

THE TRANSFORMED LOCAL GOVERNMENT SYSTEM: SOME LESSONS

C. Thornhill

School of Public Management and Administration

University of Pretoria

ABSTRACT

Democratising the system of local government in South Africa required a total transformation of all the municipalities and the services they provide. Local government as *government closest to the people* demanded particular attention as the services they are expected to provide in a transformed system affect the daily lives of all inhabitants of the state. During the *apartheid* regime South Africa consisted of racially based local authorities responsible for a limited number of municipal services. The major transformation commenced in 1998 with the establishment of comprehensive municipalities with extensive functions covering the total geographic area. The aim of this article is to briefly trace the stages in the development of the new system of local government and administration. Particular attention will be paid to the role of the elected municipal council and its substructures and the administrative structure with a municipal manager as the chief executive officer. The political administrative interface will be addressed to explain the implications of democracy on the operations of municipalities. The challenges and prospects of the current system will also receive attention and to explain the lessons learned after 10 years.

INTRODUCTION

Local government is often the first point of contact between an individual and a governmental institution. Therefore, it is often argued that local government is *government closest to the people*. It is thus imperative, in view of the current urbanising trends to devote particular attention to the system of local government and the attendant administrative structures. The newly elected democratic government had to transform the system of local government to meet the demands of a non-racial

society which was totally fragmented as a result of the former government's policy of *apartheid*.

When the new government assumed office in 1994 it inherited ± 100 fragmented local authorities scattered across the country. These structures bore no resemblance to one another as some were fully operational (for Whites); some were token local authorities (for Black people); some were advisory structures (for people of mixed origin and for people of Indian descent); and some urbanised communities were administered by the so-called *homeland or bantustan* governments. To transform these fragmented structures, required extensive political choices; administrative restructuring; and the reconsideration of the role of the local sphere of government in the new political dispensation.

The transformational processes posed significant challenges as efficient and effective services had to be maintained or introduced in cases where services were non-existent or sub standard. The issue of the political and administrative interface is just one of the complex issues in any newly democratised state requiring attention which will also be addressed in the discussion.

PRE TRANSFORMATION PHASE

It is not the intention to trace the origin of local government in South Africa back to the first European settlement in 1652. Attention is devoted only to the era of the National Party's *apartheid* policies which commenced in 1948. This stage has become known as the *pre interim* phase or the first phase in transforming the system of local government.

In the period before the unbanning of certain organisations in 1992 which promoted democracy in South Africa, ± 100 local authorities existed in South Africa. They comprised municipalities for Whites, assigned to the regional structures (called provinces) and performed their functions under delegated legislation emanating from *ordinances* passed by the provinces. The municipal matters concerning the Indian population and those of people of mixed origin (termed as Coloureds) were dealt with by respectively management committees and local affairs committees. These committees had limited powers and operated within the policy and legal frameworks of so-called White municipalities.

Since 1983 the affairs of urbanised Black people were removed from the authority of White municipalities and *Black local authorities* were established. These local structures were not accepted by the Black urban communities as they lacked a proper financial base; they were understaffed; did not possess any significant industrial or commercial areas to generate funds; and were not credible in the communities concerned. Although the previous government did everything in their power to keep these municipalities operating, they slowly declined in their ability to take policy decisions. The urban communities also started campaigns to boycott the payment of rates and taxes, hastening the demise of the structures to a point where it became obvious that the racially based municipalities could not continue to function and could no longer provide municipal services in a sustainable manner. The reform of local government commenced with the introduction of an interim phase providing for the first phase in de-racialising local government structures which will be discussed in the next section

A fragmented and incoherent range of local authorities cannot be transformed in one process as the negotiators for a democratic system of government wanted to ensure continuity in service provision. This is also the justification for the decision by the negotiators to retain all existing legislation until abolished or amended. In the case of local government the interim phase commenced with the adoption of the *Interim Measures for Local Government Act, 1991* (Act 128 of 1991). This Act allowed the former government to review the existing (pre interim) system of local government. It also enabled local authorities to enter into agreements with the racially based Black local authorities, management committees and local affairs committees (De Beer & Lourens, 1995:83). Thus, the major change introduced at this stage was to allow local authorities, established along racial lines to negotiate with one another and even to administer and manage particular services jointly. Thus it became possible to redistribute financial resources amongst local authorities in the same geographical area and to utilise existing infrastructure and expertise.

The next important phase in the interim period required major legal amendments to formalise the negotiated agreements. These negotiating forums also provided for the extra parliamentary representation i.e. interested groups who could indicate their direct interest in a particular area, but did not form part of existing municipal structures. These amendments (sections 28 and 29 of the *Provincial and Local Authority Affairs Amendment Act, 1992* (Act 134 of 1992)) provided for *inter alia* the demarcation of municipal areas for joint administrative purposes; introduction of a grant system to assist in the improvement of conditions in disadvantaged areas; and the re-apportionment of revenue amongst participating local authorities thus allowing the white more affluent local authorities to apportion revenue accrued in their areas of jurisdiction to the disadvantaged Black local authorities, management and local affairs committees.

