



CHAPTER ONE

BACKGROUND ON HISTORICAL PROCESS OF LOCAL GOVERNMENT IN SOUTH AFRICA

1.1 Introduction

Chapter One is centred on the introductory orientation on the perspective of leadership and governance in local government administration in the Limpopo Province of South Africa. In this chapter, local government issues during apartheid are highlighted in order to familiarise readers of this thesis with the status of local government administration during the period of apartheid. This will enable readers to compare the status of local government administration during the period of apartheid with the period after apartheid. Chapter One also focuses on the present challenges for developmental local government administration in South Africa. The current situation regarding local government administration in South Africa also needs attention in order to explore and evaluate its mode of operation.

It is necessary and also important for political and administrative leadership in local government administration to outline how laws are made. This should minimize confusion and ambiguity with regard to the roles, functions and powers of various institutions of governance and of government officials. The intermingling of roles in local government has a negative impact on service delivery to communities by local government administration. Chapter One guides both councillors and officials to carry out their responsibilities and obligations effectively and efficiently to enable government to deliver its goods and services to communities. Chapter One also provides information for both councillors and officials on how local government should work harmoniously and peacefully with other spheres of government as well as with the private sector.

1.1.1 Local government during apartheid

According to Cloete (1993:13), when the Union of South Africa was established on 31 May 1910, municipal affairs were made the responsibility of the provincial authorities. For many



years, the central government showed little interest in municipal affairs and contributed nothing to the development of local government and administration systems in order to ensure that they become appropriate for South African urban areas. The legislation passed by Parliament on local government affairs before 1983 dealt mostly with (i) specific matters affecting individual municipalities or local communities, for example the Durban Borough (Extension of Area) Act, 1927 (Act 12 of 1927), and the Church Square, Pretoria, Development Act, 1972 (Act 53 of 1972); (ii) the administration of Black Urban areas, such as the Black Administration (Urban Areas) Consolidation Act, 1945 (Act 25 of 1945), and the Community Councils Act, 1977 (Act 125 of 1977); and (iii) financial affairs, e.g. the state Property (Immunity from Rating) Act, 1931 (Act 32 of 1931), and the Local Loans Act, 1926 (Act 19 of 1926).

The White Paper on Local Government, 1998 (1998:1) states that apartheid has left its imprint on South African human settlements and municipal institutions. Apartheid legislation was not the beginning of geographic, institutional and social separation at the local level. Segregation was already a policy by the time apartheid was introduced in 1948. However, the Group Areas Act, 1966 (Act 36 of 1966), the key piece of apartheid legislation, instituted strict residential segregation and the compulsory removal of black people to their own, separate group areas. Through spatial separation, influx control, and a policy of own management for own areas, apartheid aimed to limit the extent to which affluent white municipalities would bear the financial burden of servicing disadvantaged black areas. The Group Areas Act restricted the permanent presence of black Africans in urban areas through the pass system, and reserved a viable municipal revenue base for white areas by separating townships and industrial and commercial development. This meant that those who lived in Venda, were expected to remain in Venda but they were found in urban areas as immigrant labourers.

The White Paper on Local Government, 1998 (1998:1) goes on to state that various attempts were made under apartheid to introduce own management structures for black residents at the local level. This was in part to compensate for restricted rights, and in part to bolster the political and economic privileges of racial exclusion. The following serve as examples of the strategy:



- (a) In Bantustans, limited local government was established. Traditional leaders were given powers over land allocation and development matters in areas with communally owned land. Some small rural townships (the so-called 'R293 towns') were given their own administrations, but these lacked real powers.
- (b) In the 1960s, Coloured and Indian management communities were established as advisory bodies to white municipalities.
- (c) The Bantu Affairs Administration Act of 1971 established the appointment of Administration Boards, which removed responsibility for townships from white municipalities.
- (d) In 1977, Community Councils were introduced. The Councils were elected bodies, but had no meaningful powers and few resources. They, therefore, never gained political credibility in terms of voicing the opinions of the people.
- (e) In 1982, Black Local Authorities (BLAs) replaced Community Councils. These authorities had no significant revenue base, and were seen by the majority as politically illegitimate from the start. They were rejected by popular (and sometimes violent) community mobilisation in the mid 1980s (White Paper on Local Government, 1998:2).

Oluwu (1999:4) states that for many countries of the world, and definitely for African countries, local government has been an extension of the central state to the community. Local government derives its legal existence from the state and, in some cases, even all of its resources, human and financial, and it does not possess any discretionary authority independently from the state. For most independent African countries, local government as an institution for the promotion of popular democracy and economic development has been a qualified success at best. Even as an institution for the provision of community services under the control of the central government, it has largely been a failure.

According to Burke (1964:13), local government has an equally important part to play in the sphere of political development. An efficient and democratic system of local government is in fact essential to the healthy political development of the African territories. It is the foundation on which their political progress must be built. Local government in a traditional and historical sense was not a nation state invention to facilitate administration and consensus management.



The existence and, more important, the persistence of indigenous and often ancient forms of locality governance in a surprisingly large number of developed, as well as developing, states would seem to testify both to the persistence of certain problems arising from the interrelationship of members of a territorial community, regardless of the nature of the more inclusive political unit of which they are a constituent part, the intensity and longevity of the values that men associate with the institutional management of local problems and from the persistence of local political systems predating the state.

The International Republican Institute (1995:26), asserts that under the apartheid system, South Africans were classified by law as Whites, Blacks, Coloured or Asian. Local government was therefore also defined in racial terms. As already noted, the local government system since 1982 had given white and black people local authorities of their own, while Coloureds and Asians had advisory bodies attached to white local authorities. Before the 1980s, black South Africans had no proper participatory decision-making structures outside the homelands. According to the ideology of apartheid, black people were supposed to express themselves politically within the states (homelands) to which they belonged. Urban areas in white South Africa were regarded as places for white-led economic activity and residence. Black people were seen to be in these areas only on a temporary basis. Important changes took place in the 1980s. First, black local authorities (BLAs) had been introduced in 1982, as already stated, as a form of local government in the black townships (Cloete, 1993:26). Furthermore, the scrapping of influx control in 1986 meant that the government finally recognized the permanence of black people in urban areas outside the homelands. However black local authorities were never really accepted by the people whose needs they were supposed to serve for a number of reasons:

- (a) Black Local Authorities faced political opposition, because they were seen as an attempt to avoid granting black people national political rights.
- (b) Black Local Authorities were seen as collaborating with the apartheid government.
- (c) Black Local Authorities had financial and administrative shortcomings that prevented them from meeting the needs of people in their various areas.



The International Republican Institute (1995:27) states that community opposition to Black Local Authorities was expressed mainly in three ways: low levels of participation in elections, rent and service charge boycotts, and open political protests that often saw the townships erupting into violent battle zones. By the early 1990s, this opposition had reached a peak and was now aimed at the whole racially-based local government system as an expression of the wider apartheid system. As with the Black Local Authorities, the Coloured and Indian Local Authorities had never attained much legitimacy and had also become the focus of much of the resistance against apartheid. As a result of the lack of legitimacy of racially based local government and the resistance of communities, the state found it increasingly difficult to govern black areas.

November and Wessels (2001:145) state that the indigenous African system of governance was given a heavy blow when in 1910 white settlers formed the Union of South Africa. Following this, African kings and other Africans leaders saw the need also to unite and fight for their recognition collectively. Accordingly, several hundreds of South Africa's most prominent African citizens: professional men, chieftains, ministers, teachers, clerks, interpreters, landholders, business men, journalists, estate agents, building contractors and labour agents converged in Bloemfontein on 8 January 1912 to unanimously form the South African Native National Congress.

With the introduction of the Black Administration Act, 1927 (Act 38 of 1927) the African system of governance and administration was changed and the white government took control of the black African population. According to November and Wessels (2001:146), this denoted the invention, promotion and exploitation of tribal differences and traditions. Furthermore, new structures were established in their place in terms of the Black Authorities Act, 1951 (Act 68 of 1951). These were termed tribal authorities, community authorities, and regional authorities. In terms of the new development, the Governor-General was established as a supreme chief, a position that gave him the power to create and divide indigenous communities and to appoint any person he chose as the so-called chief or headman. The Governor-General also had the power to depose these so-called chiefs and headman. From 1961 the position of the Governor-



General was assumed by the President of the Republic of South African. In terms of the 1993 and 1996 constitutions, these powers were assigned to the premiers of the various provinces.

One may conclude that local government during the apartheid era was not well established because of apartheid policies. The establishment of local government was done purely on the racial basis because we had White, Coloured, Indian and Black local authorities. In consequence, black people organized themselves to fight against this racially-based municipal system particularly as resources were unequally distributed. The unity amongst black progressive structures heralded the dawn of the 1994 era.

1.1.2. Local government in post-apartheid South Africa

According to International Republican Institute (1995:33), by the end of 1993, the Local Government Negotiating Forum had produced the Local Government Transition Act. Together with Chapter 10 of the Interim Constitution of South Africa, as well as the Agreement on Finances, Services and Service Rendering signed by Mr Mandela and Mr De Klerk in February 1994, this Act provides the overall framework for an elaborate local government transformation process.

Planact (2001:3) states that local government, like any other sphere of government, is governed by the principles and rules laid down in the Constitution. In addition, the Constitution, 1996 (Act 108 of 1996) describes the framework which other spheres of government must adhere to in dealing and interacting with local government. It is Parliament's prerogative to pass laws that deal with the detail of what local government should look like. While the provincial governments have a responsibility for passing regulations for local government, such regulations must not contradict the principles laid down in the Constitution. One of these is that the interactions of other spheres of government with local government should not interfere with the status of local government to regulate its own affairs. The provisions concerning local government are set out in Chapter Seven of the 1996 Constitution, 1996 (Act 108 of 1996). It deals with the following principles: the status of municipalities, the objectives of local government, the developmental duties of municipalities, co-operative government, the



establishment of municipalities, the powers and functions of municipalities, the composition and election of municipal councils, membership of municipal councils, the terms of municipal councils, internal procedures, privileges, the publication of municipal by-laws and an organized local government.

