

The current state of local government and the general impact of the Constitution of 1996

6.1 Introduction

Local government has been given a new face within the new constitutional system of South Africa. Since the local elections that were held during December 2000, local government has entered into the final phase, according to the restructuring process set out in the Local Government Transition Act. During this final phase, all local government matters will be regulated according to the provisions of the Constitution of the Republic of South Africa, 1996¹ and by the newly enacted local government laws, as is envisaged and required by the Constitution. Within the new legal framework, all local governments have been given a special status as a distinctive sphere of the government, together with specific objects and developmental duties that must be achieved.² The Constitution has further also identified certain specially entrenched powers and functions of municipalities, which are to be exercised in a system comprising different categories of municipal authority and according to specific procedures.³

Apart from the abovementioned changes, many new institutional, membership and procedural requirements have been established, which are all ultimately protected in the highest law of the state.⁴ Although the Constitution has created the new legal framework for local government, this framework has been complicated by various external factors such as financial, administrative and legislative difficulties. To under

¹ Hereafter referred to as the Constitution of the RSA, 1996.

² See the Constitution ss 152 and 153.

³ See the Constitution ss 155 and 156.

⁴ According to the Constitution s 2, the Constitution is the supreme law of the Republic, and the obligations imposed by the Constitution must be fulfilled.

stand fully the challenges of the local governments of the future, it is very important to investigate the current state of local government in the country and also to evaluate some of the problems facing such governments.

6.2 Current financial constraints in local government

The restructuring process and, more specifically, the amalgamation of the previously divided local government jurisdictions, has altogether massively increased the population figures for which municipal authorities are responsible. This sudden expansion in numbers of local residents and the accompanying responsibility over a bigger area of jurisdiction have not been counterbalanced by a balancing increase in taxes and financial capabilities. Because of the inherited system with serious service backlogs, a general collapse in infrastructure and a noticeable deterioration in creditworthiness and borrowing capacity, many current local authorities are experiencing distressing and alarming financial crises. These crises are often fuelled by ever-increasing demands and expectations on service delivery by local residents, combined with a decline in national and international economic growth. The position is further hampered by inadequate financial management capabilities and poor staff training programmes.⁵ Apart from the financial constraints, many new administrative changes have been introduced, which in practice are often very difficult to implement.

6.3 New administrative challenges

The amalgamation process of local governments has also resulted in drastic administrative changes that have to be implemented. However, many municipalities are still characterised by hierarchical line departments, poor co-ordination between departments, many untrained workers and an unequal representation of women in senior management positions. These factors contribute largely to the inefficiency that often occurs in service delivery. Because of the changed mandate within local governments, new capacities, attitudes and approaches are urgently required. It is of importance that the relations between municipal councils and their administrations, management and workforce as well as between such councils and the local community are to be improved. A new focus on training should be introduced, together with a programme of systematic evaluation and support.

⁵ Refer to the White Paper on Local Government (1998) at 28.

6.4 Legislative complexity of the new system

Since the start of the restructuring and transformation process in 1993, many new legislative changes within the local government sector have been introduced.⁶ The new legal framework was complicated, however, by the fact that many of the so-called old-order laws and regulations, which had supported the previous model of local government, were still in force and effect. This situation often caused legal uncertainty, which impacted negatively on the operation of many new municipal councils. The problem was compounded by the fact that some of the inherited old-order legislation was often applied differently in different jurisdictions and thus resulted in not only confusion and uncertainty but also in the creation of different legal norms and standards. In order for the transformation to be effective and the new systems ultimately to be successful, legislative uniformity was urgently needed. In the time prior to the beginning of the final phase of the restructuring process, many such uniform laws were enacted. These laws were also needed to ensure compliance with the overall constitutional mandate requiring such laws.⁷

6.5 Global and national trends

In modern times, it has become unimaginable for local governments to ignore the economic changes that are taking place not only in their immediate surroundings but also on a national and international basis. It is generally accepted that the rise and decline of industrial developments have a severe impact on local markets, local income and expenditure, employment possibilities and finally on the quality of life of people. It is thus true to say that globalisation and internationalisation of capital have a major impact on all spheres/levels of governments in all countries, and even more so in developing countries. Usually the lowest government level of a state is affected most by these factors.

The creation of transnational corporations, economic transactions and the integration of systems of production on a worldwide scale, which are supported with a system of rapid development of information technologies and knowledge-sharing, have resulted in the emergence of the so-called global economy. These developments are

⁶ Refer not only to the constitutional requirements but also the LGTA, the Demarcation Act 27 of 1998, Systems Act 32 of 2000 and Structures Act 117 of 1998.

⁷ In the Constitution ch 7, many references are made to national and provincial laws that had to be enacted to complete the constitutional framework of the new local government system of the country. Refer to the Constitution ss 154, 155 and 156 respectively.

very important for local authorities, especially if they want to compete and enlarge their revenue possibilities. Many large cities or metropolitan areas have become nodes or points of development and trade, which serve as connections between various economic structures across the globe.⁸

The importance of the global economy is also very important to the central government of South Africa in its strategies and policies for developing the country.⁹ In support hereof the government has put in place the so-called Government Growth, Employment and Redistribution strategy (also called GEAR), which places more emphasis on an export-orientated economy. The aim is to achieve international competitive industries and to enhance economic growth. In this context, many municipalities will have to manage and absorb the consequences of globalisation.