On 22 March 1993 the *Local Government Negotiating Forum* was launched. This Forum signalled the first real stage in the creation of a democratic, non-racial, non-sexist and financially viable local government system (De Beer and Lourens, 1995: 116). The Forum provided for:

- a pre-election phase
- a transitional phase
- a final phase

These phases provided for the repeal of discriminatory legislation; drafting of guidelines for negotiations; financial and human resource issues; broad participation by stakeholders; policy options; and the finalisation of *de jure* local government structures. The *Constitution of the Republic of South Africa, 1993* (Act 200 of 1993) was passed as an interim constitution providing for the democratization of the Republic of South Africa. This Act also provided a constitutional status to local government allowing municipalities for the first time to claim original powers.. The constitutional principles contained in the Act also guaranteed the retention of local government (principles XVI and XX). This commitment

to democratization strengthened local government's efforts to promote the establishment of non-racial local authorities and subsequently the *Local Government Transition Act, 1993* (Act 209 of 1993) was promulgated in February 1994.

The *Local Government Transition Act, 1993* was based on the principles agreed to by the *Local Government Negotiating Forum* which had to negotiate an interim system of local government. The Act provided the vehicle to abolish racially based local authorities and replace them with appointed joint structures representing all the inhabitants of a particular urban area. No democratic elections could be conducted at this stage as the new constitutional dispensation had not been concluded. However, this stage allowed the different statutory structures (i.e. consisting of the previously racially based elected representatives) to negotiate with the non-statutory representatives (i.e. the liberation movement representatives) on acceptable interim structures to continue with the rendering of traditional municipal services in all the areas which could be considered as urban areas. These now included also the areas formerly in the *bantustans*. The interim structures de-racialised municipal decision-making and service rendering; and it proved that negotiations could have positive outcomes as the former racially based councils could reach agreements with liberation movements on new structures without resorting to violence or boycotting of services .

FINAL PHASE

The conditions which would apply to the final stage in the transformation of local government in South Africa were contained in the interim *Constitution of the Republic of South Africa, 1993* (Act 200 of 1993). The contents of this Act are not discussed in detail as they provided only for the period from the first national elections of 1994 until the final constitution could be passed by the Constitutional Assembly.

The *Constitution of the Republic of South Africa, 1996*, was certified by the Constitutional Court and assented to by the President on 18 December 1996. The Constitution provides in chapter 7 for the constitutional preconditions for the new system of local government. Provision is made for *inter alia* (section 151):

- the local sphere of government to consist of municipalities which must be established for the whole territory of the Republic.;
- the legislative and executive authority of a municipality to be vested in its municipal council;
- a municipality has the right to govern on its own initiative the local government affair of its community subject to national and provincial legislation as provided for in the Constitution; and
- the national or provincial spheres may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions.

The objects of local government were clearly entrenched in section 152 of the Constitution. These include *inter alia* that:

- democratic and accountable government be provided for local communities;

- services be provided in a sustainable manner;
- social, economic development be promoted ;
- a safe and healthy environment be promoted; and the involvement of communities and community organisations be encouraged in all matters concerning local government.

The full constitutional requirements are not discussed, however, the most significant characteristics of the system of local government are that it is constitutionally entrenched; it now enjoys original powers from the Constitution; and it has to be democratically based. With these characteristics in mind, the current system can be considered.

It should be borne in mind that the transformation process does not represent a final stage. It is a continuous process that requires the reconsideration of existing processes and functions consecutively; detect shortcomings as soon as possible; and to act decisively to improve the system until an effective and efficient system is operational. Powerful democratisation forces compelled local government to break with any remnants of the *apartheid* government. A new system was created to comply with constitutional guidelines. The total system was restructured and replaced with a new system (which is continuously being reviewed and amended), e.g.

- municipalities have been demarcated in such a way that it covers the total geographical area of the Republic, not only the urban areas;
- municipal councils are representative of the South African electorate registered to vote for the national and provincial legislatures (with limited exceptions);
- communities have a constitutional right to demand to be consulted in decisions concerning the municipal area in which they reside to ensure that their needs are satisfied;
- municipalities provide a wider variety of services, not only basic services such as electricity, water and sanitation ; and
- the system is vigorously supported by newly appointed managers selected on the basis of their perceived support of the system.

The different characteristics as well as the stages of the transformation process will be discussed briefly. It should be emphasised that the system is currently under review concerning the assignment of functions to two categories of municipalities (B and C) as well as the functions and powers of particular categories of municipalities are under review as it appears as though a lack of capacity prohibits them from performing their assigned functions.

Policy guidelines

After consultation with interested parties, the Ministry for Provincial Affairs and Constitutional Development published government's policy guidelines: *The White Paper on Local Government* in 1998 (The Ministry, 1998). The White Paper *inter alia* provides for (White Paper, 1998: x *et seq*):

Firstly local government should be developmental. This implies that local government should exercise its powers and perform its functions in a manner maximising their impact on social development and economic growth; aligning the roles of the members of the public and each sphere of government; and democratising development, meaning that each municipal community should be afforded the opportunity to be involved in development.

Secondly local government is accepted as a sphere of government in its own right. Thus local government is no longer viewed as subordinate to provincial and national government. This also acknowledges the constitutional principle that: "In the Republic government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated" (Constitution, 1996: section 40(1)). The Constitution also requires spheres of government to exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of another sphere (Ibid: Section 41(1)(g))

Thirdly the White Paper recognises the existence of metropolitan municipalities (as already instituted in the interim phase). Two other categories of municipality are identified to cater for citizens living outside the metropolitan areas. These are categorised as category B or local municipalities which will be municipalities to render services in urbanised areas and category C municipalities would be labelled as district municipalities. This latter category of municipality would also include category B municipalities in its geographical area.