According to the South Africa Yearbook (2001:72), the recognition of local government as a sphere of government has enhanced the status of local government as a whole and of municipalities in particular, and has given them a new dynamic role as instruments of delivery. The relationship between the three spheres of government is outlined in Chapter Three of the Constitution, which, among other things, requires Parliament to establish structures and institutions to promote and facilitate intergovernmental relations. According to the Constitution and the Organised Local Government Act, 1997 (Act 52 of 1997), (which formally recognizes the South African Local Government Association (SALGA) and state that the nine provincial local government may designate up to 10 part-time representatives to represent the different categories of municipalities and many participate in proceedings of the National Council of Provinces.

Planact (2001:19) argues that the White Paper on Local Government (March 1998) is the first national policy framework for local government in the post-apartheid period. It was developed after discussions, research and consultations with interested persons by the Ministry for Provincial Affairs and Constitutional Development. It effectively sets the stage for macro transformation. The White Paper provides a map that must be followed in order to reach our destination – a new, democratic system of local government that will take us into the 21st century.

The most important policy decisions or perspectives filtered through the White Paper are: a developmental vision for local government's new role in the new context; a deeper understanding of cooperative government and some of its implications for decentralisation; clarification of institutional arrangements for both metro and non-metro areas; outlining the sources of local government income and an equitable share of revenue to which local

government is entitled from the national fiscus and options for municipal political and administrative arrangements (Planact, 2001:20).

1.1.3 *The present challenges*

According to the White Paper on Local Government 1988 (1998:15), challenges facing South African municipalities include the following: Skewed settlement patterns, which are functionally inefficient and costly, extreme concentrations of taxable economic resources in formerly white areas demanding redistribution between and within local areas, huge backlogs in service infrastructure in historically underdeveloped areas, requiring municipal expenditure far in excess of the revenue currently available within the local government system, creating viable municipal institutions for dense rural settlements close to the borders of former homeland areas, which have large populations with minimal access to services, and little or no economic base, great spatial separations and disparities between towns and townships and urban sprawl, which increase service provision and transport costs enormously. Most urban areas are really fragmented, with discontinuous land use and settlement patterns. Municipalities in urban areas will need to develop strategies for spatial integration, while managing the continuing consequences of rapid urbanisation and service backlogs, creating municipal institutions which recognize the link between urban and rural settlements.

There are wide variety of urban settlements, ranging from those which play the roles of local or regional service centres, to functionally specialised towns and administrative centres. Importantly, almost all towns are functionally linked to rural areas, relying on their hinterlands for productive economic activity and providing critical centres for the delivery of social services, entrenched modes of decision-making, administration and delivery inherited from municipalities geared for the implementation of urban and rural apartheid. There is an inability to leverage private sector resources for development owing to a breakdown in the relationship between capital markets and municipalities, the lack of a municipal bond market and the poor creditworthiness of many municipalities, substantial variations in capacity, with some municipalities having little or no pre-existing institutional foundation to build on and the need to rebuild relations between municipalities and the local communities they serve. Municipalities



should be particularly sensitive to the needs of groups within the community who tend to be marginalized. They should also be responsive and accessible to people with disabilities. White Paper on Local Government (1998:16).

Vil-Nkomo (1998:205-207) argues that poverty in South Africa manifests itself in the form of lack of income, lack of access to services, as well as lack of access to resources for engaging in productive economic activity. In addition, there are high levels of inequality along racial, gender and geographic lines with respect to this lack of access. Thus, there is a need to foster the development of a functionally integrated, efficient and equitable urban economy, democratic and effective structures of urban governance and management, and a social environment which contributes to a better quality of life within South Africa's urban areas. This means that the challenge facing South Africa's urban sector is one of overall growth and development, within the country's given historical context and the conditions prevailing in the international political economy.

The challenge of local government leaders in South Africa centres on the development of effective mechanisms for mobilising the necessary resources to address growth and development at the local level. This includes tapping of own resources as well as provincial and national level resources. Secondly, the creation of appropriate capacity for policy formulation, and implementation. In the case of the latter, there is a need to build appropriate capacity to ensure that there is hierarchical control, and that it is complemented by ways to increase the citizen's capacity to use voice and exist to increase public sector accountability. These are critical challenges for local government structures which are faced with insurmountable delivery expectation (Vil-Nkomo, 1998:218).

In conclusion, the study suggests that local government has been given a new constitutional mandate to create and sustain humane, equitable and viable human settlements. It is doubtful whether local government – as presently designed – is adequately equipped to fulfil this developmental mandate, because it is manned by semiskilled and unskilled human resources. Local government has been democratised, but the local government system is still structured to meet the demands of the previous era. A fundamental transformation is required.



1.1.4 *The present situation*

In most municipalities, the bulk of the workforce comprises semi or unskilled black workers, who have historically been denied access to training and personal development opportunities and are alienated from the communities they serve. Management remains predominantly white, and historical schooled in rigid, authoritarian and outdated management practices (White Paper on Local Government, 1998:95).

Gotz and Wooldridge, (2003:19-20) note that the municipal system is new and still evolving. Many municipalities are still developing their basic working practices – delegations have not been completed, administrative and committee structures are not yet final, and policy development on numerous issues is still in progress. At this stage, there is very little that can be said with any confidence regarding the political-administrative interface. The practice is still emerging and the legal framework is still being tested. It is too soon to consider any major revisions to the regulatory framework, or to limit the space for local experimentation within the existing framework.

Some conflict between councillors and officials is inevitable in any system of municipal governance, because some politicians interfere with administrative activities of local government officials. An example of interference concerns recruitment and appointment. Both municipal councillors and officials will need to develop skills to manage conflict in ways which enhance, rather than diminish, the potential for good governance. The basic allocation of tasks between councillors and officials is an immediate concern for many municipalities so that both councillors and officials should adhere to their roles and functions. It is important to note that developing a viable political-administrative interface does not end here. Even when the allocation of responsibility for specific tasks is finalized, municipal officials and councillors should continue to reflect on how they engage with one another. Good governance requires that both councillors and officials adapt their working practices to respond to new challenges and opportunities as they arise.



1.2 Supreme Law of South Africa

As noted in the South Africa Yearbook (2001: 67), the 1996 Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) was drawn up by the Constitutional Assembly (CA) and reaffirms South Africa as a constitutional and republican state. The constitution is the highest and most important law of the land. No other law or government Act can supersede the provisions of the constitution.

Planact , (2001:7) states that the provision of the constitution of South Africa is the overriding framework for local government legislation. Mayors, councillors and other local government practitioners should understand the principles that underpin democratic government, and should not lose sight of their role, particularly with regard to the vital task of implementing the developmental vision for local government administration.

1.2.1 Principles of local government

South African Interim Constitution, 1993 (Act 200 of 1993) section 178 (1) states that a local government shall ensure that its administration is based on sound principles of public administration, good government and public accountability, so as to render efficient services to persons within its area of jurisdiction and effective administration of its affairs.

According to the Planact (2001; 7), the constitution is the fundamental supreme law of South Africa. It provides the framework within which the various spheres of government, organs of state and persons interact with one another. Local government, like any other spheres of government, is governed by the principles and rules laid down in the constitution. In addition, the constitution describes the framework which other spheres of government must adhere to in dealing and interacting with local government. In addition to the above paragraph, Cameron and Stone (1995:44) assert that it is parliament's prerogative to pass laws that deal with the detail of what local government should look like. While the provincial governments have a responsibility for passing regulations for local government, such regulations must not contradict the principles laid down in the constitution. One of these is that the interactions of



their spheres of government with local government should not interfere with the status of local government to regulate its own affairs.

The South African Constitution, 1996 (Act no 108) sets out the provisions concerning local government in Chapter Seven. It deals with the following principles: the status of municipalities, objectives of local government, developmental duties of municipalities, cooperative government, the establishment of municipalities, the powers and functions of municipalities, the composition and election of municipal councils, membership of municipal councils, terms of municipal councils, internal procedures, privileges, publication of municipal by-laws and organized local government.

1.2.2. Status of municipalities

Section 151(1-4) of the Constitution of South Africa, 1996 (Act 108 of 1996) states that: the local sphere of government consists of municipalities which must be established for the whole of the territory of the Republic; the executive and legislative authority of a municipality is vested in its municipal council; 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; and national and provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions.

1.2.3. Objectives of local government

According to Planact (2001:9), local government must strive, within its financial and administrative capacity, to fulfil the following objectives: to provide democratic and accountable government for local communities; to ensure sustainable provision of services to communities; to promote social and economic development, to promote a safe a healthy environment and to encourage the involvement of communities.



1.2.4 Developmental duties of municipalities

The 1996 Constitution states that a *municipality* must structure and manage its administration, 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. A municipality must also participate in national and provincial development programmes (Plantact, 2000:9).

1.2.5 Municipalities in co-operative government

The Constitution of South Africa, 1996 (Act 108 of 1996) provides for national and provincial government to support and strengthen the capacity of municipalities by legislation and other measures, to manage their own affairs, exercise their powers and perform their functions. It also provides for draft national or provincial legislation that affects the status, institutions, powers or functions of local government to be tabled for public comment before being introduced in parliament or in provincial legislatures. Such legislation should be presented in a manner that allows organized local government, municipalities and other interested persons an opportunity to make presentations concerning the draft legislation (Planact, 2001:10).

1.2.6 Powers and functions of municipalities

Planact (2001:10) states that local government is the sphere of government closest to the people and is therefore better placed than national or provincial government to efficiently carry out most tasks dealing with services and community development. Locally elected councillors have a better understanding of local needs than national and provincial politicians. The tasks of local government are therefore numerous. First, local government is responsible for planning, developing, constructing and maintaining infrastructure so that effective delivery of services can take place. Secondly, local government is responsible for the delivery of services that develop and maintain a peaceful, stable and healthy local environment. Thirdly, local government is responsible for managing its administration in an accountable and transparent manner.



1.2.7 Organised local government

According to Planact (2001:11), section 163 of the Constitution of South Africa, 1996 (Act 108 of 1996) envisages an important role for organized local government and provides that an Act of parliament must cater for the recognition of national and provincial organizations representing municipalities. Such an Act should also determine procedures by which local government may consult the national and provincial government, designate representatives to participate in the National Council of Provinces and nominate persons to the Financial Fiscal Commission (FFC).

