture of Public Service
- flexibility and responsibility
- efficient delegation
- performance contracts

- staff codes
- capacity building

There are two further Acts of Parliament that emanated from the White Paper on Local Government. These are the Local Government: Property Rates Act 6 of 2004 and the Municipal Finance Management Act 56 of 2003.

#### **5.4 Municipal Finance Management Act 56 of 2003**

The preamble to this Act is fairly short and to the point:

“To secure sound and sustainable management of the financial affairs of municipalities and other institutions in the local sphere of government; to establish treasury norms and standards for the local sphere of government; and to provide for matters connected therewith” (Municipal Finance Management Act 56 of 2003).

Certain chapters, relevant to this study, are briefly described here.

Chapter Four covers municipal budgets and prescribes rigid parameters on the process and drafting of the budget. Section 21 of the Act deals with the budget process requiring the Mayor of a municipality to provide a time schedule at least 10 months prior to the commencement of a financial year for “the preparation, tabling and approval of the annual budget; the annual review of the integrated development plan in terms of Section 34 of the Local Government: Municipal Systems Act” (Section 21 (b): Municipal Finance Management Act 56 of 2003).

Chapter Seven provides for the responsibilities of mayors. Under *apartheid*, mayors had no such responsibilities and were by and large ceremonial figures. The Mayor in terms of section 52 of the Act must provide political direction on the fiscal and financial affairs of the municipality and must report quarterly to his/her council on the financial standing of the municipality (Section 52: Municipal Finance Management Act 56 of 2003). Unlike the *apartheid* era, Mayors now perform their roles on a full-time basis. They are regarded as working mayors rather than just figureheads performing ceremonial duties.

Chapter Eleven provides for the procurement of goods and services, referred to as ‘supply chain management’. There are onerous provisions as to how municipalities are to go about procuring goods and services. In essence, the process must be fair, equitable, transparent, competitive and cost effective (Section 111: Municipal Finance Management Act 56 of 2003).

In terms of Section 111 of the Act, each municipality must have a supply chain management policy to give effect to Part 1 of Chapter Eleven and the framework for such a policy is provided for in Section 112 of the Act (Section 112: Municipal Finance Management Act 56 of 2003).

While the Act itself subscribes to the highest standards of sound public administration within a democratic environment, its practical implementation can only be measured against municipalities’ resources and preparedness to implement same.

### **5.5 Local Government: Municipal Property Rates Act 6 of 2004**

In the present system of municipal government as well as the system under the *apartheid*, government municipalities relied on property rates for the bulk of their income. This Act is therefore important for municipalities. The main features of this Act are the following:

- property rates on a property will be calculated on the market value of a property;
- rating the individual units within a sectional title complex;
- the Act has more flexibility in granting relief to the poor, medically boarded persons and pensioners; and
- more flexibility in rating different categories of property.

Currently, property rates are still the main source of a municipality's income.

### **5.6 Other legislation that impacts on municipalities**

There have been various other legislations passed by the government that had and still have an effect on the transformation and operations of local government in a very fundamental way. The most overwhelming have been some of the new labour legislations introduced in the country.

#### **5.6.1 Labour legislation**

Municipalities are also employers and are subject to all the labour legislations in the country. Three pieces of such legislation are the Labour Relations Act 66 of 1995, the Basic Conditions of Employment Act 75 of 1997 and the Employment Equity Act 55 of 1998. The point here is that municipalities in South Africa operate in a highly regulated environment.

## **6. METROPOLISATION AND THE MOVE FROM APARTHEID TO DEMOCRACY**

The new democratic order in South Africa set out to undo the fragmented system of municipal government that existed under *apartheid* by introducing metropolitan institutions. These larger municipal bodies covered wider areas than did the *apartheid* cities of the past. This in a sense removed fragmentation as municipalities became inclusive and representative bodies.

### **6.1 Metropolitan governments of South Africa: Refining the system**

South African **metropolitan municipalities** emerged as democratic transformation of government at the municipal sphere began. For the first time in South Africa, **metropolitan municipalities** were introduced. The previous sections of this thesis demonstrated just how poorly municipal governments were structured under the previous regime's policy of separate development. There is a danger, however, in trying to fix all *apartheid's* ills simultaneously. The danger is that if the structures are changed too radically they may not have the infrastructure and sophistication to be efficient, effective and economical. This section takes a

closer look at these relatively new types of authorities in South Africa called ‘*metropolitan governments*’.