Fourthly the policy addressed the political structure of the new system of local government. Provision is made for dynamic leadership in the political structure. Furthermore, powers could be delegated to provide for wider participation in political processes. The policy guidelines also provide for a mixed electoral system, implying that a council should partly consist of ward representatives and partly of proportional representatives elected on a party list system.

Fifthly the White Paper attends to the core of the *raison d'être* of municipal government and administration *viz* service delivery. In this regard provision is made for municipalities to utilise the full spectrum of service delivery options including contracting out, public-private partnerships and related mechanisms.

Sixthly and as could be expected, the policy document addressed the vexing issue of financing local government services. The White Paper acknowledged the extensive services required to redress the injustices of the past, but also noted the need for sustainable municipalities. Thus it is proposed that municipalities should be assigned revenue sources, but that provision should also be made for intergovernmental transfers to supplement their revenue and enable them to provide the extensive services now entrusted to the new sphere of local government. Specific provision must also be made for budgeting, accounting, financial reporting, and the introduction of *Generally Accepted Accounting Practices*.

It should be noted that the transformation of the system of local government was preceded by clear policy guidelines. The White Paper published in 1998 covered most of the political and administrative components required to devise a totally new system of local government and administration, which represents a break with the past in the sense

that the municipalities would be non-racial; would provide a wider range of services than before; and would be an *equal* partner in the whole system of government without fear of being subjected to policy decisions by the other two spheres of government.

Various legislative measures had to be passed to give effect to the policy guidelines contained in the White Paper. These acts are not discussed in detail, but will be alluded to in an effort to illustrate the extent to which the White Paper had been put into practice.

Municipal demarcation

The *Local Government: Municipal Demarcation Act, 1998* (Act 27 of 1998) was passed on 3 July 1998 to provide for criteria and procedures for the determination of municipal boundaries. This stage in the introduction of a new system of local government preceded the establishment of the new municipalities. In this Act provision is made for the establishment of a Demarcation Board (section 3) that is a juristic person; independent and impartial in exercising its functions without fear, favour or prejudice. The Board is required to demarcate the boundaries of municipalities in accordance with the conditions set in the Constitution, 1996 (section 155). The Board is required to determine municipal boundaries for the whole territory of the Republic (section 21).

When determining the boundary of a municipality the Board has to take into consideration *inter alia* the interdependence of people, communities and economies; the need for cohesiveness, integrated and unfragmented areas; the financial viability and administrative capacity of the municipality; the need to share and redistribute financial and administrative resources; provincial boundaries; areas of traditional rural communities; existing and proposed functional boundaries; existing and expected land use; topographical, environmental and physical characteristics; administrative consequences of its boundary determination; and the need to rationalise the total number of municipalities.

The original determination of the boundaries of municipalities created a number of challenges. Some municipalities extended over existing provincial boundaries. The result was that legislation had to be passed to regulate the administrative consequences of such municipalities (*cf Local Government: Cross-boundaries Municipalities Act, 2000* (Act 29 of 2000)). These cross boundary municipalities proved to be unsuccessful as policies in the different provinces differed and the *Cross-boundary Municipalities Repeal and Related Matters Act, 2005* (Act 23 of 2005) had to be passed. It is important to note the significance of boundary determination as it could have dire consequences. In some cases local communities were totally opposed to be part of a particular province (e.g. Khutsong) as the re-demarcation provided for the amendment of provincial (regional) boundaries to rationalise the administration of municipalities per province. This opposition even resulted in damage to property and boycotting of service payments. An amendment to the Constitution, 1996 was made, but had to be referred back by the Constitutional Court requiring Parliament to revise its amendment after consulting the affected communities.

The Demarcation Board succeeded in rationalising the number of municipalities from the 1100 racially segregated municipalities to 843 in 1995. With the demarcation of 1998 the number was reduced even further to 284 which later were amended to 283.

The lesson from this first exercise in demarcating municipalities clearly indicates that the communities should be consulted prior to any decisions affecting them, irrespective of whether it concerns the delivery of services, but also as a result of their perceptions concerning the capacity of a regional government to administer their affairs. Furthermore, cognisance should be taken of historical boundaries that applied, even in an unacceptable governmental system people become accustomed to their location for administrative purposes (e.g. magisterial districts) and any change should take note of this factor.

Structures of municipalities

The second legislative measure to be adopted to create the new system of local government and administration was the adoption of the *Local Government: Municipal Structures Act, 1998* (Act 117 of 1998) published on 18 December 1998. This Act mainly provides for the establishment of municipalities in accordance with the requirements relating to the categories and types of municipality; to establish criteria for determining the category of municipality for an area; to define the types of municipality for each category; to provide for an appropriate division of functions and powers among categories of municipality; to regulate the internal structures of political office bearers and senior officials; and to provide for appropriate electoral systems.

Municipal councils consist of two kinds of councillors. *Firstly*, 50% of the councillors are elected on a ward basis. This implies that a municipality (except a district municipality and some metropolitan municipality e.g. Cape Town metro) is divided into wards and the electorate in each ward elects a councillor to represent them. *Secondly*, the remaining 50% of the councillors are elected on a proportional basis through the party list system according to the number of votes a party obtains in an election. The reasoning behind this system is that ward councillors should promote matters concerning the ward they represent. The proportionately elected members should consider the matters concerning the whole municipality i.e. an overall view.