Furthermore, local governments have not only the opportunity, but indeed the responsibility to attract foreign investments. This can be achieved through the promotion of systems which allow for competitive industrial development and a strong support for local enterprises. Municipalities throughout the country are challenged to find a balance between competition and co-operation between themselves. Co-operation is necessary to enhance performance and to uplift the economy as a whole.¹⁰

6.6 The influence of settlement patterns and trends

Settlement patterns and trends play an important role for local governments of the future and must be taken into account to ensure the effective delivery of services. It is generally accepted that settlement dynamics have severe influences on the resources of local authorities. The importance of proper planning in respect of future settlement patterns can thus not be overemphasised. Settlement patterns and trends have also been important during the process of demarcation of the new local government areas; the boundaries had to account for population figures within certain jurisdictions.

⁸ One can take the area of the Eastern Cape as an example. With the motor industry settled in that area, it has become a central node for that industry and provides not only for many job opportunities but has a strong financial and economic importance both locally and also internationally. Many products are exported to other countries in the world.

⁹ This is especially important for the RDP programme of the national government.

¹⁰ Refer to the White Paper on Local Government (1998) at 31.

In the White Paper on Local Government, various settlement types have been identified. These types are discussed briefly below, as they are important in understanding the many diversities that are present in the various settlements.¹¹

- *Urban core settlements* Such a settlement refers to a formal city or town with a high population density, high levels of economic activity and usually higher land values.
- *Urban fringe settlements* These are settlements outside the urban core of a city or town and often include areas of low income.
- *Dense rural settlements* These types of settlement are divided into two groups. There is the so-called “Betterment settlement”, which has a high density of people. Such settlements are mostly pre-planned and former homeland areas. The second group is called “Informal settlements”. Such settlements are unplanned, un-serviced and mostly relatively poor.
- *Villages* Villages are rural settlements with a active population of more than 500 people but fewer than 5 000. Villages are often unplanned and include traditional African settlements.
- *Argri-villages* Such settlements are planned, densely populated settlements in rural/agricultural areas.
- *Dispersed/Scattered settlements* These are unplanned settlements of fewer than 500 people. Most such settlements are the first step in the creation of an informal settlement.

The importance of the various types of settlement lies within the diverse composition of their communities. Over 20 million people in modern day South Africa live in urbanised areas. It is further estimated that the process of urbanisation is to continue in the foreseeable future, with a dramatic increase in the proportion of urbanised citizens. Metropolitan areas and secondary cities are expected to absorb the most of this urban growth. Recent studies of the Department of Constitutional Development and Local Government have revealed profound changes in the migration trends of people in South Africa, which will have major consequences on local government institutions and their respective programmes for compliance with the new constitutional demands and objectives.

¹¹ See the White Paper on Local Government (1998) at 31-32.

6.7 General impact of the Constitution

It goes without saying that the Constitution as the highest or supreme law of the South African state has a profound and decisive impact on local governments.¹² From the wording of section 2 it is clear that not only legislative actions¹³ but also the conduct of executive or legislative bodies must comply with the Constitution. In many instances the Constitution also requires positive state action in order for the obligations set out in the Constitution to be fulfilled. If law or conduct does not comply with the Constitution, such law or conduct is unconstitutional and thus invalid.

Many constitutional requirements are applicable to all spheres of government¹⁴, while others are directed specifically and exclusively at local government.¹⁵ This distinction can be classified under general constitutional principles important to local government and specific constitutional principles for local government. In this chapter the focus will be on the general principles. The specific aspects relevant to local governments will be discussed extensively in later chapters.

6.7.1 Founding constitutional requirements and principles important to local government structures

6.7.1.1 The preamble and founding provisions

Both the preamble and founding provisions contain important aspects and insights into the constitutional text as a whole, and such principles/provisions have an important role and significance for the constitutional system. Such provisions are usually the basis/foundation upon which the total constitutional and legal system is founded. Both the preamble and the founding provisions are important to local government institutions and local government law: they contain background information regarding our history and they confirm certain fundamental values on which the new constitutional order is based. The preamble also gives one insight into the text of the Constitution that is to follow and explains the aspirations and goals of the citizens of the state. Both the preamble and founding provisions have important value and significance with regard to future local government developments and the overall

¹² The Constitution s 2 states that the Constitution is the supreme law of the state and that any law or conduct inconsistent with the Constitution is invalid. The section also requires that the obligations imposed by the Constitution be fulfilled.

¹³ Eg, municipal by-laws.

¹⁴ Eg, compliance with the Bill of Rights (ch 2) or the basic values and principles governing the public administration (ch 10).

¹⁵ See the Constitution ch 7 under the heading: Local Government.

achievement of the broad constitutional objectives and goals set out for local governments. In respect of future disputes or local government issues, the preamble and founding provisions can be used as a guide as to how such disputes/issues should be addressed. In this respect the preamble specifically recognises and identifies the following aspects:¹⁶

- It recognises the injustices of the past and honours those who have suffered for justice and freedom in our land
- It honours those who have worked to build and develop our country and believe that South Africa belongs to all who live in it.
- It is directed at healing the divisions of the past and establishing a society based on democratic values, social justice and fundamental human rights.
- It wants to lay the foundation for a democratic and open society in which the government is based on the will of the people and every citizen is equally protected by the law.
- It wants to improve the quality of life of all citizens and free the potential of each person.
- It wants to build a united and democratic South Africa which should be able to take its rightful place as a sovereign state in the family of nations.