Accordingly, the constitutionally based South African Local Government Association (SALGA) was launched on 20 November 1996. The Organised Local Government Act, 1997 (Act 52 of 1997) recognizes the South African Local Government Association and nine provincial local government associations (PLGAS) as representatives of organized local government. The Act allows organized local government to designate up to ten part-time representatives to the National Council of Provinces in the National Parliament and to further nominate two persons to the Financial and Fiscal Commission (FFC), which advises the Finance Ministry on budget issues. These representatives participate in intergovernmental structures and are therefore able to influence national and provincial legislation and to gauge the impact of such legislation on local government. The obligations for local government as encapsulated in the Constitution provide a framework for local government activities. The Constitution is an overriding component of legislation necessary for informing the local government legislation, which is dealt with later in section 164 (Constitution, Act 108 of 1996: 67).

1.3 Transitional period of Local Government administration in South Africa.

As recorded by the International Republican Institute (1995:33), by the end of 1993, the Local Government Negotiating Forum produced the Local Government Transition Act. Together with Chapter 10 of the Interim Constitution of the country as well as the Agreement on Finances, Services and Service Rendering signed by Mr Mandela and Mr De Klerk in February



1994, this Act provides the overall framework for an elaborate local government transformation process.

In elaboration Planact (2000:13) states that the South African political terrain changed dramatically with the unbanning of the liberation movements in 1990. At national level, the National Party government entered into a period of intensive negotiation with unbanned movements and other political players between 1990 and 1994. A similar scenario was played out at local level. The unpopularity of apartheid-style local government had led to the rise of local civic groups, which had united to form a national civic movement in the 1980s. These civic groups revolted against the apartheid system and called for a one city one tax base. The civic groups began negotiating with apartheid local authority about concrete issues of improved services, access to land and so on. These embryonic discussions led to the establishment of the Local Government Negotiating Forum in the pre-1994 period. The product of this forum was a significant piece of national legislation, the Local Government Transition Act (LGTA), which was promulgated in 1993.

1.3.1 Objectives of the Local Government Transition period.

In 1993, the promulgation of the LGTA was a breakthrough in the transformation of local governance in South Africa. The Act had the following objectives as recorded in Planact (2001:14): to provide for revised interim measures with a view to promoting the restructuring of local government and, for that purpose, as well as to provide for the establishment of provincial committees for local government in respect of the various provinces, as well as to provide for the recognition and establishment of forums for negotiating such restructuring of local government, to exempt certain local government bodies from certain provisions of the Act, to ensure the establishment of appointed transitional councils in the pre-interim phase, to delimit the areas of jurisdiction and the election of transitional councils in the interim phase, to ensure the establishment of a transitional rural local government structure, to enable the issuing of proclamations by the MECs of the various provinces, to establish Local Government Demarcation Boards for the various provinces, and to repeal certain laws and provide for matters connected therewith.



1.3.2 Key provisions of the Act

The Local Government Transition Act, 1996 (Act 97 of 1996) effectively endorsed the deracialisation of local government. It mapped out a three phase process aimed at transforming local government in South Africa (Cameron & Stone, 1995:34).

(a) *The interim phase (1994)*

The interim phase (1994) was dominated by the amalgamation of different racially-based local authorities within localities. Non-statutory members, such as civil servants were also invited to form part of the transitional councils. This period ended with the first democratic local government elections in 1995 (1996 in KwaZulu-Natal and the Western Cape).

(b) *The transitional phase*

The transitional phase began after the 1995/6 democratic local government elections and ended after the democratic local government elections held in December 2000. The main task during this transitional phase was to establish National Policy frameworks and legislation for the local government sphere. The aim was to eradicate out all the difficulties associated with the past and interim system and this was therefore a period of intensive activity which was intended to devise a final, workable model for local government. The local government transition process was thus a long and complex one.

(c) *The final phase*

The final phase started after the December 5, 2000 local government elections. This phase poses critical challenges for all stakeholders in the implementation of the different pieces of legislation drawn up during the transitional phase. The Demarcations Act and Municipal Structures Act are designed to ensure the establishment of more representative, focused political structures with significant powers.



1.3.3 Historical metamorphosis of local government

It is important and significant to discuss the historical process of local government to enable the political and administrative powers to understand that a metamorphosis of local government in South Africa has taken place. The discussion below sketches the historical process of local government from apartheid through to what it looks like in the 21st century. (The different phases are discussed in some detail in the subsequent section of this chapter (Planact, 2001:15).

(a) *Apartheid local government pre - 1994*

The apartheid government imposed local government structures on disenfranchised communities throughout the country. These structures comprised black local authorities, white local authorities, and management committees' regional services councils. The councils were such as illegitimate and undemocratic.

(b) *"The city one tax base" campaign - 1980*

Communities started organizing themselves and rebelled against the apartheid systems. Civic organizations were created and were at the forefront of the rent and service boycotts. They called for a one city one tax base.

(c) *Local government negotiation forum 1990-1994*

The black local authorities continued to collapse because of protests. National and provincial government began to respond to rent and service boycotts. The Local Government Negotiation Forum was created comprising representatives from the statutory and non-statutory organizations. The product of this was the Local Government Transition Act.



(d) *The Local Government Transition Act 1993*

The Local Government Transition Act, 1993 (Act 209 of 1993) provided a regulatory framework for pre - interim and interim phase local government integration.

(i) *Pre-interim phase.*

Transitional Local Councils and Transitional Metropolitan Councils were negotiated on the basis of 50% from the non-statutory side and 50% from the statutory side.

(ii) *Interim phase*

Local government elections were set for 1995. Possible structures for local government in rural areas were identified. Provincial competence over local government was approved.

(e) *First democratic local government elections 1995-1996*

Seven out of nine provinces held elections during November 1995, ushering in the transition phase with democratically elected councillors in most urban and rural areas. KwaZulu-Natal and the Western Cape held their elections in 1996, as already stated. The challenge was to build support for rural development while contending with shrinking budgets, limited resources and necessary development in urban areas (Planact, 2001:17).

(e) *The final phase*

The final phase started after the 5 December 2000 elections as noted above. Local Government in the final phase would have new boundaries, new municipal structures, established sources of income, carefully designed institutional arrangements and at least in theory clear vision of its role.



1.4 Transformation of local government administration in South Africa.

The White Paper on Local Government 1998 (1998: IX) within the framework of the constitution establishes the basis for a new developmental Local Government System, which is committed to working with citizens, groups and communities to create sustainable human settlements which provide for a quality of life and meet the social, economic and material needs of communities in a holistic way.

Planact (2001:19) states that the White Paper on Local Government is the first national policy framework for local government in the post-apartheid period. The White Paper was developed after discussion, research and consultations with interested persons by the Ministry for Provincial Affairs and Constitutional Development. It effectively sets the stage for macro transformation. The White Paper also provides guidelines on how to achieve a democratic system of local government. The important policy decisions or perspectives filtered through the White Paper are:

- a. A developmental vision for local government's new role in the new context.
- b. A deeper understanding of cooperative government and some of its implications for decentralization.
- c. Clarification of institutional arrangements for both metropolitan and non-metropolitan areas.
- d. Outlining the sources of local government income and ensuring an equitable share of revenue to which local government is entitled from the national fiscus.
- e. Options for municipal political and administrative arrangements.

1.4.1. Current status of local government

Section A of the White Paper on Local Government looks at the situation during the transition period (1995) and the problems and challenges facing municipalities. Most of these problems have been inherited from the apartheid system, which the people resisted and which their struggle helped to bring to an end. The analysis set out in section A helps identify the need for a new local government system, which must address the inequalities and backlogs of the past

and ensure that everyone has access to basic services, opportunities and improved quality of life (Planact, 2001:9).

1.4.2. *Developmental local government*

Section B of the White Paper explains the meaning of development. It describes the kind of leadership councils must provide and the kind of relationships municipalities need to build with communities, organizations, business and other structures that contribute to the development of an area. It also describes integrated development planning (IDP) a new approach to planning which will assist municipalities to fulfil their development role.

(a) *Definition of developmental local government*

Developmental local government must ensure: that all communities have access to basic services; that everyone can participate in decision-making and planning; that the local economy grows; that job opportunities increase; and that local resources are used wisely to improve the quality of life for everyone, now and in the future. Developmental local government is local government committed to finding sustainable ways to meet their social, economic and material needs and to improve the quality of their lives.

(b) *Four characteristics of developmental local government*

Developmental local government has four interrelated characteristics which are:

(i) *Maximising social development and economic growth*

A municipality needs to ensure that all of its plans, policies, programmes and actions will lead to economic and social development and a better quality of life for all particularly for those who have been historically disadvantaged.



(ii) *Integrating and coordination*

Different agencies within a municipality, including national and provincial government, parastatals, trade unions, community groups and private sector institutions, contribute to the development of an area. Developmental local government must provide a vision and leadership for all those who have a role to play in achieving local prosperity. One of the critical tools for achieving coordination and integration is (IDP).

(iii) *Leading and learning*

All over the world, the extremely rapid changes taking place at global, regional, national and local levels are forcing communities to find ways of sustaining their economies, building their societies, protecting their environment, improving personal safety and eliminating poverty. It requires municipalities to create strategies and a fluid the means to deal with these issues, as there is no single correct way of achieving these goals. It also requires cooperation among stakeholders. Municipalities have to create a sense of common purpose to find local solution for increased sustainability. At the same time, municipalities should build the capacity of their communities.

(iv) *Democratizing development*

Municipalities play a central role in promoting local democracy. In addition to representing community interests within the municipality, municipal councillors should encourage citizens and community groups to become involved in the design and delivery of municipal programmes. Municipalities must adopt inclusive approaches to foster community participation, together with strategies aimed at removing obstacles to, and actively encouraging, the participation of marginalized groups in the local community.

The White Paper provides ways for municipalities to create social conditions favourable to development through building relationships capable of bringing together various interests to rally around a common vision. Developmental local government requires that municipalities become more strategic, visionary and ultimately influential in the



way they operate. A developmental municipality should play a strategic policy-making and visionary role, and seek to mobilize a range of resources to meet basic and achieve developmental goals (Planact, 2001:22).