Categories

The Act on establishing the structures *inter alia* provides for the categories of municipality already alluded to i.e. category A- metropolitan municipalities (currently six metropolitan municipalities); category B – local municipalities (currently 231); and category C- district municipalities (currently 46). The criteria for being classified in a category are stipulated in the Act.

Types

The Act makes provision for the *type* of executive available to each category. Although the council possesses both the legislative and executive authority, executive actions can be performed on behalf of council e.g. by a collective executive system; a mayoral executive system; a plenary executive system; a sub council participatory system; and a ward participatory system.

The different types will not be discussed in detail. However, the two most significant types will be referred to as they represent the major challenges in the relationship between the council as the legislature and the councillors serving in an executive capacity. It should once more be emphasised that the *final executive authority* of a municipality is vested in council. It may delegate functions and responsibilities to the executive arm of council, but accountability for executive actions vest in council.

Executive committee

Municipalities that are authorised by the relevant Act (Act 117 of 1998, section 42), may appoint an executive committee. The composition of an executive committee must be composed in such a way "...that parties and interests represented in the municipal council are represented in the executive committee in substantially the same proportion they are represented in council". A council may determine its own procedures to elect an executive committee. Considering the wording of the Act reproduced verbatim, it could be deduced that members should not necessarily represent the parties and interests exactly proportionally, but merely *substantially* proportionately.

The executive committee is the principal committee of council; receives reports from other committees, may dispose of matters delegated to it; and performs functions comparable to a cabinet in the national sphere of government. Thus an executive committee *inter alia*:

- reviews and evaluates the needs of a municipality in order of priority;
- recommends strategies to council;
- identifies programmes and services to address those priority needs;
- recommends the best methods to deliver those strategies;
- identifies and develops criteria to evaluate the progress with the implementation of the strategies;
- evaluates the progress against key performance indicators;
- monitors the management of the municipality's administration;
- reviews the performance of the municipality;
- oversees the provision of services to the different communities in the municipality; and
- performs such duties and exercise such powers as the council may delegate to it.

The municipal council may, by resolution, remove a member of the executive committee or all the members from office. The relationship between the council and the executive committee is clearly stipulated in the authorising Act (Act 117 of 1998, section 44(4)) by requiring that an executive committee must report to the council on all decisions taken by the committee. No distinction is made between powers assigned to the executive committee and the duties delegated to it. Thus it could be deduced that the final executive authority is vested in council and may thus also review the decisions of the committee.

Municipalities making use of the executive committee system elects a mayor from its members (Act 117 of 1998, section 48). The mayor acts as the chairperson of the executive committee. The mayor may also perform any ceremonial duties and exercise the powers delegated by the council or the executive committee.

Executive mayor

The introduction of the executive mayor is a novel concept in the South African local government sector. This *type* may be utilised by municipalities authorised to institute such system (Act 117 of 1998, section 54). The functions and powers of the executive mayor are not repeated as they are substantially the same as those entrusted to the executive committee. There are two major exceptions *viz firstly* the executive mayor is not the principal committee of council as the case is with the executive committee, but also receives reports from other committees as is the case with the executive committee and may dispose of a matter if delegated to the executive mayor. *Secondly* the executive mayor may perform ceremonial duties as the council may determine which function an executive committee cannot perform. Thus it could be argued that from a functional point of view the two types are largely comparable.

The most significant distinction between the executive committee and the executive mayoral system is to be found in the composition of the mayoral committee appointed by the executive mayor from members of the council. The executive mayor may delegate specific responsibilities to each member of the committee; may delegate any of the executive mayor's powers to the respective members. The council may also assign specific powers and functions to the executive mayor, but such powers must be exercised and performed by the executive mayor together with the other members of the mayoral committee.

A major difference between the executive committee and the mayoral committee is that the executive committee's members are elected by the council, but the mayoral committee's members are appointed by the executive mayor. The second major difference is that the executive committee serves for the term of the council, unless the type of the municipality changes. In the case of the mayoral committee, the members serve for the term of the executive mayor. However, the executive mayor may also dismiss a member at any time. It could thus be argued that the mayoral committee system is comparable to the cabinet system, but with the main difference that the executive committee must report on all its decisions to council (as is the case with the executive committee).

A lesson to be learnt from the executive mayoral system mainly concerns the challenges faced with distinguishing clearly between the political role of the executive mayor and the administrative role of the municipal manager. This particular issue will be dealt with in more detail under a separate heading. Suffice it to state at this juncture that it appears as though some executive mayors assume administrative powers and actually endeavour to manage the municipality's affairs.

Extending democracy

One of the major reasons for the liberation movements' opposition to the former system of government was the absence of democracy in the state's machinery. Therefore, it could be expected that the new system would make particular provision for the introduction and the strengthening of democracy in all governmental processes and actions. Some of

the most significant democratisation innovations in the local sphere of government sphere will be referred to in the following paragraphs.

Community participation

One of the requirements the new system of local government had to meet, was to promote democracy at the local sphere. It is, therefore, understandable that the enabling legislation would make provision for the extension of citizen participation in the governing of a municipality. Therefore, particular provision has been made in the enabling legislation concerning local government. The *Local Government: Municipal Systems Act, 2000* (Act 32 of 2000) requires municipalities to develop a culture of municipal governance that complements formal representative government. This is achieved with the requirement that local communities must be encouraged to participate in the affairs of the municipality (section 16).