Because local government institutions are part of the overall governmental structure, all of the abovementioned goals and objectives are relevant to them. The goals must thus be read in conjunction with the specific constitutional objectives and duties for local government.¹⁷ All local government institutions must strive to address and heal the injustices/inequalities of the past, especially with regard to unequal provision of services, to ensure democratic values and fundamental rights protection and, even more importantly, to improve the quality of life of local South African residents. Although strictly speaking the preamble is not a specific section of the Constitution, it contains very important directives aimed at ensuring a new democratic and acceptable local government system and should be used to that end.¹⁸

¹⁶ Refer to the preamble of the Constitution.

¹⁷ See the Constitution ss 152 and 153.

¹⁸ In *S v Mhlungu* 1995 (3) SA 867 (CC) at para 112 where the Constitutional Court confirmed that the preamble of the Constitution is of interpretative importance as it connects up, reinforces and underlies all of the text of the Constitution that is to follow. It further helps to establish the basic design of the Constitution and it indicates its fundamental purpose.

In contrast with the preamble, the founding provisions of the South African Constitution are entrenched directly within the constitutional text.¹⁹ It is clear from the Constitution itself that the founding provisions are of extreme importance, as they enumerate the fundamental values on which the new constitutional order is founded. These values are stated thus:²⁰

“The Republic of South Africa is one, sovereign, democratic state founded on the following values:

- Human dignity, and the achievement of equality and the advancement of human rights and freedoms.
- Non-racialism and non-sexism.
- The supremacy of the Constitution and the rule of law.
- Universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, which is to ensure accountability, responsiveness and openness.”

Many of these values are just as important to local government as they are to the others spheres of government and the state in general, and every effort must be made to achieve and maintain them.

6.7.1.2 The supremacy clause

The importance of the Constitution is specifically emphasised through the supremacy clause.²¹ According to this clause, the Constitution is the supreme law of the Republic, and any law or conduct inconsistent with the Constitution is invalid. Furthermore, all the obligations imposed by the Constitution must be fulfilled. With reference to local government, the supremacy clause is important for *inter alia* the following reasons:

- All the constitutional requirements (direct or indirect) and obligations regarding local government are protected in the Constitution as part of the highest and most

¹⁹ S 1 of the Constitution, in which the founding provisions are set out, is the most firmly entrenched of all the sections of the Constitution. In s 74(1) the Constitution states that s 1 and also ss 74(1) in its protection of s 1 may be amended only by a Bill passed by the National Assembly with a supporting vote of at least 75 per cent of its members and by the National Council of Provinces with a supporting vote of at least six of the nine provinces.

²⁰ See the Constitution s 1.

²¹ See the Constitution s 2.

important law of the state. Such requirements and obligations can be altered/amended only through special procedures and special majorities.²²

- Any legislative or executive conduct or law-making actions by a local government, for example the making of a by-law or the acceptance of a new policy, must be consistent with the Constitution; otherwise it will be invalid. Strict compliance with both the procedural and substantive requirements of the Constitution must be ensured.
- Local governments, like all other spheres of government, are also tasked with specified positive obligations that must be fulfilled. The Constitution is mandatory in this regard, and all efforts should be made to achieve and fulfil such obligations.²³

It is thus clear that the supremacy clause is important to both the direct requirements set out for local government in chapter 7 of the Constitution and also the other indirect or consequential provisions applicable to municipal authorities in general. Any dispute regarding the constitutionality of a law or conduct will depend on the facts and circumstances of each case and will require a process of interpretation in determining possible inconsistency with the Constitution. According to the Constitution it is the function of the judicial authority to resolve such constitutional disputes and to declare laws or conduct to be inconsistent with the Constitution.²⁴ It is thus clear that the decisions of our courts are thus of profound significance and are an indispensable source of the law.

6.7.1.3 Official languages

South Africa is a multilingual country and the Constitution protects eleven official languages.²⁵ The state must further take the necessary practical and positive measures to elevate the status and advance the use of the official languages. The protection and use of the official languages are thus also important to local government

²² See the Constitution s 74. See also *In re: Certification of the RSA 1996*, 1996 (4) SA 744 (CC).

²³ See s 7 of the Bill of Rights which states that the state must fulfil, promote, respect and ensure the rights set out in the Bill of Rights.

²⁴ The Constitution s 165(1) determines that the judicial authority of the Republic of South Africa is vested in the courts. S 166 again determines the judicial system. The judicial system is of importance, as only certain courts have the jurisdiction to adjudicate constitutional disputes. South Africa also follows the system of *stare decisis*, which requires the lower courts to follow the decisions of the higher courts.

²⁵ See the Constitution s 6.

institutions as part of the overall governmental structure of the state. The Constitution sets the following requirements regarding the use of the official languages:²⁶

- National and provincial governments may use any particular official languages for the purposes of government, taking into account usage, practicality, expense, regional circumstances and the balance and the needs and preferences of the population as a whole or in a relevant province. However, both national and each provincial government must use at least two official languages.
- All municipalities must take into account the language usage and preferences of their respective local residents.