## **6.2 Definition of a metropolitan area**

An acceptable definition of ‘metropolitan area’ has been provided in the White Paper on Local Government. This definition is as follows:

**“...large urban settlements with high population densities, complex and diversified economies and a high degree of *functional integration* across the larger geographic area than the normal jurisdiction of a municipality<sup>8</sup>.**

**Economic and social activities transcend municipal boundaries, and metropolitan residents may live in one locality, work in another, and utilise recreational facilities across the Metropolitan area”** (Ministry of Provincial Affairs and Constitutional Development 1998, 58).

At the commencement of the transformation of municipalities in 1996, the government in South Africa determined six metropolitan areas, namely, Johannesburg, Tshwane, Cape Town, Durban, Lekoa Vaal and Khayalami (David 1999, 69). Three further metropolitan areas have since been identified and confirmed by the Municipal Demarcation Board on 28 July 2008. These areas are Msunduzi (formerly Pietermaritzburg) in the Province of KwaZulu-Natal, Mangaung (formerly Bloemfontein) in the Free State Province and Buffalo City (formerly East London) in the Eastern Cape (Mlokoti 2008, undated). According to Mlokoti, the boundaries of these cities will remain unaltered for the present time but will be reviewed after the next local government elections scheduled for some time in the year 2011.

An all-embracing reason for wanting metropolitan governments, according to Sutcliffe, is that “metropolitan areas require special consideration, given the density of population<sup>9</sup>, the existence of multiple, overlapping externalities and the need to coordinate services over larger areas, while simultaneously ensuring proximity between voters and councillors” (Sutcliffe 1998, 6).

The White Paper cites three further reasons for the establishment of metropolitan authorities:

- To establish a basis for equitable and socially just metropolitan governance;
- To promote strategic land use planning, and coordinated public investment in physical and social infrastructure; and
- To develop a city wide framework for economic and social development so as to promote the economic competitiveness and well-being of the city (Ministry of Provincial Affairs and Constitutional Development 1998, 59-60).

This is a vast difference from the previous municipal structures during *apartheid* rule. For instance, around the borders of the old City of Durban were numerous relatively small and

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<sup>8</sup> See Section 6.3, especially the first bullet.

<sup>9</sup> Tables 4 and 13 in Chapter Three provide evidence that some South African cities as currently demarcated do not have the population densities typical to those of other metropolitan cities.

medium-sized local authorities such as the Borough of Umhlanga, Borough of Verulam, Mt. Edgecombe Town Board, the Canelands Health Committee and the Borough of Westville (Panday 2009, interview, 20<sup>th</sup> July 2009). Each of these authorities was autonomous and did planning, for instance, independently of the neighbouring municipalities with whom they shared common boundaries. Each authority therefore went in its own determined direction. Many could barely survive financially: for example, the former Borough of Verulam was financially ruined (Govender, 2009, interview, 5<sup>th</sup> August 2009). Many could not also provide all the services and depended on larger authorities such as the former City of Durban to assist with service provisions such as the supply and reticulation of electricity (Panday 2009, interview, 20<sup>th</sup> July 2009).

Durban Electricity did provide extended services well beyond the old City of Durban boundaries. Some of the smaller local authorities around Durban entered into agency agreements with the erstwhile City of Durban for the provision of electricity to their areas because it was not financially viable for these authorities to provide this service (Panday 2009, interview, 20<sup>th</sup> July 2009). In a sense this service was already 'metropolitanised'. The problem was that only the old City of Durban benefited from the surplus that it earned from the sale of electricity in neighbouring municipalities.

In the main, White-controlled cities and towns blossomed, whilst contiguous to these prosperous areas were unviable Black local authorities and settlement areas (Panday 2009, interview, 20<sup>th</sup> July 2009). This certainly amplified the need for the incorporation of these areas into the City of Durban which then in its own right qualified to have a metropolitan government. The extension of the boundaries to the current extent has thus far weakened the municipality's ability to be efficient, effective and economical.

### **6.3 Metropolitan government institutions**

With regard to the type of institutional arrangements for municipalities, the White Paper goes to the heart of the issue by this powerful statement:

**“The choice of institutional arrangements for the municipalities which will govern South Africa’s metropolitan areas is a key policy issue which not only impacts on the lives of millions of metropolitan residents, but is central to the economic well-being of the nation as a whole”** (Ministry of Provincial Affairs and Constitutional Development 1998, 61).