(c) *Desired outcomes of developmental local government*

There are three outcomes that developmental local government seeks to achieve, and these are;

(i) *Provision of household infrastructure and services*

Local government is responsible for the provision of household infrastructure and services. The South African constitution enshrines the right of every citizen to basic affordable services. These basic services are essential to enable people to support family life, find employment, develop their skills or establish their own small business. Municipalities should first extend the provision of basic services to those who currently enjoy little or no access to services. These services should be affordable and sustainable. The Consolidated Municipal Infrastructure Programme (CMIP) is a national fund to assist municipalities to build the infrastructure needed for delivery of these services, for example, pipes, reservoirs and sewage treatment plants.

(ii) *Creation of liveable, integrated areas*

One of the major challenges local government is faced with is the integration of our settlements. Urban areas face the challenges of integrating towns and townships while rural areas face the challenge of building liveable environments ranging from securing access to land and services for the rural poor to addressing the distortions in ownership and opportunity that apartheid created between white and black rural dwellers.

This spatial integrating is critical if municipalities are to enhance economic efficiency, facilitate the provision of affordable services, reduce the costs households incur through communicating and enable social development. Spatial planning is also central to nation



building and to addressing disadvantages of location and to building an integrated society and nation.

(iii) *Local economic development*

The South Africa constitution entrusts local government with the responsibility of promoting local economic development by providing good quality cost-effective services, local government can play an important role in promoting job creation and boosting the local economy

(d) *Other initiatives*

There are two other important initiatives, which are:

(i) *Reviewing existing policies and procedures to promote local economic development*

Reviewing and simplifying municipal procedures and regulations can make a significant impact on the local economy. The White Paper gives an example of procurement procedures. Another example is that of the “one stop shop”. The establishment of user-friendly “one stop shops” that can advise residents and deal with single, consolidated accounts for all municipal services would increase the quality and efficiency of local services.

(ii) *Provision of special economic services*

The constitution states that local government is responsible for promoting the social and economic development of communities. This can be done through marketing and investment support, small business support, support for growth sectors, training and placement services, coordination with other agencies, and review of legislation that impacts local economic development.

(e) *Developmental municipality*

The achievement of developmental outcomes will require significant changes in the way local government works. The White Paper puts forward the following three interrelated approaches which can assist municipalities to become more developmental.

(i) *Integrated development plan (IDP)*

IDP is a process through which a municipality can establish a development plan for the short, medium and long term. This process involves all stakeholders in the activities of the municipalities (Planact, 2000:24).

(ii) *Performance management*

Performance management aims at improving the effectiveness and efficiency of local government by helping municipalities to focus on strategic priorities and measuring results, and at improving municipal accountability to local citizens.

(iii) *Working together with local citizens*

The White Paper states that one of the objects of local government is to provide democratic and accountable government for each community and to encourage the involvement of communities and community organizations in the matters of local government. Developmental local government means strong leadership, clear vision, maximum participation by the community, private sector and all stakeholders to meet the basic needs of all and to build solid foundations for growth and lasting prosperity.

1.4.3 Cooperative government

A framework for cooperative government is encapsulated in Chapter Three of the South Africa constitution. The constitution accords a completely new status and changed roles to



intergovernmental relations through the principle that all three spheres of government are distinctive, interdependent and interrelated. This principle, therefore, implies that no sphere of government should be viewed as an 'island on its own'. Rather, every sphere exists not only on its own but also in interaction with other spheres. The White Paper on Local Government, 1998 (1998:38) defines 'cooperative government' as the set of multiple formal and informal processes, channels, structures and institutional arrangements for bilateral and multilateral interaction within and between spheres of government.

This system has the following strategic purposes:

- (i) to promote and facilitate cooperative decision making;
- (ii) to coordinate and align priorities, budgets, policies and activities across interrelated functions and sectors;
- (iii) to ensure a smooth flow of information within government and communities, with a view to enhancing the implementation of policy and programmes; and
- (iv) to prevent and resolve conflicts and disputes.

1.4.4 Institutional system

Section D of the White Paper on Local Government, 1998 (1998:XI) looks at the three different categories of municipality established by the constitution and the different types of municipality in each category.

The three categories of municipality established by the constitution are:

- (a) *Category A*: A municipality that has exclusive municipal executive and legislative authority in its area – Metropolitan Council.

- (b) *Category B*: A municipality that shares municipal executive and legislative authority in its area with Category C municipality within whose area it falls – Local Council.

- (c) *Category C*: A municipality that has municipal executive and legislative authority in an area that includes more than one municipality – District Council.

1.4.5 Political systems

This section of the White paper begins by highlighting the importance of dynamic local political leadership. It discusses the advantages of allowing for the delegation of executive power by a municipal council to either an executive committee or an executive mayor, and proposes that both options should be accommodated.

The section concludes by proposing a mixed municipal election system where the proportional representation (PR) component is geared to adjust distortion in representivity, and proposes an approach to reducing the number of municipal councillors:

1.4.6 Municipal administrative system

The seventh section of the White Paper introduces the issue of the municipal administrative system. The section focuses primarily on service delivery systems, and a wide range of approaches to transforming municipal services delivery systems is put forward. While certain national interventions are required to enable municipalities to utilise the full range of options available, each municipality is encouraged to develop its own institutional transformation programme and adopt the options best suited to its circumstances.

The section also outlines proposed changes to the local government training system, and stresses the pivotal role the South Africa Local Government Bargaining Council will play in enabling the transformation of municipal administrative systems.



1.4.7 Municipal finances

This section deals with municipal finances and puts forward a set of principles to guide the development of a new framework for municipal finance. It goes on to elaborate the key aspects of that framework.

1.4.8 Transformation of municipalities

The White Paper also puts forward an approach to municipal transformation. It notes that national government is committed to developing a stable and enabling framework in which change can occur, and to providing a range of support mechanisms to assist municipalities during the transition. However, transformation ultimately rests in the hands of each municipality. Municipalities are encouraged to think critically about how they operate and relate to local communities, and to develop their own strategies for meeting local needs and promoting the social and economic development of communities in their areas of jurisdiction. The White Paper for Local Government outlines the system that will make developmental local government a reality.

1.5 Demarcation of municipalities in South Africa

According to the Planact (2001:29) demarcation is the first step in the transformation of local government in South Africa. The constitution sets the basis for the establishment of an independent authority to oversee the process and introduces the Demarcations Act that provides the legislative framework within which this process should be undertaken.

1.5.1 The purpose of the Act

The purpose of the Act is to provide criteria and procedures for the determination of municipal boundaries by an independent authority. The question is however:



Why do we need to demarcate municipal boundaries?

After the 1995/96 local government elections, approximately 1 260 local government bodies across the country were amalgamated to create 843 municipalities. The boundaries within these municipalities were working contributed to the inability of municipalities to effectively contribute to their new developmental role, for the following main reason: many councils are not financially viable. Surveys have indicated that many types of councils operate on a permanent overdraft basis and some do not have cash to finance their operations. This is because some boundaries do not have a tax base *that* can assist in sustaining local administration. The internal boundaries within municipalities were drawn along racial lines and, in some cases, this was even extended to what was perceived as “ethnic” groupings. Metropolitan government is divided into metropolitan councils and metro local councils. This has led to tax bases and planning areas being split across settlements which should be planned and budgeted for as a single integrated area. This has often resulted in poor planning decisions and conflicts over the distribution of resources between the more and less wealthy parts of the metro area. Some district councils are so large that they account for half the size of a province. They are too remote from local councils for these councils to understand and respond to their needs. Their areas are also not consistent with other functional regions, such as provincial sub-regions. This is not conducive to integrated development. Some parts of the country have an elected rural local government while others do not and are served by district councils. Rural municipalities are often structured without powers, financial resources or capacity. Although they are meant to serve wide areas, they do not do much more than recommended infrastructure investment projects to district councils. In some parts of the country, this has created a poor image of democratic local government. Meaningful service delivery in many rural areas means integrating them into the jurisdictions of municipalities that have real powers and capacity and resources.

1.5.2 Legislation governing the Demarcation Process

The Demarcation process is governed by three different pieces of legislation all of which relate to each other. These are:



(a) *The constitution*

The constitution establishes the need for an independent demarcation authority. After the 1995/6 elections, provincial Demarcation Boards were established which looked at the amalgamation of local government bodies in the transition period.

The constitution also states that national legislation should define criteria and procedures by which this Demarcation authority will determine new boundaries, and sets out the obligations for municipal councils. In addition, it calls for legislation to determine when an area should have a single Category A municipality and when it should have a both Category B and Category C municipalities.

(b) *Municipal Structure Act*

The Municipal Structures Act, 1998 (Act 117 of 1998) lays down the criteria for determining when an area should have a Category A municipality and states who will make this decision and how. The Act stipulates that all non-metropolitan areas must have both Category B and C municipalities, and also sets out procedures for deciding when an area should have no Category B municipality and will therefore be a District Management Area. The Act defines municipal powers and functions that have to be taken into account in the demarcation process. It allows for cross-border municipalities; and it defines the role of the Municipal Demarcation Board and the Independent Electoral Commission (IEC) in delimiting words and criteria for this process.

(c) *Municipal Demarcations Act*

(i) *Structure of the Act:* The Act is divided into three chapters. The content of each is summarised as follows:



- (ii) Chapter One of the Act defines the independent Demarcation Board. Part 1 of the chapter describes the procedure for the establishment of the Demarcation Board and spells out its functions and powers.

Part 2 details the composition of the members of the Board and how they will be appointed, it lists appropriate qualifications of potential Board Members and their term of office. It states that the State President appoints the Chairperson and Deputy Chairperson of the Board. It also deals with how members of the Board should conduct themselves, their conditions of appointment and termination of membership.

Part 3 maps out some key operating procedures of the Board, such as meetings, procedures, decisions and committees the Board may establish to assist it in the performance of its functions and to provide it with administrative support.