The use of languages is particularly important for the purposes of official communication, the proclamation and wording of laws and the issuing of directives. All official languages enjoy equal protection, although this is not absolute. For the practical reasons mentioned above, certain languages may be preferred for public purposes. This is important, as the public must be able to take cognisance of the rules of law applicable to them and must therefore be informed in a language which they can understand.

It was indicated above that, unlike national and provincial governments, municipalities are not compelled to choose two official languages. They must, however, take the language usage and preferences of their residents into account. Again, it is mandatory in terms of the Constitution that all available demographic statistics be taken into account before a municipality chooses to use a particular language as its official language. It is unclear why the requirement to use at least two official languages is mandatory for only national and provincial governments; it is submitted that it is more important to establish an acceptable and effective system of communication between local authorities and their residents than it is to establish such a system on a national or provincial level. The reasoning of the constitutional drafters for not compelling local governments to use at least two official languages seems unclear and unfortunate. Be that as it may, at present municipalities can decide to use only one official language which, as argued above, could negatively hamper communications and also participation of certain sections of a local community. Before a decision is taken on the use of an official language, an investigation into the language usage and preferences of the local inhabitants is mandatory. It is submitted that a decision of a

²⁶ See the Constitution s 6(3)(a)-(b).

municipality to use only one official language will be hard to justify in terms of the constitutional provisions without a proper investigation and in an area where there are also other language users.²⁷

It is important to remember that aside from the constitutional requirements set out above, members of the public are still permitted to use any official language of their choice in their communications with government structures. Local governments should position themselves to deal with and answer such communications even though the language used by a private person is not the official language of that municipality. For confirmation of this viewpoint one should look at not only the provisions of section 6 of the Constitution but also the various sections in the Bill of Rights, which protect an individual's right to use a language of choice. The following reasons are submitted as to why a local resident can use any official language to communicate with the local authority of that area:

- All official languages must enjoy parity of esteem and must be treated equitably. No one language is more important than another.²⁸
- Only government institutions are restricted or subject to conditions in terms of language usage.
- The Bill of Rights prohibits unfair discrimination on, *inter alia*, the ground of language.²⁹
- The Bill of Rights also provides that everyone has the right to use the language of his or her choice, but may not do so in a manner inconsistent with any provision of the Bill of Rights.³⁰
- Language is also protected where education is concerned and during criminal proceedings.³¹

With reference to the Bill of Rights, it should be emphasised that any limitation of a right set out in the Bill of Rights can be limited only according to the requirements and provisions of the limitation clause.³² Languages are further also protected by the Pan South African Language Board which was established in compliance with sec-

²⁷ Refer to *Louw v Transitional Local Council of Greater Germiston* 1997 (8) BCLR 1062 (W).

²⁸ See the Constitution s 6(4).

²⁹ See the Constitution s 9(3).

³⁰ See the Constitution s 30.

³¹ Refer to the Constitution ss 29(2), 35(3)(k) and 35(4).

³² See the Constitution s 36.

tion 6(5) of the Constitution. A dispute regarding language issues can also be referred to this board for investigation.

6.7.1.4 The importance of the Bill of Rights

In the paragraph above, mention was made of the protection of language in the Bill of Rights. However, The Bill of Rights as a whole has a far larger impact on all governmental institutions' Before one investigates such impact, it is important to discuss briefly the general aspects of the Bill of Rights, which are summarised as follows:

- The Bill of Rights is part of the Constitution and as such is a tool in the process of transforming the South African society and legal system within the broad constitutional framework. Most of the constitutional principles are fundamental to understanding the Bill of Rights in its constitutional context.³³
- A Bill of Rights usually imposes substantive limitations on the exercise of state power. It sets certain standards or rights, which the state may not violate or limit unreasonably. Should the state fail to protect or even limit these pre-determined rights, it will act unconstitutionally and thus unlawfully. Such unconstitutional or unlawful conduct will thus be invalid.³⁴
- Many of the rights or duties in a Bill of Rights impose duties not only on the state, but on natural or juristic persons who must comply or protect such rights. Overall, however, the Bill of Rights is concerned mostly with protecting the individual against the excessive powers of the state.

With regard to the purpose of the Bill of Rights, one can clearly identify its value and importance within the new local government structure of South Africa. However, the sections set out in the Bill of Rights can be divided into procedural/operational provisions/rights and also substantive provisions/rights. It is not the focus of this work to explain and investigate fully the functioning of the Bill of Rights and the substantive provisions that are contained therein. There are many legal textbooks available which specifically deal with such issues in great detail.³⁵ However, it is necessary to refer to some aspects in more detail:

- Rights in general

³³ Principles such as the idea of constitutionalism, the rule of law and constitutional supremacy.

³⁴ See the Constitution ss 2, 38 and 172.

³⁵ See for more information the various chapters in Chaskalson *et al* (1999) and also in De Waal, Currie and Erasmus (2001).

The Bill of Rights proclaims itself as a cornerstone of democracy in South Africa, and it enshrines the rights of all people in our country.³⁶ Again the importance of democracy within the new South African state is emphasised. The protection of the rights of *all people* (own emphasis added) in our country has important implications for non-citizens who, but for a few exceptions, are also entitled to many of the rights protected in the Bill of Rights.