Community participation must take place through political structures, through mechanisms such as *izimbizo* (informal gatherings with councillors where questions can be asked on any issue related to municipal matters), public meetings, consultative sessions and report back sessions with the local community. In devising such mechanisms it is a legal requirement (Act 32 of 2000, section 17(3)) that attention be given to people who cannot read or write, people with disability, women and other disadvantaged groups. It is also required that meetings of council and its committees (with particular exceptions) must be open to the public. With the compilation of the integrated development plan for the municipality the community must also be involved (Act 32 of 2000, section 29).

It should be obvious that the new approach to democratising local government goes far beyond the normal practice of only elected representatives acting on behalf of a community. Communities are no longer excluded from the governing function and do not only play a role at elections and are then sidelined. They could actively participate in a variety of issues.

Ward committees

Metropolitan and local municipalities, as authorised in the enabling legislation (Act 117 of 1998, section 73), may establish ward committees. A ward committee consists of a ward councillor, acting as the chairperson and not more than ten other persons from the ward concerned. These committees must specifically take into account that women are equitably represented; and that the diversity of interests in the ward are also represented. Thus the ward committee offers ordinary inhabitants who may not be interested in campaigning or being fully involved in council matters to contribute to their communities by way of representation in ward committees.

No formal elections are normally held to select the ward committee members. In most cases the different interest groups are requested to put forward names of prominent members of movements or associations active in the particular area. From these, ten are then selected. Ward committees are supported by the council through e.g. the provision of a secretary; monetary assistance; transport to meeting venue; or cell phone. They do not receive an allowance such as elected councillors receive.

A ward committee is assigned specific duties including making recommendations to the ward councillor or through this councillor to the council on any matter affecting the ward. The council may also delegate powers and duties to a ward committee. It depends on the initiatives of the members of the committee and the support and guidance of the councillor the rate of success they achieve.

A lesson to be learnt from this democratising concept is that democracy can be extended beyond the normal elected representatives. It also serves as a training stage for inhabitants who become exposed to public representation. These members may even become councillors in future municipal elections. A challenge facing the system is that in some wards the councillor concerned manipulates the members to promote his/her own political agenda and does not allow community representatives not supporting the party in power's policies to serve as members. Thus care should be taken with the composition of a ward committee to ensure that it represents the real interests of the community in the particular ward.

Another lesson to be learnt is that once communities have been afforded the right to participate, they will demand that this right be honoured. In some cases where they have not been consulted or acknowledged have even led to violent protests. Thus council will be well advised to honour its processes once introduced and not try to sidestep occasions that could elicit negative comments.

Functions and powers

As alluded to earlier, municipalities have been assigned extensive functions and powers in re-engineering the system. Municipalities are assigned powers and functions in the Constitution (sections 156 and 229). These include *inter alia*:

- the right to administer the local government matters entrusted to it in the Constitution (Schedule 4(B) and 5(B);
- the authority to make and administer by-laws for the effective administration of the matters assigned to it, may impose rates, taxes and surcharges for the services provided by or on behalf of the municipality;
- may develop and adopt policies, plans and strategies, promote development and implement national and provincial legislation as assigned to it (Act 32 of 2000, section 11); and
- to do anything else within its legislative and executive competence.

In general it could be stated that a municipality remains responsible for the traditional core services such as water provision, electricity distribution, refuse removal and sanitation. However major responsibilities have been assigned in terms of the Constitution e.g. aspects of health services, and housing. The Constitution, however, clearly states that these functions could only be assigned if the matter could most effectively be administered locally and the municipality has the capacity to administer it.(In some cases municipalities are no longer entitled to provide a housing service due to lack of capacity) This is another lesson to be learnt from the transformed system i.e. that the newly created

municipalities often lack the administrative capacity to perform the assigned duties due to a lack of properly trained and experienced managers and functional employees with the required commitment to succeed. The second challenge in this regard is the lack of financial capacity to implement the extensive policies passed by the democratically elected government since 1994.

Administration and management

The administrative and managerial matters of municipalities received particular attention in the development of the new system. The most significant of these issues include the following:

Firstly human resources are addressed by the requirement that a municipal council *must* appoint a municipal manager as head of administration and also as accounting officer. The person appointed in this position must have the relevant skills and expertise to perform the duties associated with the post (Act 117 of 1998, section 82). As head of administration the municipal manager thus has to ensure that policies are developed; that proper organisational structures exist; that financial arrangements are made to prevent financial misconduct and promote sound financial management; that work methods and procedures are determined to obtain efficient and effective service delivery; the human resource management will contribute to sound service delivery through effective managerial practices; and that proper control is exercised to enable council to render account in public for all its actions or inactions. All municipal human resource policies and practices have to be consistent with applicable labour legislation (Act 32 of 2000, section 52). Staff matters are extensively dealt with in the Municipal Systems Act, 2000.

Secondly the *Local Government: Municipal Finance Management Act, 2003* (Act 56 of 2003) requires every municipality to have a budget and treasury office consisting of a chief financial officer and other persons contracted by the municipality for the work of the office (Section 80). This officer is administratively in charge of the budget and treasury office and has to advise the municipal manager on the exercise of powers and duties assigned to the accounting officer in terms of financial matters. Thus, it could be stated that the chief financial officer is the financial expert in the municipality and assists the municipal manager as accounting officer to perform his/her duties effectively.