- (iii) Chapter Two of the Act outlines the demarcation process. Part 1 deals with how the Board determines and re-configures municipal boundaries. Part 2 deals with the demarcation criteria, setting out the objectives of demarcation and the factors to be taken into account to address difficulties created by these boundaries. Section 24 of Part 2 states that when the Board determines a municipal boundary its aim must be to establish an area that will enable the municipality for the area to fulfil its constitutional obligations including the provision of democratic and accountable government for the local communities, the provision of services to the communities in an equitable and sustainable manner, and the promotion of social and economic development, in order to enable effective local governance and integrated development, and have a tax base as inclusive as possible of users of municipal services in the municipality.

Part 3 of Chapter Two deals with the demarcation procedures themselves and lays down how the Board is to consult with communities and municipalities. It also states that the legal, practical and other consequences resulting from the area of a municipality being wholly or partially incorporated in or combined with the area of another municipality must be dealt with in terms of the 1998 Municipal Structures Act.

- (iv) Chapter Three of the Act deals in Part 1 with the Board's administrative matters, such as the appointment of a manager who is the CEO and accounting officer. Sections 34 and 35 deal with employees, conditions of employment and their pension rights.

Part 2 deals with financial matters, such as where the Board should obtain its finance, how it accounts for those finances, the auditing of its financial statements for which the Board is accountable and the reporting procedures in relation to finances. Part 3 deals with miscellaneous matters, such as the civic liability of the Board, regulations, offences and penalties, repeal of legislation and transitional provisions. It is also important to mention that Chapter One (a) section 1 (d) (e) 10 (j) and 10 (k) of the Promotion of Local Government Transition Act, 1983 (no 91 of 1983) and the Local Government Transition Act (no. 209 of 1993) are repealed by the Demarcation Act.

(v) *Role and responsibility of the Demarcation Board*

The Demarcation Board is probably the most important structure in the demarcation process. It is very different from the structures that oversaw the last local government demarcation process. The country now has one Demarcation Board which is an independent structure comprising members appointed by the President. The Board also makes independent decisions (Planact, 2000:33).

(vi) *Responsibilities of the Board*

The Board and its administration are funded by national government, and it must draw up and submit its annual budget to the Minister of Finance. The Board may appoint committees to conduct the work of demarcation. These committees may be made up of members, employees and co-opted experts. The Board may delegate powers to its committees but cannot delegate the making of the actual decision to approve a municipal boundary. When the Board or one of its committees starts work on the process of demarcating any municipal boundary, it must publish a public notice of this fact. The notice must state the intention to start demarcating and must invite written



representation from any interested persons or parties. The Board must make sure that this notice is seen by the public and by key interest groups. It must publish the notice in local newspapers, draw attention to it by radio or other means, and send a copy to the MEC. Any municipalities potentially affected, and the local magistrate if any magisterial districts might be affected and the provincial house of traditional leaders concerned must also be notified (Planact, 2001: 33).

The Board must give the public and interested parties at least three weeks to submit written representations. The Board may choose to hold a public meeting about demarcation in a particular area. The Board may also choose to initiate a formal technical investigation to resolve a demarcation question. The Board must act in accordance with priorities and schedules set by the local government minister or MEC and South African Local Government Association (SALGA). The Board is consulted when the minister takes decisions on Category A municipalities and district management areas. The Board is responsible for delimiting ward boundaries within a municipality. It must consult the Electoral Commission in this process. The Municipal Structures Act also accords the Demarcation Board powers to decide whether a Category B municipality has the capacity to perform powers and functions that the MEC wishes to reallocate to a Category C municipality, or vice versa, and make the appropriate recommendations. The MEC must consult the Demarcation Board before altering the division of powers and functions between district and local councils (Planact, 2001: 34).

Note, however, that on 15 October 1999 the Constitutional Court found sections 4.5.6 (2) and 24 (1) of the 1998 Municipal Structures Act to be unconstitutional and the following amendments were made after this court ruling. The municipal Demarcations Board and not the minister of provincial and local government must decide which area must have Category A municipalities and which must have municipalities of both categories B and C, as already noted. The municipal Demarcation Board and not the minister must also decide which areas must have a district management area. It is no longer possible for the minister to determine guidelines to assist MECs for local



government to decide which type of municipality will be appropriate for a particular area. Furthermore, the terms of municipal councils are determined by parliament and not by the minister (Planact, 2001: 33).

(vii) New structures

Section 7 of the Municipal Structures Act, no. 117 of 1998 makes provision for three different categories of municipalities in the country. They are elected differently, and have different structures, powers and functions. The new municipalities are: Category A – 6 metropolitan municipalities, namely Cape Town, Durban, East Rand, Pretoria, Johannesburg and Port Elizabeth; Pretoria and Durban have traditional authorities within them. Category B – 23 local municipalities of which 114 have traditional authorities within them and 26 are district management areas: Category C – 47 district councils of which 30 have traditional authorities within them.

In total the country's municipalities have been reduced from 843 to 284. In the Free State Province, the number has been reduced from 99 to 26.

1.6. Structures of municipalities in South Africa

The Municipal Structures Act, 1998 (Act 117 of 1998) is the second piece of legislation that is aimed at laying the foundation for local government in South Africa. As indicated above, the demarcation of municipal boundaries is the first step in further transforming local government. However, new boundaries alone will not automatically solve all the problems. Proper structures, systems, adequate and stable sources of income, and structures to encourage community participation are needed to ensure local government that is citizen-friendly, accountable, developmental, financially sustainable, performance-orientated and committed to the improvement of the quality of lives of the people (Planact, 2000:37).

1.6.1 Purpose of the Municipal Structures Act

The main purpose of this Act is to:

- provide for the establishment of municipalities in accordance with the requirements relating to categories and types of municipalities; establish criteria for determining the Category of municipalities to be established in an area; define types of municipalities that may be established within each category.
- provide for an appropriate division of function and powers between categories of municipalities regulate the internal systems, structures and office bearers of municipalities;
- provide for appropriate electoral systems.

1.6.2 (a) *Categories and types of municipalities*

According to Planact (2000:38), the Constitution and the Municipal structures Act, 1998 (Act 117 of 1998) together establish a system of categories and types of municipalities. There are three categories of municipalities, dealt with in Chapter 1. They are as set out as follows: Category A is the metropolitan municipality, which has the exclusive authority to administer and make rules in its area. Category B is the local municipality which shares the authority in its area with the district municipality of the district in which it falls. Category C is the district municipality, which has the authority to administer and make rules in an area that includes more than one local municipality. Areas are called district management areas, and the district municipality performs all the municipal functions in an area. The minister must apply the criteria outlined above to establish whether an area should have a single Category A municipality or municipalities of both Categories B and C.

(b) *Establishment of municipalities*

Chapter Two of the Act provides for the establishment of municipalities by the Member of the Executive Council for Local Government by notice in the Provincial Gazette

(Section 12 notice), in which the category, type, boundaries, names and number of councillors of the municipality are specified (Planact, 2001:42).

According to Planact (2000:40), the chapter further regulates the consequences where a newly established municipality supersedes an existing municipality. When a municipality is established in terms of Section 12 in the area of an existing municipality, it supersedes the existing municipality and becomes the successor in law with regard to that area. In such cases, a Section 12 notice must regulate the legal, practical and other consequences of the disestablishment of the existing municipality. The chapter also provides for the amendment, repeal or replacement of a notice establishing a municipality.

(c) *Municipal Councils*

The Municipal Structures Act, 1998 (1998:24) spells out that Part 1 of Chapter Three deals with the composition, membership, operation and dissolution of municipal councils. The Act regulates the number of councillors to be elected or appointed, the qualifications applicable to councillors as well as the election or appointment of councillors. It also provides for the holding of by-elections, the term of office of councillors, the vacation of office, privileges and immunities of councillors, the committees of municipalities and the assignment of powers and duties to communities and other internal functionaries.

Part 2 of Chapter Three stipulates that each municipal council must have a chairperson who will be called a speaker. This speaker must be elected at the first sitting of the municipal council after the election (Municipal Structures Act, 1998:38).

(d) *Internal structures and functionaries*

Planact (2001:43) states that Chapter Four of the Act provides the criteria for determining when municipal councils may elect an executive committee, its

composition, powers and functions, the term of office, the filling of vacancies, removal from office, quorums, decisions and the appointment of sub-committees of the executive committee. It also provides for the election of a mayor and defines the powers and functions of a mayor.

Section 44 of the Municipal Structures Act 1998 (Act 117 of 1998) states that an executive committee is the principal committee of the council of a municipality that is entitled to establish such an executive committees. It receives reports from other committee of the council and must forward them, together with its recommendations, to the council when it cannot dispose of the matter in terms of its delegated powers.

1.6.3 Functions and powers of Executive Committees

According to Planact, (2000:44), the Executive Committee of a municipal council must do the following: identify the needs of the municipality, review and evaluate those needs in order of priority, recommend to the municipal council strategies, programmes and services to address priority needs through the integrated development plan and estimates of revenue and expenditure, taking into account any applicable national and provincial development plans and recommend or determine the best methods, including partnerships and other approaches, to deliver these strategies, programmes and services to the maximum benefit of the community.

In performing its duties Planact, (1998:43), the executive Committee must identify and develop criteria in terms of which progress in the implementation of the strategies, programmes and services can be evaluated, including key performance indicators (KPIs). It must evaluate progress against the key performance indicators, review the performance of the municipality in order to improve its economy, efficiency and effectiveness; the efficiency of credit control and revenue and debt collection services; and the implementation of the municipality by-laws. In addition, the Executive Committee should monitor the management of the municipality administration in accordance with the policy direction of the municipal council, oversee the sustainable

provision of services to communities in the municipality, compile reports annually on the involvement of communities and community organizations in the affairs of the municipality, ensure that regard is given to public views, and report on the effect of consultation on the decisions of the council and report to the municipal council on all decisions it takes.

The Act also provides criteria for the election of an executive mayor and stipulates that at the beginning of its term, the municipal council elects the executive mayor and subject to the approved of the members of the Executive Council, a deputy executive mayor) from among its members. The election procedure is detailed in Schedule 3 of the office of the municipal council. It is not possible to serve more than two consecutive terms as an executive mayor (Municipal Structures Act, 1998:48).

1.6.4

Functions and powers of Executive Mayors.