The Bill of Rights further states that the state must respect, protect, promote and fulfil the rights in the Bill of Rights. This undoubtedly has severe implications for all spheres of government and specifically also for local governments. Normally the state is required only to respect and protect fundamental rights.³⁷ However, we see here that the Constitution requires the state to act both negatively³⁸ and positively.³⁹ The determination of instances when the state must act in a positive manner will strongly depend on the type and nature of the right that is relevant to a particular issue.⁴⁰

Lastly, the Constitution determines that the rights in the Bill of Rights are subject to limitations. Such rights are not absolute and can be limited. However, any limitations must comply with the requirements of the specific limitation clause provided for in the Constitution.⁴¹ If a local authority limits or threatens to limit a right or rights set out in the Bill of Rights through its laws or conduct, special attention must be given to the contents of the limitation clause before such laws or actions are indeed implemented. This obligation requires all government institutions to ensure proactively that their laws, actions or policies do not unreasonably and unjustifiably limit one or more of the rights that are protected in the Bill of Rights.

- Application of the Bill of Rights

A Bill of Rights has normally specific rules regarding its application. In this regard the South African Bill of Rights is no different and the following aspects are of im

³⁶ See the Constitution s 4(1).

³⁷ It is better to refer to the rights set out in the Bill of Rights as fundamental rights rather than human rights, because many of the rights are also applicable to legal persons.

³⁸ Not limiting or breaching rights.

³⁹ Acting proactively to achieve or fulfil a right.

⁴⁰ Fundamental rights can be divided into three categories, namely civil political rights or so-called first generation rights; socio-economic rights or second generation rights and also third generation rights. Positive state action is often required in cases involving 2nd or 3rd generation rights, such as the right to housing, health care and the environment.

⁴¹ See the Constitution s 36.

portance:

- (a) At first, the Bill of Rights applies to *all law* (own emphasis added) and it binds the legislative, executive and judicial authorities and all organs of state.⁴² The reference made to all law should be widely interpreted to include all legislation, be that original or subordinate legislation, the common law and also customary law. All authority in the state – legislative, executive or judicial – together with all organs of state, are bound by the provisions of the Bill of Rights. The Constitution specifically defines organs of state and also the terms “national legislation” and “provincial legislation”.⁴³ From the above wording of the Constitution it is clear that local governments are undoubtedly bound by the Bill of Rights, both in its capacity as a legislature and as an executive organ of state on the local level of government.⁴⁴
- (b) Taking into account the nature of a right and also the nature of any duty imposed by the right, a provision of the Bill of Rights binds a natural or a juristic person if it is applicable and to the extent that it is applicable.⁴⁵ This subsection of the Constitution confirms without uncertainty that the Bill of Rights has both vertical and horizontal application, depending on the nature of the right and the nature of any duty imposed by a right.⁴⁶ It should be noted that some rights specifically explain who carries the responsibility to comply with duties imposed by such rights.⁴⁷

⁴² See the Constitution s 8(1).

⁴³ In this regard see the Constitution s 239. National legislation includes subordinate legislation made in terms of an Act of parliament (eg, regulations issued by a minister) and also legislation that was in force when the Constitution took effect and that is administered by the national government. Provincial legislation includes also subordinate legislation in terms of a provincial Act, and legislation in force when the Constitution took effect and that is administered by a provincial government. “Organ of state” means any department of state or administration in the national/provincial/or local sphere of government; or any other functionary or institution exercising a power or performing a function in terms of the Constitution or a provincial Constitution; or exercising a public power or performing a public function in terms of any legislation, but does not include a court or a judicial officer.

⁴⁴ Again reference must be made to the Constitution s 2, which determines that both law or conduct must be consistent with the Constitution. It is also important to note that on the local sphere of government, municipal councils act in both legislative and executive capacities. S 151(2) states that legislative and executive authority is vested in the relevant municipal council. See also *S v Mercer* 2004 (2) SA 598 (CC).

⁴⁵ Refer to the Constitution s 8(2).

⁴⁶ Some rights, eg, the right to life or human dignity are applicable only to natural persons, while rights such as access to court or privacy are also applicable to juristic persons.

⁴⁷ Many rights place a duty on government as a juristic entity and not on private individuals. It is for government to take reasonably legislative measure to achieve progressive realisation of the rights to housing or health care, food, water and social security. Other rights, eg, the right that no

continued on next page

(c) Juristic persons are bound by the Bill of Rights only to the extent that they are required to be bound by the nature of the rights and the nature of that juristic person.⁴⁸ Many rights set out in the Bill of Rights are applicable only to natural persons.⁴⁹ The nature of such rights disqualifies juristic persons from their protection, because juristic entities do not live or have human features. It is further important to determine whether a juristic person has a private or public nature. When it has a public nature the state cannot simultaneously be bound and entitled to the rights set out in the Bill of Rights.⁵⁰ The nature of a local government in its role as a juristic institution excludes it from the protection of the rights contained in the Bill of Rights. It is not entirely certain what the position would be when two organs of state or different spheres of government are involved in a dispute between one another, however, and where one organ/sphere is supposedly discriminating against the other. It is submitted that the Bill of Rights cannot be enforced in such instances, however, but that other provisions in the Constitution can be called upon to protect and address the dispute.⁵¹

- Limitation, enforcement and the interpretation of the Bill of Rights

It was stated above that the rights contained in the Bill of Rights are not absolute and can be limited. Any limitation must comply with the requirements set out in the limitation clause of the Constitution.⁵² Any limitation of a right which does not comply to the limitation clause requirements will not be reasonable and justifiable and will thus be unconstitutional and invalid. All local authorities must thus ensure that they do not fall foul of provisions of the limitation clause through either legislative actions or executive conduct.

person may unfairly discriminate against anyone, applies also horizontally between private individuals or institutions. See s 9(4) of the Constitution.