Thirdly, the new system provides for performance management by requiring its administration to be responsive to the needs of the local community; to facilitate a culture of public service and accountability amongst its staff; to be performance orientated to perform its functions through operationally effective and administrative units; assign clear responsibilities for the management of the administrative units and mechanisms; delegate responsibilities to the most effective level within the administration; and establish a performance management system and to set key performance indicators to measure performance; annual performance reports must also be submitted(Act 44 of 2003, section 6 substituting section 46 of Act 32 of 2000).

Fourthly municipalities as public institutions are required to operate according to strictly defined financial processes and practices. The *Local Government: Municipal Finance Management Act, 2003* (Act 56 of 2003) was passed to regulate the financial affairs of municipalities. This rather extensive act is partly based on the financial legislation governing the national and provincial spheres of government (*Public Finance Management Act, 1999* (Act 1 of 1999)). The Act provides *inter alia* for securing the financial and sustainable financial affairs of municipalities; and to establish treasury norms and standards. The Act promotes sound financial administration by requiring e.g. arrangements regarding supervision over local government financial matters by national Treasury; by requiring every municipality to open a bank account for revenue received and from which payments can be made; the requirement that a budget must be approved for every financial year before the commencement of the financial year to which it applies; the responsibilities of the political office bearers such as the mayor/executive mayor; responsibilities of the municipal officials such as the municipal manager as accounting officer, the top management and the chief financial officer; supply chain management; and financial reporting and auditing.

Fifthly control over the local sphere of government is exercised by *inter alia* the provincial sphere of government through the Constitution, 1996. Section 139 of the Constitution assigns an interventionist role to the provincial sphere of government. Thus a provincial government may intervene in local government in a province if a municipality cannot or does not fulfil an executive obligation in terms of legislation. In such a case a provincial executive may even issue a directive describing the extent of the failure and the steps required to meet its obligations or even assuming the responsibility for the relevant obligation.

The normal requirements are retained concerning financial reporting to the Auditor-General (Act 56 of 2003, section 121(3)). The member of the executive council of a provincial legislature responsible for local government in a province is required to submit an annual report to the Minister of Provincial and Local Government on the performance of municipalities in the province.. The responsible Minister must annually compile and submit to Parliament and the MECs a consolidated report on local government indicating their performance in terms of the general performance indicators (Act 32 of 2000, sections 47& 48).

Sixthly and perhaps posing the most complex challenges in local government is probably the political/administrative interface. The legislative measures seem to be clear on the relationship. Section 52 of the Municipal Systems Act, 2000 stipulates that the respective roles and responsibilities of each political structure and political office bearer and the municipal manager must be defined in precise terms in writing and be acknowledged and given effect to in the rules, procedures and instructions and policy statements. The Act further states that in defining the areas of responsibility, the manner in which they must interact must be determined; appropriate lines of communication and reporting must be determined; and mechanisms, processes and procedures for interaction between the political structures and the municipal manager and other staff has to be clearly established.

Capacity

Capacity is specifically addressed in municipal enabling legislation (*cf* Act 32 of 2000, section 68). The importance of capacity is dealt with under a separate heading as a result of the challenges posed in this regard. A municipality is required to develop its human resource capacity to a level that enables it to perform its functions and exercise its powers effectively, efficiently and economically. Measures also exist to finance training programmes for municipal officials.

A lesson to be learnt from a capacity building point of view is that when a new system is introduced and the administrative and the political structures dramatically re-engineered, a major challenge is posed to the new incumbents of the political and the administrative components. In the case of South Africa the matter was further complicated by the fact that the former municipalities were racially segregated. The staff component of most municipalities was from the White community and most of the financially viable municipalities were in White areas, resulting in the councils also being from that community. With the democratisation the new municipalities lacked experienced staff and councillors.

The system currently in existence only became fully operational in 2006. The result is that local government is faced with a serious lack of human resources with the required capacity to administer the new municipalities and render the wide range of services in a newly demarcated area including formerly disadvantage communities.

The challenges regarding capacity have been highlighted in the Municipal Demarcation Board's 2007/2008 report. The challenges include matters such as municipalities *performing poorly* i.e. less than 25% of their assigned functions (MDB.2008:133). The Demarcation Board also found that in some cases the poor performance could be attributed to non-viable areas (particularly in the former *bantustans*) (Ibid.: 138). This clearly illustrates that the original demarcation of these municipalities should be reconsidered. The Board further reported on managerial incapacity due to *inter alia* the extent of the service backlog in former disadvantaged areas; lack of financial reserves and dependence on grants by national government; household indigency; managerial inexperience and incapacity; and community expectations exceeding the capacity of the municipality (MDB.2008:143)

The lessons to be learnt from this challenge clearly imply that proper capacity should be developed prior to the implementation of a totally new system in which no institutional memory exists. Furthermore, communities should be properly informed about the capacity of the municipality to deliver on political promises.

Political / administrative interface

The relationship between administration/management and politics is not one of a servant – master relationship (Cameron, 2003: 55). The relationship is much more multi-faceted and complex. Therefore, it is necessary to consider the respective roles of the politicians and of the personnel corps more closely to be able to comprehend the administrative political interface.