In establishing municipal institutions, the difficulty lies in determining how large a municipality ought to be to achieve maximum economies of scale and is, at the same time, manageable in terms of its size, so that it will be efficient. Unfortunately, there is no ready-made formula to determine the 'ideal size' that will achieve both the economies of scale required and the level of efficiency required. An appropriate size may differ from one metropolitan region to another and even from one country to another, depending on the state of development and economic viability of the region concerned. Both these aspects are vital to the success of a metropolitan authority. After all, the economic well-being of the country is reliant upon the success of its metropolitan areas. In the next chapter, a closer look at metropolitan structures is undertaken, considering whether the proposed structures that are currently under debate in the process are likely to achieve the proposed aims of our democratically elected government (Ministry of Provincial Affairs and Constitutional Development 1998, 61).

#### **6.4 Systems of metropolitan government**

The South African government looked at two types of metropolitan systems, namely, metropolitan government with ward committees and metropolitan government with metropolitan local councils.

##### *a) Metropolitan governments with ward committees*

With this type of metropolitan arrangement there would be a metropolitan council which is empowered with full legislative, executive and administrative municipal powers and functions (David 1999, 71).

There would also be a Ward Committee for each ward in the metropolitan area on which will serve the ward councillor and representatives from civil society organisations. These ward committees will be committees of the metropolitan council and may receive powers and functions delegated to it from the metropolitan council. It may also advise the metropolitan council on certain matters and may be consulted on specific issues (Ministry of Provincial Affairs and Constitutional Development 1998, 65). The intention behind this type of metropolitan council is to take government to the people and also to get people to play a part in the affairs of their local government. The ward councillor must be chairperson of the committee and not more than 10 other persons who are residents in the ward must serve on the committee [Local Government: Municipal Structures Act 117 of 1998: Section 73 (2)].

The purpose of ward committees in terms of the Local Government: Municipal Structures Act 117 of 1998 is to enhance participatory democracy in the local sphere of government [Local Government: Municipal Structures Act 117 of 1998: Section 72 (3)]. In terms of Section 73 (1), should a metropolitan council or local council elect to have ward committees, it must have such committees for each ward. The metro or local council may make administrative arrangements to assist ward committees to be effective [Local Government: Municipal Structures Act 117 of 1998: section 73 (4)].

An interesting feature of the ward committees is that its members are not eligible for remuneration, while councillors enjoy such a benefit (Local Government: Municipal Structures Act 117 of 1998: Section 77).

##### *b) Metropolitan Government with metropolitan local councils*

These councils are provided for under Part 3 of the Local Government: Municipal Structures Act 117 of 1998. In this type of metropolitan government, full legislative, executive and administrative municipal powers and functions are given to the metropolitan council. The metropolitan council is granted discretionary powers to establish metropolitan local councils. If a metropolitan council exercises this prerogative, it would have to do so by passing by-laws (Local Government: Municipal Structures Act 117 of 1998: Section 57).

This is a vast change from the existing arrangement of metropolitan government. In terms of the Local Government Transition Act 209 of 1993, the Member of the Executive Committee for Local Government in each province had the power to determine metropolitan areas, metropolitan local areas within metropolitan areas as well as the powers and functions of metropolitan councils and metropolitan local councils. In terms of the Local Government: Municipal Structures Act, the Member of the Executive Committee's role in the structure of

metropolitan government has been diminished. All powers are given directly to metropolitan councils (Local Government: Municipal Structures Act 117 of 1998: Section 57).

The *rationale* for this move by the Department of Provincial Affairs and Constitutional Development is to be found on page 58 of the White Paper on Local Government. This section reads as follows:

“Some of the factors which have guided the choice of municipal institutions proposed in this White Paper are:

- The legacy of (colonial and apartheid) separation, which has created distortions in our settlement patterns.
- The uneven distribution of municipal capacity, particularly between urban and rural municipalities. Previous legislation created disincentives for skilled staff to work in rural and small town areas. Furthermore, under apartheid there was little commitment to building sustainable municipal capacity in large parts of the country.
- The need for rapid intervention in the management of urban and rural systems, to tackle entrenched patterns of inequity, increased economic competitiveness and viability, and harness concentrated capacity and investment.
- Sharp social divisions within local communities, and the need to enable diverse community groups to have adequate voice and representation within municipal system without perpetuating existing divisions.
- The new vision for local government, and the need for empowered and capacitated municipalities to play a transformational and developmental role in building viable human settlements which meet the needs and aspirations of local communities.
- **These factors lead to: -**
  - The need for capacitated municipal institutions at an appropriate level to address spatial distortions in settlement patterns.
  - A focus on district governments as centres of municipal capacity to manage integrated development planning and to ensure rapid delivery where local municipal capacity does not exist.
  - A focus on metropolitan governments to promote social inclusion and the spatial, economic and political integration of metropolitan areas” (Ministry of Provincial Affairs and Constitutional Development 1998:58).

A fair question to ask is whether the previous two tier municipal structures were inadequate to overcome the Ministry’s concerns. There are several points to consider here. Firstly, municipalities have changed dramatically, especially in the metropolitan areas, from what they were under the *apartheid* government. Secondly, much has already been done during the transitional phase to address some of the concerns raised above. Perhaps another question to



ask is whether the proposed structure of metropolitan councils as envisaged in the Local Government: Municipal Structures Act 117 of 1998 will address the concerns raised above. This question must be subjected to further research.

Also interesting is the vast amount of autonomy given to metropolitan councils in the Local Government: Municipal Structures Act 117 of 1998. The complete internal structuring of municipalities, which would be vast powers, will be given to metropolitan councils. In summary the following powers have been granted, *inter alia*, to metropolitan councils:

- Should a metropolitan council be eligible to establish metropolitan local councils it may do so entirely at its discretion (Local Government: Municipal Structures Act 117 of 1998, Section 58)?
- Metropolitan Councils may assign duties and powers at will to metropolitan local councils (Local Government: Municipal Structures Act 117 of 1998, Section 60);
- Metropolitan councils may establish ward committees if they so desire (Local Government: Municipal Structures Act 117 of 1998, Section 69);
- The term of office of ward committees will be determined by the metropolitan council (Local Government: Municipal Structures Act 117 of 1998, Section 71);
- The procedure of filling of vacancies in ward committees will be determined by metropolitan councils (Local Government: Municipal Structures Act 117 of 1998, Section 72); and
- The dissolution of local councils or ward committees will be at the determination of metropolitan councils (Local Government: Municipal Structures Act 117 of 1998, Section 74).

Metropolitan councils thus have the powers to structure themselves as they please.

## **7. CONCLUSION**

There were several problems during *apartheid* with the systems of municipal governments in the various provinces of South Africa. Municipalities were established and operated along racial lines, which resulted in a few rich white municipalities and many poor black municipalities and settlements areas. Furthermore, there were large settlements occupied mainly by Blacks without any formal municipal structure. Many of these settlement areas were on the fringes of well-developed White municipalities. This was the product of the previous government's ideology of separate development for the different race groups under *apartheid*, which carried with it innumerable problems for the Black majority such as poor education, being distantly located from economic activities, inadequate infrastructure and so forth. Municipalities therefore did not supply essential services such as water, electricity, health care and housing to all South Africans.

The new democratic order in the country faced daunting challenges in correcting such large scale imbalances in municipal service delivery among its people. Negotiations, compromises and legislation become the order of the day as key stakeholders hammered out the

restructuring and transformation of municipalities in South Africa. The key legislation that gave impetus to the transformation process was the Local Government Transition Act 209 of 1993. This Act provided for a three-phased process to transform municipalities from *apartheid* to democracy. These phases, namely, the 'pre-interim phase', the 'interim phase' and the so called 'final phase' of transformation, have been discussed in this paper. Transitional councils were elected during the pre-interim and interim phases of transformation. In December 2000, municipal government in South Africa entered the 'final phase' of transformation as provided for in the Local Government Transition Act.

This paper and narrative firstly, provided a brief history of municipal governments during *apartheid* rule in South Africa. It then outlined the legal measures adopted to transform the country's municipalities from *apartheid* to democracy. The third aspect covered in this paper is the **metropolisation** of South Africa's major urban areas.

It is evident that the legislature of the new democratic order in South Africa paved the way for significant transformation of municipalities with some of the best legislation in the world, displaying democratic values. The paper therefore, documents an important part of the history of democratic transformation of local government transformation in the Republic of South Africa, with reference to, metropolitan government from the history of apartheid to South African democracy, post 1994.

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