The duties and powers of the Executive Mayor are almost the same as those of the Executive Committee (outlined above). The Executive Mayor is also duty bound to report on all his or her decisions to the Municipal Council (Planact, 2001:44). In the bigger municipalities (those with more than nine council members), the Executive Mayor must appoint a mayoral committee from among the councillors. The purpose of such a committee is to assist the Executive Mayor, who may delegate specific responsibilities or powers to its members (Municipal Structures Act, 1998:48). Even though the role of Executive Mayor will depend, to a large extent, on what powers and functions the municipal council delegates to him or her, it is clear that the executive mayor will be the executive leader of the municipality. He or she will be responsible for the day-to-day running of the municipality, assisted by the Mayoral Committee. The Municipal Council may designate some tasks of the Executive Mayor to be exercised together with the Mayoral Committee. This allows the Council to bend the decision-making structure slightly towards a more collective executive bearing in mind that the Mayoral Committee is appointed by the Executive Mayor (Planact, 2001:44).

The Act also provides for the establishment, composition, powers and functions, term of office and vacation of office, quorum and decisions of metropolitan sub-councils and ward committees respectively (Municipal Structures Act, 1998:44).

1.6.5 Ward Committee

Part 4, Section 73 of the Municipal Structures Act, 1998 (1998:52) stipulates that certain types of local and metropolitan municipalities may have a ward committee, its purpose being to increase the participation of citizens in local government. A ward committee consists of the councillor who represents that ward in the Municipal Council, and not more than ten other persons, who must be residents of the ward. These ten are unpaid committee members. The Ward Committee serves as an advisory forum on matters that affect the ward. It can make recommendations to the Ward Councillor and through him or her to other organs of the municipality. The Municipal Council may also delegate other duties and powers to a ward committee if it fails to fulfil its objectives.

According to Planact (2001:45), Part 6 of the Act provides for the participation of traditional leaders in the proceedings of district and local councils. It sets out regulations governing their participation and describes the ceremonial role of traditional leaders in the affairs of a district and on local council. The Act further stipulates that a municipal council must appoint a municipal manager as head of the administration and an accounting officer for the municipality and, when necessary, an acting manager.

1.6.6. Functions and powers of municipalities

The Municipal Structures Act, 1998 (1998:56) stipulates that Chapter 5 of the Act provides for an appropriate division of power and functions between municipalities when an area has both Category B and C municipalities. It also provides for the member of the Executive Council for local government in the province, subject to other provisions of the section, to adjust the divisions of functions and powers between a



district and local municipality. Section 86 deals with the resolution of disputes concerning the performance of functions or the exercise of powers. It establishes a mechanism whereby the member of an executive council for local government may, with the concurrence of the municipalities concerned or the approval of the minister and by notice in the provincial gazette, assign any of the powers and functions of a municipality to a local or district municipality.

1.6.7. Code of conduct for councillors.

Schedule 5 of the Municipal Structures Act lays down a code of conduct for councillors. The Chairperson of the Municipal Council must give each councillor a copy of this code and make it available in every room where the council meets (Planact, 200:46).

(a) What councillors must do

(i) General Conduct

In general, councillors must perform their duties in good faith, honesty, in a transparent manner and in the best interests of the municipality without compromising the municipality's credibility and integrity. Councillors must attend meetings of the council and committee of which they are members unless they have obtained leave of absence or are required to withdraw from the meeting. The council may determine fines, but failure to attend three or more consecutive meetings must result in removal from office (Municipal Structures Act, 1998:94).

(ii) Disclosure of personal matters

Councillors must disclose any personal interests in any matters before the Council or its committees and withdraw from meetings about those matters, unless the council decides otherwise (Planact, 2000:47)



(iii) Financial interests

According to Planact, 2001:46), financial interests in businesses, partnerships, employment and remuneration, gifts above a certain amount, directorships and the like must be made known in writing to the Municipal Manager and the Council may decide to make this information public.

(b) What councillors may not do.

(i) Private gain

Section 6 of the Municipal Structures Act 1998 (1998:96) forbids councillors from using their position, privileges or confidential information for private gain for themselves or any other person; and prior consent of the Council is needed for activities that may compromise a councillor's credibility.

(ii) Full-time councillors

According to Schedule 5, Section 8, a councillor who is a fulltime councillor may not undertake any other paid work, except with the consent of a municipal council which consent shall not unreasonably be withheld.

(iii) Rewards, gifts and favours

Councillors may not accept rewards, gifts or favours for doing things, such as voting in a particular manner, persuading the councillor, making a representation to the Council or disclosing confidential information (Planact, 200:47).

(iv) Unauthorised disclosure of information

According to Schedule 5, Section 10(1), a councillor may not without the permission of the Municipal Council or a committee disclose any privileged or



confidential information of the Council or committee to any unauthorised person.

(v) Intervention in administration

A councillor may not interfere in the administration of any of the municipality's organs (unless mandated to do so by the Council) or instruct any employee of the council without authorisation. Councillors may not obstruct the implementation of any council or committee decision or behave in a way that would contribute to maladministration in the Council. A councillor may not use, take or acquire or benefit from any property or asset owned, controlled or managed by the municipality, to which that councillor has no right (Planact, 2001:47)

(vi) *Consequences of a breach of the code*

Any investigation into a breach of the code by a councillor or traditional leader must take place in accordance with the rules of natural justice, which means that there must be a "fair hearing". The two fundamental requirements for the fair hearing to which an affected party is entitled are the "notice of Intended Action" and a "proper opportunity to be heard". Thus, an affected party must be given adequate notice of the possibility that administrative action may be taken against him or her. The notice should also stipulate how, where and when representations can be made (Planact, 2000:47).

(c) *The Executive Mayor*

According to Planact (2001:47), if the Executive Mayor of a council suspects a breach of the code of conduct, he or she has to investigate the matter, allow the councillor concerned to respond to the allegations and



report the matter to a council meeting. This report is open to the public. The MEC should also be informed of the outcome of the investigation.

(d) *The Municipal Council*

The Municipal Council can investigate and offer findings on an alleged breach of the code. It can also establish a special committee to investigate and make recommendations to the Council. The Council can also punish a councillor by: using a formal warning, reprimanding the councillor, requesting the MEC to suspend the councillor, firing the councillor and requesting the MEC to remove the councillor from office.

Councillors may appeal to the MEC against a warning, reprimand or fine and the MEC can, after hearing both sides of the story, confirm or change the decision taken by the Council (Planact , 2000: 47 – 48).

1.7 Systems of municipalities in South Africa

The Municipal Systems Act, 2000 (Act 32 of 2000) is the third piece of legislation to give effect to the Local Government White Paper. The first two Acts (the Municipal Demarcation and Municipal Structures Acts) deal with the institutional and jurisdictional aspects of the local government transformation process. The Municipal Systems Act seeks to establish the basic principles and mechanisms to give effect to South African's collective vision of developmental government. Its focus is therefore primarily on the internal system and administration of the municipality (Planact, 2001:49).

1.7.1 Purpose of the Municipal Systems Act

The key purpose of the Act is to give effect to the country's vision of a developmental Local Government as indicated in the White Paper on Local Government. Based on constitutional provisions for basic development rights, the Act elaborates on the core principles, mechanisms



and processes that are necessary to enable municipalities to move progressively towards the social and economic upliftment of communities, and to ensure universal access to quality services that everyone can afford. Furthermore, the Act extends the definition of a municipality to include residents and communities within the municipal area, working in partnership with the municipality's political and administrative structures (Planact, 2001:50).

1.7.2 Structure of the Act

The Municipal Systems Act, 1998 (Act 117 of 1998) comprises the following: interpretation of terms, the legal nature and internal relations of municipalities, public participation, municipal powers and duties, IDP, performance management, local public administration and human resources, municipal services, credit control and debt collection, provincial and national monitoring and standard setting, legal and miscellaneous matters (Municipal Systems Act, No. 32 of 2000).

1.7.3 Key Provision of the Act

(a) *Legal nature and internal relationships of municipalities.*

In Chapter Two of the Municipal Systems Act (2000:18) the legal nature of municipalities and internal relationships, cooperative government rights and duties of governing structures, rights and duties of communities, residents and rate payers are outlined. While section 2 of the Act defines a municipality as 'a corporate entity within the local sphere of government exercising legislative and executive authority within an area determined in terms of the Local Government Municipal Demarcation Act, 1998'. A municipality is constituted of structure, functionaries, administration, communities, residents and ratepayers. The main thrust of Chapter Two is to set municipalities up as corporate entities that are legally responsible for their own actions.

(b) *Cooperate governance*

Planact (2001:51) states that section 3 of the Municipal Systems Act, 1998 (Act 32 of 2000) emphasizes the need for cooperative governance as described in the Constitution and the White Paper on Local Government. The Act emphasizes that municipalities must, within the constitutional system of cooperative governance as envisaged in section 4.1 of the Constitution, do the following: seek to integrate the exercise of their legislative and exercising authority with policies, programmes, legislation and institutional arrangements of the national and provincial spheres of government, participate in organized local government to seek solutions for the problems relating to local government generally, develop common approaches for local governance, facilitate compliance with principles of cooperative government and intergovernmental relation and conform with any arrangements concluded by organised local government section 4 and 5 of the Act make provision for the rights and duties of the governing structures of a communities, residents and rate payers.

(c) *Public participation*

According to Planact (2000:53), in Chapter Three of the Act is devoted to public participation. It looks at the development of a culture of participation, suggests mechanisms, processes and procedures for public participation and its promotion. It deals with public notice of meetings and the admission of members of the public to the municipal council meetings. The chapter stipulates that a municipality must seek to develop a culture of governance that complements formal representative government with a system of participatory governance and must, for this purpose, encourage and create conditions for communities, residents and ratepayers in the municipality to participate in local affairs. It also mentions that municipalities must establish mechanisms, processes and procedures for participation and in doing so they must take into account the special needs of people who cannot read or write, people with disabilities and other disadvantaged groups.



(d) *Municipal powers and duties*

Municipal Systems Act, (2000:30) stipulates in Chapter Four that a municipality has all the powers and functions assigned to it in terms of section 44 (a) (iii), 104 (1) (c), 156 and 229 of the Constitution and must exercise them subject to Chapter Five of the Municipal Structure Act, No. 117 of 1998. It allows for additional functions to be assigned to municipalities by the cabinet in consultation with Minister of Local Government as well as organized local government, the member of Executive Council, for local government in the province as well as organized local government.