It can be argued that council is the major authority to determine municipal policy. This approach negates the politics-administration dichotomy, according to which policy-making is the task of the legislator, whilst the execution of the policy is the task of the executive government institutions (the so-called administration). Although council is responsible for passing by-laws and resolutions (which could be regarded as written statements of policy), the municipal manager and other managers in the municipal departments as well as civil society contribute to the formulation of policy (*cf.* section 16(1)(a) of the Municipal Systems Act, 2000 regarding the obligation of council to encourage communities to participate in the preparation, implementation and review of its integrated development plan) within the framework of their respective spheres of operation and within the parameters of policies passed by council.

The participation of the municipal manager in the formulation of public policy does not imply the *involvement in, but the acknowledgment of politics*. When an official proposes policy options through the municipal manager in the course of the execution of his/her duties, he/she performs a *political function* (in the sense of attaching an administrative value judgment to facts within the current political framework and interpreting societal requirements) and operates within the *ambiance* of politics. As soon as the two terms are brought into relation to each other, the 'separation' fades away. Politics and administration are like the two sides of a coin: an absolute separation is impossible. The legislation pertaining to local government is quite clear in this regard. By assigning functions and powers to municipalities it implies the duty to formulate policies and to perform the assigned functions to deliver services (*cf.* sections 83 and 84 of the Municipal Structures Act, 1998). Consider as well the contents of chapter 5 of the Municipal Systems Act, 2000 concerning the integrated development plan. Section 11(3) of the latter Act specifically assigns the responsibility to develop and adopt policies to municipalities.

In practice, municipal managers should be able to distinguish when the decisions to be made fall outside their administrative sphere of authority and within the political domain of council or a political office-bearer. The implication is not that managers should leave the important *qualitative* decisions to the political office-bearers, concerning themselves with making only unimportant (or less important) quantitative decisions. As a matter of fact, their decisions regarding the practical steps necessary to give effect to the political office bearers' decisions are definitely no less important than the decisions made by the latter. It is, however, necessary for managers to be able to distinguish between political activities, *i.e.* allocating *political value* considerations (to be performed by the political office-bearers) and administrative as well as managerial activities to be performed by the officials consciously recognising the values and needs of the community they serve. Even though these activities are performed respectively by politicians and managers they have to be integrated to achieve the goals of the municipality.

The political/administrative interface is the grey area within which politics has to be distinguished from administration and management. If there is lack of trust or lack of clarity regarding the respective responsibilities, the executive institution cannot provide

the services required. It should also be stated that to be able to separate the political and administrative functions to some extent, one has to assume that sufficient educated and talented people are available to fill both offices (Cameron, 2003:58) If this condition cannot be met, an executive institution cannot promote the policy objectives of the particular executing authority and will not be able to integrate political values into the administrative and managerial systems.

In a number of cases the political office bearer e.g. the executive mayor and the municipal manager belong to the same political party and serve in the same party structures. Party political decisions taken by the party structure then crops up in the formal meetings and must be dealt with administratively. Should the municipal manager then find that it would not be administratively permissible and could not be publicly accountable, the political structures may view it as obstruction. This could even result in a municipal manager being suspended or his/her contract appointment cancelled.

The interface on the municipal sphere is much more complex than on the other two spheres of government. This is mainly due to the fact that the issues involved in municipalities concern the direct and daily lives of communities in clearly demarcated areas. Lack of service delivery is directly observable and often results in direct calls to the municipal councillor. The councillor in turn tends to liaise directly with the manager concerned, or worse still, with the particular official involved. This practice tends to cloud the distinction between the two functions. It also contributes to communication failures within the managerial system and detrimentally affects lines of authority within the system. (It is a requirement in section 53(5) (a) of the *Local Government: Municipal Systems Act, 2000* (Act 32 of 2000)). The Act specifically determines that when defining the roles and areas of responsibility of the political structures, the political office bearers and of the municipal manager a municipality *must* determine:

- the relationship among the political structures and the political office bearers and the municipal manager and the *manner in which they must interact*;
- appropriate lines of accountability and reporting for those political structures and the political office bearers and the municipal manager;
- mechanisms, processes and procedures for minimizing cross-referrals and unnecessary overlapping responsibilities between the two groups of role players;
- mechanisms, processes and procedures for resolving disputes; and
- mechanisms, processes and procedures for interaction between those political structures and office bearers; between the municipal manager and other staff members of the municipality; between councillors and the municipal manager; and between the council and other staff members of the municipality.

The challenge in obtaining an effective interface lies in the politicisation of the administration and management. It appears as though councillors and in particular executive mayors, tend to intervene in the administration of a municipality. The excuse used is that they want to have a *hands on* knowledge. However, the danger in this argument is that normal administrative and managerial duties become clouded by political concerns. The issue often seems to be whether the municipal manager and other

managers will support the ruling party, not whether they will deliver services or satisfy the needs of the municipal community. The problem currently experienced in the lack of administrative credibility may partly be due to politically motivated appointments. If municipal managers are appointed on the basis of their professional knowledge and skills politicians need not concern themselves with the administration or management or doubt the commitment of the municipal manager to efficient and effective administration. The post of the municipal manager should again be professionalized. This will ensure that municipal managers are qualified to administer and to manage. They should also be appointed on five year contracts (renewable) to encourage them to develop long term policies and commitments to the community they serve.