⁴⁸ Refer to the Constitution s 8(4).

⁴⁹ The rights to life and human dignity for example.

⁵⁰ Fundamental rights have been developed to protect against excessive state powers.

⁵¹ Eg, when a provincial government is withholding financial grants to a particular local authority on the basis of the political composition/control of that authority while other local authorities are treated much more favourably, the relevant local authority should not base its claim on unfair discrimination in terms of the Constitution, but rather on the protection given elsewhere in the Constitution. They should rather use the protection given in the Constitution Chs 10 and 13.

⁵² See the Constitution s 36.

The protection of the rights of the Bill of Rights is further enhanced through the specific enforcement clause.⁵³ Various categories of people or institutions can approach a competent court in instances where rights of the Bill of Rights have been infringed or are under threat of being infringed.⁵⁴ The Constitution also provides directives for the purposes of interpreting the extent and content of the rights of the Bill of Rights.⁵⁵ These interpretative directives should be applied together with various other directives that were developed by the courts.⁵⁶

- The substantive rights protected in the Bill of Rights:

The rights explained in (a)–(c) above are regarded as procedural rights. Most rights in the Bill of Rights are so-called “substantive rights”, however, and should be studied extensively. With the exception of a few, almost all of the substantive rights are important and applicable to local government in one way or another.⁵⁷ It is thus imperative for all local governments, as part of the government in general, to familiarise themselves with the content and extent of the rights of the Bill of Rights and to adhere to the constitutional obligation that the state must respect, protect, promote and fulfil the rights where applicable.⁵⁸

Since the commencement of the IC and the FC, many legal disputes have been decided that have involved local governments and fundamental rights protected under the constitutions. Examples of such disputes are briefly mentioned as follows:

⁵³ See the Constitution s 38 .

⁵⁴ See the Constitution s 38(a)–(e). In the case of *IEC v Langeberg Municipality* 2001 (3) SA 925 (CC) the court doubted whether a local government could act on its own behalf in a Bill of Rights issue and do so in the interest of others. See para 15 at 933-934. See also *Highveldridge Residents Concerned Party v Highveldridge TLC* 2002 (6) SA 66 (T). In the case the applicant, a voluntary association, instituted proceedings against the municipality for having, according to them, unlawfully terminated the water supply to the residents’ township. The court *inter alia* held that s 38 required the words “an association” in s 38(1)(e) to be interpreted so as to be compatible with the overarching spirit, purport and objects of the Bill of Rights. Since an “association” did not require legal personality for it to sue or be sued in its own name, *ex facie* the text there were no restrictions on the *locus standi* of an association. To hold that the common law restrictions applied would be contrary to the constitutional context against which s 38 stood to be interpreted and would make the common law an unjustifiable obstacle to constitutional rights, particularly in view of the Constitution ss 39(2) and 173. See para 25 at 78B-E. The court also held that the conduct of the respondents could indeed constitute reviewable administrative action.

⁵⁵ See the Constitution s 39.

⁵⁶ See, eg, the interpretation guidelines laid down in the case of *S v Makwanyane* 1995 (3) SA 391 (CC).

⁵⁷ Arguably the rights to citizenship, freedom of movement and access to courts are enforceable against only national government and not local governments. See ss 20, 21 and 34 of the Constitution.

⁵⁸ See the Constitution s 7(2).

- (a) The cases that follow reflect the courts' decisions under the equality clause.⁵⁹ In *Beukes v Krugersdorp Transitional Local Council*⁶⁰ the court held that the present instance invoked a claim of indirect unfair discrimination: the first respondent did not levy the 'flat rate' from only black residents, nor did it levy the higher, service-based charges from white persons only, but based its charges on locality. However, its differential charges stemmed precisely from the racial history that divided those localities and confined members of various racial groups to different areas which were still largely, albeit not exclusively, racially divided. The consequence was that differential charges had an undeniable, though indirect, racial impact. The question was whether or not the differences could be historically, socially or economically justified. If they could not, they would constitute unfair discrimination and the applicant would have a valid complaint on the grounds of race.⁶¹

The first respondent's answer to the applicant's complaint regarding non-collection and waiver of arrears in townships but not in "white" areas was that it had collected moneys due to it from township residents and, to the extent that it might have waived what those residents owed, it had done so for reasons which were 'sound and businesslike'. The court held that this seemed amply warranted within the latitude which had necessarily to be permitted a public authority in exacting compliance in regard to debts owed to it from those subject to its jurisdiction. The court pointed out, however, that if a local authority were to follow a sustained locality-directed policy of non-collection or waiver which had a direct or indirect racially discriminatory impact, that policy would be unfair and open to challenge under section 8(2). However, the applicant could not claim in the present proceedings to have made out such a case.⁶²

Finally the court held that the first respondent had stated that the "flat rate" charged in the townships had been adopted only as an interim measure and for practical reasons which included inadequate metering facilities, the long-standing boycott by black township residents of local authorities' levies and

⁵⁹ The Constitution s 9, which states that everyone is equal before the law and has the right to equal protection and benefit of the law, and also that the state may not unfairly discriminate against anyone on certain grounds.