Planact (2001:53) note that in assigning any function to a municipality, the cabinet member or the member the executive Council must either undertake to provide the funds, or make alternative financial arrangements for performance of the assigned tasks as the function of the municipality concerned. If the assignment of the function imposes a duty on the municipality, that duty falls outside the functional areas listed in Part B of schedule 4 or Part B of schedule 5 of the Constitution the performance of the duty. This has significant financial implications for the municipality concerned. The core message of Chapter Five is that municipalities must fulfil their developmental role in order to archive their legislature role.

(e) *Municipal planning in cooperative governance*

All municipalities must be aligned with the broad development plans and strategies of other affected municipalities and other organs of the state so as to give effect to the principles of cooperative government. It is therefore, important for municipalities to participate in national and provincial development programmes (Planact, 2001:54).

(f) *Adoption of integrated development plans*

Each Municipal Council must, within a prescribed period, adopt a single, inclusive strategic plan that links, integrate and coordinate plans and take into account proposals,



aligns the resources and capacity of the municipality with the implementation of the plans. It should form a policy framework and general basis on which annual budgets must be based, comply with the general provisions of Chapter Five of the Act and be compatible with national and provincial development plans and planning requirements that are binding on the municipality in terms of legislation (Municipal Systems Act, 2000:16).

(g) *Core components of integrated development plans (IDPS)*

These plans must reflect the council's vision for the long-term development of the municipality with special emphasis on the most critical development needs and internal transformation needs of the municipality. It must undertake to conduct an assessment of the existing level of development in the municipality, which must include an identification of communities that do not have access to basic municipal services, the council development strategies, which must be aligned with any national or provincial sectoral plans and planning requirements that are binding political structures and that will encourage them to administer their affairs in an economical, effective, efficient and accountable manner. The Act also places the responsibility for the establishment of the system with the Executive Committee, which must manage the development of the municipality's system, but can assign this responsibility to the municipal manager. The municipality must also establish mechanisms to monitor and review its performance systems. The Act outlines the core components of the performance system and explicitly states that the local community must be involved in the development, implementation and review of the municipality's performance through appropriate mechanisms, processes and procedures (Municipal Systems Act, 2000:46).

(h) *Performance Management Systems*

Chapter Six of the Municipal Systems Act, 2000 (Act 32 of 2000) requires that municipalities establish performance management systems that will promote a culture of performance management among its employees. The policy must reflect national policy



and obliges councils to adopt by laws to give effect to this policy. The chapter also deals with internal and external mechanisms for providing services. It enumerates the responsibilities of municipalities when providing services through service delivery agreements with external mechanisms, and provides for the establishment of internal municipal service districts and multi-jurisdictional municipal service districts (Planact, 2000:56).

(i) *Local public administration and human resources*

Chapter Seven sets out the basic values and principles governing local public administration, methods of dealing with inconsistency with applicable labour legislation, roles and responsibilities of political structures, political office bearers, the appointment of managers directly accountable to the municipal manager, the remuneration of municipal managers and the delegation system (Planact, 2001:55).

(j) *Municipal services*

Chapter Eight sets out the general duties of municipalities in terms of municipal services and refers to the constitutional obligations that apply in this regard. It also states that councils must adopt a tariff policy on the levying of fees for municipal services provided by the municipality. It stipulates that the municipality must devise a spatial development framework that must include the provision of basic guidelines for a land use management system for the municipality, as well as the council's operational strategies, applicable disaster management plans, a financial plan, which must include a budget projection for at least the following three years, key performance indicators and performance targets (Planact, 2000:54-55).

The Act provides a framework which is referred to as a process or guide for the drafting of integrated development plans, and specifies that this must tally with a pre-determined programme that also specifies timeframes for the different steps, involve consultations with the local community about its development needs and priorities, allows for



community participation in the drafting of the plan and involves consultations with organs of state (international and traditional authorities). The Act also sets out the process by which integrated development plans should be approved and how the drafting process is to be managed. It also provides for provincial monitoring and support, the submission of integrated Plans to the Member of Executive Council⁷ for its annual review and the amendment of integrated development plans (Municipal Systems Act, 2000:48).

(k) *Credit control*

Chapter Nine stipulates that municipalities must establish sound customer management systems for levying rates and other taxes and charging services fees. The aim of such a system would be to create a positive relationship between the person liable for these payments and the municipality and, where applicable, the service provider. The chapter also spells out the responsibilities of municipalities in relation to debt collection, its credit control policy and the adoption of by-laws to give effect to this policy. It lays how the policy is to be implemented and enforced, and sets out municipalities' rights of access to premises in order to read, inspect, install or repair any meter or service connection for reticulation, or to disconnect, stop or restrict the provision of any service. The chapter also discusses the amounts owing, agreements with employers of people who are in debt to the municipality, and regulations and guidelines with regard to this policy (Municipal Systems Act, 2000:56).

(l) *Provincial and national monitoring*

According to Municipal Systems Act, 2000 (2000:96), Chapter Ten outlines, how provinces can monitor municipalities and how non-performance and maladministration may be handled. It also deals with prosecution for offences, fines and bail, the serving of legal documents and legal processes and provides for national monitoring and standard setting. Legal proceedings, public servitudes and custody of documents are



dealt with in Chapter 11 of the Act, while Chapter 12 deals with a number of miscellaneous matters.

1.8. Management of municipal finance

The Municipal Finance Management Act, 2003 (Act 56 of 2003) is the fourth component of the legislative reforms and transformation framework articulated in the White Paper on Local Government. It provides a foundation for orderly and sound financial management principles and practices in the local sphere of government. It is crucial for councillors to understand these principles and practices and to keep them in mind when carrying out their role to ensure the attainment of a development vision for local government. Local government financial management was legislated for by the Local Government Transition Act, No. 209 of 1993 (LGTA), and was destined for repeal by the 5 December 2000 local government elections. The Management Act replaces the provisions relating to financial management in the LGTA (Planact , 2000:57).

1.8.1 Purpose of the Act

According to section 2, the object of the Municipal Finance Management Act, 2003 (Act 56 of 2003) is to secure sound and sustainable management of the fiscal and financial affairs of municipalities and municipal entities by establishing norms and standards and other requirements for ensuring transparency, accountability and appropriate lines of responsibility in the fiscal and financial affairs of municipalities and municipal entities; the management of their revenues, expenditure, assets and liabilities and the handling of their financial dealings; budgetary and financial planning processes and the coordination of those processes with the processes of organs of state in other spheres of government; borrowing; the handling of financial problems in municipalities; the supply chain of management and other financial matters.

1.8.2 *Structure of the Act*

(a) *Interpretation, objectives, application and amendment*

Chapter One provides definitions of key concepts and outlines whom the legislation applies to as well as the conditions under which amendment may be made (MFMA, No. 56 of 2003).

(b) *National and provincial supervision*

Chapter Two deals with the intergovernmental aspects of local government financial management. It defines the major relationship between the different spheres of government as they pertain to municipal financial management. The provisions in this chapter enable national and provincial government to monitor local government finances, to prescribe relevant norms and standards for municipalities and to delegate powers (MFMA, No 56 of 2003).

(c) *Municipal revenue*

Chapter Three regulates the management of municipal revenue and investments. It requires each municipality to establish a revenue fund, into which all monies received by municipalities must be paid. The municipal manager is accountable for the management of the revenue fund and must ensure compliance with the relevant requirements in the legislation. Various procedures are outlined for the control, withdrawal and investment of funds. The national treasury is granted powers to prescribe a framework for municipal cash management and for management of investments by local governments (MFMA, No.56 of 2003).

(d) *Municipal budgets*

Chapter Four defines a process of annual budgeting for municipalities including provisions for regular reporting to their councils and the national and provincial governments. The guiding principle is that municipalities will assume responsibility for detailed budgeting, within a nationally determined macro economic framework. Provision is made for budget adjustments



and for the shifting of funds between budget votes in the course of a municipality's financial year, subject to certain reporting requirements' limitations – based on the previous year's budget – are placed on the municipality's expenditure liability if they have not passed these budgets. The budgets and budgeting provisions aim to establish clear links between the assignment of functions to municipalities and the allocation of resources to them. Councils are made ultimately responsible for passing budgets, within the framework set for intergovernmental relations concerning financial management in local spheres of government (MFMA, No. 56 of 2003).

(e) Cooperative government

Chapter Five as with Chapter Two of the Act, deals with the intergovernmental aspects of local financial management. It defines the major relationships between the different spheres of government as they pertain to municipal financial management. The provision in this chapter enables national and provincial government to monitor local government finances, to prescribe relevant norms and standards for municipalities and to delegate powers (MFMA, No. 56 of 2003).

(f) Debts

Chapter Six deals with the borrowing of money by municipalities. It limits short-term borrowing to bridging finance, operating cash shortfalls or capital requirements on the basis of anticipated income streams, grants or long-term debt in waiting. It requires that short-term debt be paid off annually. Long-term debt is limited to funding of capital investment. Chapter Six of the Act also sets out the requirements for the authorization of municipal debts, without national or provincial approval, and details the conditions for providing security. The chapter rules out guarantees of municipal debts by national and provincial government, other than what is provided for in the Public Finance Management Act. Disclosure requirements for the borrowing of money by municipalities are also set out (MFMA, No. 56 of 2003).



(g) Responsibility of mayors

The responsibilities of major custodians involved in municipalities, financial management are detailed in Chapter Seven. The municipal mayors are there to provide general political guidance over the fiscal and financial affairs of the municipalities. In providing such general political guidance, the mayor may monitor and, to the extent provided in this Act, oversee the exercise of responsibilities assigned in terms of this Act to the accounting officer and the chief financial officer, but may not interfere in the exercise of these responsibilities (MFMA No. 56 of 2003).