The lesson to be learnt from the political/administrative interface is that role clarification is imperative. The second lesson to be learnt is that politicians should not become involved in the administration of the municipality. The third lesson is that the municipal manager should not become involved in council's politics although he/she should be fully aware of the political motives driving the council and then make the necessary administrative arrangements to maintain accountable administration. A fourth lesson is that council should only appoint a head of administration that is competent to perform the administrative and managerial responsibilities associated with the post. Lastly, mutual trust should exist between the executive mayor/ council on the one hand and the head of administration on the other hand if the objectives of the municipality are to be realised effectively and efficiently.

CONCLUDING REMARKS

In some cases the road to democracy is fraught with internecine conflict. In most of these cases the creation of new structures is subject to political instability and administrative incapacity to implement any reform policies. In this regard South Africa was blessed with a smooth transfer of power from an apartheid based undemocratic system to a fully non-racial democratic system with no factionalism and no interruption of services. The negotiators participating in the development of the new government even agreed that all existing laws will remain in force until amended.

Local government was the level/sphere of government that was the clearest example of racial segregation and unequal access to services in the former system of government. After democratisation local government thus required the most extensive transformation of the total system.

A number of lessons could be learnt. However a number of critical factors have to be taken into account to ensure that the new system will have both the political and the administrative capacity to achieve the lofty ideals of democracy.

BIBLIOGRAPHY

Bekink, B. 2006. *Principles of South African Local Government Law*. Durban. Lexis Nexis Butterworths.

- Buchholz, R.A. 1992. *Business Environment and Public Policy: Implications for Management and Strategy*. 4th Ed, Prentice-Hall, Englewood Cliffs.
- Cameron, R. 2003. Politics-administration interface: the case of the City of Cape Town. *International Review of Administrative Sciences*, 69(3).
- Cloete, J.J.N. and Thornhill, C. 2005. *South African municipal government and administration: a new dispensation*. Pretoria: Dotsquare Publishing.
- Cloete, J.J.N. 1993(a). *Democracy: prospects for South Africa*, J.L. Van Schaik, Pretoria.
- Cloete, J.J.N. 1998. *South African public administration and management*. 8th Ed, J.L van Schaik, Pretoria.
- Cooper, T.L. 1990. *The responsible administrator*. San Fransico: Jossey-Bass Publishers.
- Deal, T.E. and Kennedy, A.A. 1988. *Corporate Culturem* Penguin Group, London.
- De Beer, J. and Lourens, L. 1995. *Local government: the road to democracy*. Midrand: Educum Publishers.
- Du Toit, A. 1991, *Towards democracy: building a culture of accountability in South Africa*. IDASA, Pretoria.
- Ford, R. and Zussman, D. 1997. *Alternative Service Delivery: Sharing Governance in Canada*. IPAC, Canada.
- Fox, W. and Meyer, I.H. 1995. *Public Administration Dictionary*. Eppondust: Juta & Co.
- Gentot, M. 1995. Openness in public administration. In *International Review of administrative Sciences*, (61).
- Hanekom, S.X. 1993. Social equity and the administration of public affairs. *SAIPA*, 28, September.
- Hanekom, S.X, Rowland, R.W. and Bain, E.G. (Eds.) 1987. *Key Aspects of Public Administration*. Macmillan, Pretoria.
- Hanekom, S.X. and Thornhill, C . 1994. *Public Administration in Contemporary Society*. 2nd Ed., Southern Book Publishers, Pretoria.
- Institute of Directors. 2002. *King Report on Corporate Governance for South Africa 2002*.
- Kerauden, P. 1995. Administrative reform, ethics and openness: the balance between effectiveness and administrative identity. In *International Review of Administrative Sciences*, (61) 1.
- Kernaghan, K. and Langford, J.W. *The responsible public servant*. New York: The Institute for Research on Public Policy.
- Klitgaard, R., Maclean-Abaroa, R. and Parris, H.L. 2000. *Corrupt cities: a practical guide to cure and prevention*. Institute for Contemporary Studies Press, California.
- Local Government. *Municipal Demarcation Act, 1998 (Act 27 of 1998)*. Pretoria: Government Printer.
- Local Government. *Municipal Structures Act, 1998 (Act 117 of 1998)*. Pretoria: Government Printer.
- Local Government. *Municipal Systems Act, 2000 (Act 32 of 2000)*. Pretoria: Government Printer.
- Local Government. *Municipal Finance Management Act, 2003 (Act 56 of 2003)*. Pretoria: Government Printer.
- Municipal Demarcation Board. 2008. *National Report on Local Government Capacity: District and Local Municipalities MDB capacity assessment 2007/2008*. The MDB.

- Nalbandian, J. 1991. *Professionalism in Local Government*. Jossey-Bass, California.
- Public Service Commission. 2005. *State of the Public Service Report 2005*.
- Rosenow, R.L. and Rosenthal, R. 1993, *Beginning Behavioural Research: Conceptual Primer*. Macmillan, New York.
- Sekoto, M. and Van Straaten, F. 1999. Focusing on the customer in the public sector. *Journal of Public Administration*, (34) 2.
- South Africa, (Republic). *Constitution of the Republic of South Africa*, 1996. Pretoria: Government Printer.
- South Africa (Republic). White Paper on Transforming Public Service Delivery, 1997. Pretoria: Government Printer.
- Webster, A.M. 1966. *Webster's Seventh Collegiate Dictionary*. G. & C. Merriam Co, New York.