

A brief introduction to local government in South Africa

With the introduction of a new constitutional order for South Africa on 27 April 1994¹ the former South African government had to undergo fundamental changes and reforms on all levels. Not only did the national and provincial governments have to be revised but, more specifically, the whole of the local sphere had to be transformed in compliance with the new constitutional mandate.

Both the interim Constitution and its successor, the final Constitution,² replaced the former system of parliamentary sovereignty with a new system of constitutional supremacy. Both constitutions contained comprehensive bills of rights in which the rights of all people in the country were enshrined.³ All spheres of government were bound by the Bill of Rights, and the Bill of Rights also applied to all law.⁴ A newly restructured judiciary, with the inclusion of a specialised Constitutional Court, was given the power and duty to oversee and control full compliance with the new constitutional standards and requirements. The former centralised government was furthermore replaced by a system of government with federal elements in which significant powers and functions were devolved to provincial and local authorities. The final Constitution, which completed the negotiated framework of transformation, established a new governmental structure on three spheres, which are distinctive, interdependent and interrelated.⁵ The constitutional text further incorporated many basic principles and features which underlie the new order and with which all spheres of government and other organs of the state had to comply in future.⁶ The basic principles and values embodied in the Constitution have a broad effect and

¹ The date on which the interim Constitution came into force.

² The Constitution of the Republic of South Africa, 1996 which became the supreme law on 4 February 1997.

³ See the Constitution s 7(1).

⁴ See the Constitution s 8(1).

⁵ See the Constitution s 40(1).

⁶ Some of the basic features are the principle of constitutionalism, the rule of law, democracy and a system of co-operative government.

influence on many other provisions in the Constitution, which are thus important to all government structures, including local governments. The Constitution thus forms the foundation for all law within the state.

It is generally accepted that the pre-1993 constitutional dispensation had seriously damaged the spatial, social and economic environments in which people have lived, worked and raised their families. This was specifically evident within all municipal jurisdictions where people's lives and living standards were affected directly. Arguably the most critical functions of the new local government structure and reform process are to rebuild local communities and environments and, further, to establish a new foundation for a democratic, integrated, prosperous and non-racial society.

As was mentioned above, local government within the new constitutional order has been afforded specific status and is protected as a distinctive sphere of government. Local authorities are no longer a mere function of national or provincial governments. Apart from this entrenched status, the Constitution and other relevant legislation vest local government with specific functions and responsibilities in the process of building a new democracy and promoting socio-economic development and upliftment.

In light of the above, the importance of local government in the new structure is self evident. It serves as a counterweight to the concentration of powers on other levels, it brings the decision-making process closer to the local people, and it is thus better suited to ensuring public involvement. Local government has often been described as the cornerstone of ensuring an overall democratic government. It serves as the level of government that functions the closest to local residents and is involved in the rendering of essential services that are needed in all walks of life. One can truly regard a local government as an essential service provider "from the cradle to the grave".⁷

Within the abovementioned framework of the Constitution, local government had to be transformed into a service delivery-orientated sphere of government, committed to working with all interest groups and directed at achieving sustainable human settlements with enhanced quality of life. The framework of such transformation was set out in the White Paper on local government, which was published during March 1998. The White Paper, together with the constitutional requirements, provided the

⁷ Most local authorities provide for clinics and basic health services and also for the creation and maintenance of cemeteries.

basis on which the new system of local government had to be established. Within this framework new legislation was proposed and enacted in order to complete the overall structure and to achieve the constitutional requirements and objectives. In retrospect the White Paper was a unique document: it dealt with an entire sphere of government and served as a mini Constitution for the reform process.

The implementation and achievement of the goals and objectives of the reformed local sphere of government will require a supreme and constructive effort on the part of all people in our country. This responsibility is placed not only on the elected representatives and other political functionaries but also on the administrative personnel of local authorities and local residents themselves. Constructive participation on the part of all is of fundamental importance.

It is submitted that local government within the overall governmental structure of South Africa is of fundamental importance for stability and success of the state as a whole. Local government forms the backbone of the newly established democratic foundation and is also the part of government closest and most directly involved in people's day-to-day lives. Every person living within the territory of the state will fall within the jurisdiction of a local authority and will be directly and indirectly influenced through the powers and functions of such local authority. A full understanding of the role, powers, functions, objectives, developmental duties and provisions of services are thus of great importance for the politicians and local administrators, but they are more so for the local electorate and inhabitants. The Constitution provides only the framework for understanding and studying the legal system of local government; the completion of the system is to be found in various national and provincial laws.