⁶⁰ 1996 (3) SA 467 (W).

⁶¹ At 480F-H.

⁶² At 481G/H-I, read with 481F.

the fact that municipal facilities and services in the formerly white areas were far superior to those in the townships and that that amounted to an economic and social justification for the differentiation of which the applicant complained. The differences of which the applicant complained were not based on racial discrimination, but were warranted by the localities' differing circumstances.⁶³ These cases were followed by a Constitutional Court decision in the case of *Pretoria City Council v Walker*⁶⁴. In this case the applicant (appellant) successfully sued the respondent in a magistrate's court for arrear service charges for the period July 1995 to April 1996. The respondent's defence, which was not upheld by the magistrate, was that he was entitled to withhold payment by reason of the fact that the applicant's conduct had constituted a violation of his constitutional right to equality in terms of section 8 of the Constitution. The applicant had charged the residents of the former municipal area of Pretoria on the basis of a tariff for the actual consumption of water and electricity supplied, which was measured by means of meters installed on each property in that area, whereas it had charged residents in the former Mamelodi and Atteridgeville municipal areas (where no meters had been installed) a flat rate based on the amount of water and electricity supplied to such areas divided by the number of residences therein. It was the applicant's intention to install meters on each property in Mamelodi and Atteridgeville, after which residents there would be charged on the basis of water and electricity actually consumed. The court held that the differentiation in the present case was rationally connected to legitimate governmental objectives, however; not only were the measures of a temporary nature but they were designed to provide continuity in the rendering of services by the applicant while phasing in equality in terms of facilities and resources during a difficult period of transition.⁶⁵ With regard to the policy of the selective enforcement of the charges for municipal services, the court held further that the burden of rebutting the presumption of unfairness was on the applicant. Action had been taken against

⁶³ See also *Port Elizabeth Municipality v Prut* No 1996 (4) SA 318 (E). In this case the respondents argued that the writing off of R63 million in outstanding services charges owed by residents of certain areas, but not their area, unfairly discriminated against them.

⁶⁴ 1998 (2) SA 363 (CC).

⁶⁵ See para 27 at 378 B-C.

defaulters in old Pretoria but not in Mamelodi and Atteridgeville, thus singling out white defaulters for legal action while at the same time consciously adopting a benevolent approach which exempted black defaulters from being sued.⁶⁶ In the circumstances it had to be held that the presumption of unfairness had not been rebutted and that the course of conduct of which the respondent had complained amounted to unfair discrimination within the meaning of section 8(2) of the IC. Finally, the court held that the debt that was owed by the respondent remained and that the only question was whether its payment should be enforced; the finding that the conduct of the applicant's officials amounted to unfair discrimination was an intimation that the applicant had acted incorrectly and that it should put its house in order; it was not a vindication of the respondent's refusal to pay for services rendered.⁶⁷

- (b) Local governments are also confronted with the right to freedom of religion.⁶⁸ In the case of *Garden Cities Incorporated Association not for gain v Northpine Islamic Society*⁶⁹ the court held that the prohibition in a written sale agreement that the respondent may not install sound amplification equipment on the property bought from the applicant for religious usage did not infringe the respondent's right to freedom of religion. The court held that the sanctity of the agreement which the applicant had concluded with the respondent should prevail.⁷⁰
- (c) With reference to the right of freedom of expression⁷¹ various disputes can occur in which municipalities can have an interest. In the case of *City of Cape*

⁶⁶ See para 80 at 396 A-B.

⁶⁷ See para 94 at 400 E-G. The court thus reversed the decision in *Walker v Stadsraad van Pretoria* 1997 (4) SA 189 (T). See also the case of *Lotus River, Oltery, Grassy Park Residents Association v South Penninsula Municipality* 1999 (2) SA 817 (C), in which the court, dealing with a dispute which focussed on whether the municipality's decision to increase rates across the board by 19% for a financial year had contravened the applicant's rights to equality protected under s 9. The court held: That the respondent had discharged the *onus* of justification; it had been placed in an invidious financial position as a result of the restructuring of local government; its reliance on external subsidies was no longer available; the valuation roll was outdated and could not be updated in time for the 1998/1999 financial year; and it had a limited range of viable options and had chosen to increase rates only after careful consideration. Accordingly, even though the applicants' right to equality in terms of s 9 had been breached by the 19% increase in rates, viewed from the short-term perspective of the 1998/1999 financial year, the respondent had supplied sufficient justification for the limitation.

⁶⁸ See the Constitution s 15(1).

⁶⁹ 1999 (2) SA 257 (C).

⁷⁰ See 272A-H.

⁷¹ The Constitution s 16.