(h) Responsibilities of officials

The responsibilities of officials involved in a municipality's financial management are detailed in Chapter Eight. The municipal manager is designated as a municipality's accounting officer, with some general and specific responsibilities related to developing and maintaining efficient and transparent systems of financial and risk management, internal control, budget and expenditure control, contacts and liabilities, as well as reporting. Written employment contracts and performance standards are required for the accounting officer. Part 2 of the chapter sets out conditions for the delegation of powers and duties by municipal accounting officers to other officers and outlines the implications that this has for such other officials (MFMA, No. 56 of 2003).

(i) Municipal entities

Chapter Ten allows municipalities to retain or establish a variety of corporate entities in terms of other relevant legislation, but also makes it possible for statutory and regulatory limitation and requirements to be imposed on such entities. These conditions concern accounting, auditing, asset transfers, debt management, governance, reporting and disclosure, decision-making, mandates and operational scope, planning, budgeting and investments. Every municipal entity is required to have an accounting authority that will be accountable for the execution of such conditions (MFMA, No. 56 of 2003).



(j) Goods and services

Part 1 of Chapter 11 deals with the supply chain of management and this part does not apply if a municipality contracts with another organ of state. Part 2 of the chapter deals with public-private partnership agreement, but only if the municipality can demonstrate that the agreement will provide value for money to the municipality (MFMA, No. 56 of 2003).

(k) Financial reporting and auditing

Chapter 12 outlines the requirements and procedures for local government financial statements and auditing. The municipal manager must, in accordance with generally recognized accounting practices, ensure that annual consolidated financial statements are issued and submitted to the auditor-general and the national and relevant provincial treasury. The relevant MEC must, in turn, submit copies of the statement, the audit report and particulars of corrective action to the provincial legislatures. Stringent conditions are set out to ensure compliance with these requirements by all relevant parties (MFMA, No. 56 of 2003).

(l) Resolution and financial problems

Chapter 13 of the Act deals with the following primary responsibility for the resolution of financial problems, provincial interventions, debt relief and restructuring and municipal financial recovery service (MFMA, No. 56 of 2003).

(m) General treasury matters

A number of general treasury matters are dealt with in Chapter 14. There are the assignments of powers to the national treasury to make regulations or to issue instructions or guidelines relevant to the Act or specific aspects of municipal financial management in general and for borrowing by municipalities or municipal entities. Provision is also made for the creation of audit committees (MFMA, No. 56 of 2003).



(n) *Financial misconduct*

Chapter 15 is concerned with financial misconduct within municipalities. It defines the concept of financial misconduct with reference to various relevant clauses in other chapters of the Act, and relevant to municipal officials as well as the accounting authorities and officials of municipal entities. A legal regime is provided for disciplinary proceedings and the Minister of Finance is empowered to make regulations prescribing procedures in this regard. Part 2 of the chapter provides for criminal proceedings against accounting officers, accounting authorities and officials (MFMA, No. 56 of 2003).

(o) *Miscellaneous*

Chapter 16 provides for miscellaneous aspects. It limits liability in respect of anything done in good faith in terms of the legislation, allows the Minister to exempt municipalities and municipal entities from specific provisions of the legislation, and sets out transitional arrangements for the phasing in of legislation and for its repeal (MFMA, No. 56 of 2003).

1.9. *Municipal Property Rates in South Africa*

According to Planact (2001:63), the Property Rates Act is the fifth piece of legislation that forms part of the transformation process.

1.9.1. *Purpose of the Act*

This Act is intended to regulate the power of a municipality to impose rates on property; to exclude certain properties from rating in the national interest; and to make provision for municipalities to implement a transparent and fair system of exemptions, reductions and rebates through their rating policies, to make provision for fair and equitable valuation methods for properties; to make provision for an objection and appeals process; to amend the local government Municipal Systems Act, 2000, so as to make further provision for the



serving of documents by municipalities; to amend or repeal certain legislation; and to provide for matters connected therewith (Municipal Property Rates Act, No. 6 of 2004).

1.9.2 *Structure of the Act*

The Act consists of the following chapters: Interpretation, Power to levy rates, Liability for rates, General valuation of rateable property, Valuation criteria, Valuation rolls, Valuation Appeal Boards, updating of valuation rolls, and Miscellaneous matters.

(a) *Rating*

Chapter Two of the Property Rates Act provides for a municipality to levy a rate on all property in its municipal area. It sets out specific categories of property, and allows for different rates to be levied on different properties. The Act also gives municipalities the right to determine categories of property in their municipal area. The Minister of Finance may issue guidelines to assist municipalities in the exercise of their power to levy rates (MPRA, No 6 of 2004). The chapter also states that the Minister of, in concurrence with the Minister of Finance, may by notice in the government gazette set a limitation on the amount of the rates, annual percentage increments and additional rates that may be levied on property (MPRA, No. 6 of 2004).

The chapter further defines the period for the levying of recommencement, phasing in and compulsory phasing in of certain rates. Levying of rates in areas under the jurisdiction of traditional authorities is also specified. The Act obliges municipalities to draw up and maintain a register of properties situated within their municipal areas (MPRA, No. 6 of 2004).

A signature point is that the Act obliges municipalities to adopt a rates policy and to levy rates in accordance with this policy. The chapter mentions the principles on which a rates policy should be based by law, giving effect to the implementation and enforcement of a municipality's rates policy that must be adopted (MPRA, No 6 of 2004).

(b) *Liability for rates*

Chapter Three sets out how municipalities must recover rates from single and joint property owners and specifies that the rates on state-owned property are non-recoverable. The method and time of payment of property rates are dealt with and it is stated that owners should be furnished with accounts. Criteria are provided as to how arrears on rates may be recovered from tenants, occupiers and owners who are not available at the premises of the property on which rates are being levied (MPRA, No. 6 of 2004).

(c) *General valuation of rateable property*

Chapter Four requires municipalities to make a general valuation and to prepare a valuation roll of all properties on which they intend to levy rates. It specifies when the valuation may commence, how long it should last and how the date should be set (MPRA, No. 6 of 2004).

The Act also requires that a municipal valuer must be appointed and the functions of the valuer are described in this chapter. It states that a municipality may enter into an agreement of partnership with another municipality to appoint a single valuer, defines the qualifications of such a valuer. It also provides for the protection of confidential information.

(d) *Valuation criteria.*

In Chapter Five, it also specifies that property must be valued in accordance with the 'Generally recognized valuation practices, methods and standards and provisions' of the Act. The chapter enumerates the techniques tools and systems to be used for valuation and looks at the general basis of valuation, Sectional title schemes and special valuations (MPRA, No. 6 2004).

(e) *Valuation rolls*

In preparing a valuation roll, a municipality must list all the properties on which it intends to levy rates. Chapter Six prescribes the particulars to be reflected in the valuation roll in respect



of each property as at the date of valuation. They are as follows: registered or other description of the property; the category, determined in terms of Section 8, into which the property falls; the physical address of the property; the extent of the property; the market value of the property, if the property was valued; the name of the owner and any other prescribed particulars (Section 48 (2a-g) of MPRA, No 6. of 2004). The chapter also defines the process and time for the public notice of valuation rolls, impaction and objections and the process to be followed with regard to objections and the certification, obligation to give reasons and rights of appeal (MPRA No. 6 of 2004).

(f) Valuation Appeal Boards

In Chapter Seven the MEC for local government is given the right to establish Valuation Appeal Boards in a province. The main function of these boards is to hear and decide appeals against decisions by municipal valuers concerning objections to matters appearing on or omitted from valuation rolls (MPRA, No 6. of 2004).

The chapter describes the composition of the boards, disqualifications, and terms of office, termination of membership and conduct of members of the board. It describes the procedures and processes for meetings, decisions to be taken and the orders of procedure (MPRA, No. 6 2004).

The MEC for local government may authorize a Valuation Appeal Board to establish a committee or committees to assist it in the performance of its functions. The powers of Valuation Appeal Boards are: (1) an Appeal Board may, by notice, summon a person to appear before it; to give evidence; or to produce a document available to that person and specified in the summons; call upon a person present at a meeting of an Appeal Board whether summoned or not to give evidence; or to produce a document in that person's custody; it may administer an oath or solemn affirmation to that person question that person, or have that person questioned, or retain a document produced in terms of paragraphs (a) (ii) and (b) (ii) for a reasonable period (Section 75 [1a-e] of MPRA No. 6 of 2004).

The Act specifies that legal proceeding by or against a Valuation Appeal Board may be instituted in the name of the board and that any costs awarded in any legal proceedings against a Valuation Appeal Board must be borne by the municipality concerned (MPRA, No. 6 of 2004).

(g) *Updating of valuation rolls*

In terms of Chapter Eight, a municipality may whenever necessary and after the municipality's valuation roll has been certified in terms of section 49 of the Act, cause a supplementary valuation to be made and a supplementary roll to be prepared in respect of any retainable property (MPRA No. 6 of 2004).

(h) *Miscellaneous matters*

Chapter Nine states that the Minister must monitor and from time to time investigate and issue a public report on the effectiveness, consistency, conformity and application of municipal valuations for rating purposes. It identifies what is to be included in the investigation and the categories of properties that must be investigated. The report of the investigation should reflect whether the criteria are being applied in a capable manner, the ratio set for valuation and whether there is equality. It also specifies the regulations, offences and transitional arrangements and the repeal of laws (MPRA No. 6 of 2004).

1.10 Conclusion

This chapter began by looking at the parliamentary committee system, which allows room for public participation and is therefore one of the hallmarks of South Africa's relatively young democracy. These committees increasingly play a key role in ensuring that government is by and for the people. The obligation for local government is encapsulated in the Constitution of South Africa, 1996 (Act 108 of 1996) which provides a framework for local government activities. The Constitution is an overriding component of legislation necessary for informing local government legislation. While it is widely acknowledged that Local Government Transition Act, 1996 (Act 97 of 1996) resulted in the deracialisation of local government; it is



also widely agreed that it did not bring about fundamental transformation. This posed challenges to local government proponents and practitioners. A series of Acts emerged from this framework. These direct municipalities in the new dispensation and form the final phase of the Local Government Transaction. Legislation flowing from the White Paper on Local Government are the following: the Municipal Demarcations Act, the Municipal Structures Act, the Municipal Systems Act, the Financial Management Act and the Municipal Property Rates Act. In Chapter Two of this study the research methodology is outlined, this indicates how this research was conducted.