Town v Ad Outpost (Pty) Ltd,⁷² a case concerning the display of billboards in contravention with a particular by-law of the relevant municipality, the Cape High Court held that that particular advertising was a form of expression and hence stood to be protected under section 16(1) of the Constitution. The by-law further breached the respondent's right to freedom of expression by prohibiting any form of a particular mode of advertising and could not be justified under the Constitution. A similar dispute concerning the right to freedom of expression against advertising requirements was heard in the case of *North Central Local Council and South Central Local Council v Roundabout Outdoor (Pty) Ltd*.⁷³ The case concerned an outdoor advertising billboard which violated the relevant municipality's by-law. Ratepayers had objected to the billboard on the grounds that it was an eyesore and a traffic hazard in a purely residential area. The first respondent resisted the application on the grounds that the by-law was unconstitutional in that it infringed their right to freedom of expression as entrenched in section 16 of the Constitution. The applicant municipality contended that the by-law was justifiable according to criteria prescribed in section 36(1) of the Constitution. Contrary to the *City of Cape Town v Ad Outpost* case above, the court held that although advertising was a constitutionally protected form of commercial speech, the applicant had adopted the measures in question in the interests of traffic safety and the appearance of the city. The applicant had a substantial interest in the regulation of the location of billboards, and the measures in question were, contrary to the respondents' contentions, rationally connected to a legitimate, substantial and pressing purpose of promoting public service and welfare. They directly advanced that purpose and were the least restrictive means available to the applicant to achieve its purpose. The court also held that the limitation of the respondents' rights was reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.⁷⁴

- (d) Municipalities are also regularly involved in property-related matters as well as other so called "socio-economic rights", such as the rights to access to ade-

⁷² 2000 (2) SA 733 (C).

⁷³ 2002 (2) SA 625 (D).

⁷⁴ See 636A-C.

quate housing, health care, food and water.⁷⁵ Not only are municipalities obliged to participate in housing schemes in order to fulfil the right to housing but they must also ensure that any eviction from land belonging to them is authorised under the Constitution and other applicable laws.⁷⁶

Various land/property related disputes have already emerged under the new constitutional dispensation. In *Port Elizabeth Municipality v Peoples Dialogue on Land and Shelter*,⁷⁷ the appellant municipality owned a piece of land which it had earmarked for development in terms of a scheme which would entail the surveying of the land, its division into approximately 680 erven, the installation of water reticulation, rudimentary road networks and storm water facilities. Provision would also be made for refuse removal and a bucket system for sewerage. The intention was to allocate these erven to the very poor who were most in need of accommodation. Beneficiaries would then apply for first homeowners' subsidies, to be utilised for the erection of dwellings. During the latter half of 1998 a small group of people moved onto the land and erected shacks on it. The appellant conceded that this had been a result of a desperate need for housing in the area. It agreed to allow a limited number of families to remain on the land. Thereafter, however, increasing numbers moved onto the land. By June 1999 at least 340 structures had been erected and were occupied. The appellant served formal notice to vacate on these occupants (the further respondents), but to no avail. Their occupation made it impossible for the appellant to proceed with its proposed development. The court held *inter alia* that the deliberate and premeditated manner in which the further respondents had occupied the land had to weigh heavily against them. While it was common knowledge that the shortage of housing was a huge problem throughout the country, it could be addressed only if the relevant organs of state were allowed to plan and implement developments methodically. The premeditated and wanton occupation of land in order to blackmail municipalities into giving occupiers preferential treatment could not be countenanced.

⁷⁵ Refer to the Constitution ss 25, 26 and 27.

⁷⁶ In this respect refer to the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998. Under s 1 of the Act an owner of land includes an organ of state which includes a municipal council.

⁷⁷ 2001 (4) SA 759 (E).

There was therefore no doubt that the public interest demanded that the courts intervene effectively to avert such conduct.⁷⁸

A further and very significant case concerning socio-economic rights relating to land was the case of *Government of the RSA v Grootboom*.⁷⁹ In this case the respondents had been evicted from their informal homes situated on private land earmarked for formal low-cost housing. They applied to a High Court for an order requiring the government to provide them with adequate basic shelter or housing until they obtained permanent accommodation. The High Court held that section 28(1)(c) of the Constitution of the Republic of South Africa Act 108 of 1996 obliged the state to provide rudimentary shelter to children and their parents on demand if the parents were unable to shelter their children, that this obligation existed independently of and in addition to the obligation to take reasonable legislative and other measures in terms of section 26 of the Constitution and that the state was bound to provide this rudimentary shelter irrespective of the availability of resources. The appellants were accordingly ordered by the High Court to provide the respondents who were children and their parents with shelter. The appellants appealed against this decision. The respondents based their claim on two constitutional provisions: section 26 of the Constitution, which provides that everyone has the right of access to adequate housing, thereby imposing an obligation upon the state to take reasonable legislative and other measures to ensure the progressive realisation of this right within its available resources, and section 28(1)(c) of the Constitution, which provides that children have the right to shelter.

In this landmark decision the Constitutional Court held *inter alia* the following:

- (i) The state was obligated to take positive action to meet the needs of those living in extreme conditions of poverty, homelessness or intolerable housing⁸⁰
- (ii) Section 26 as a whole placed, at the very least, a negative obligation upon the state and all other entities and persons to desist from preventing or impairing the right of access to adequate housing. The manner in

⁷⁸ See para D at 772A-F.

⁷⁹ 2001 (1) SA 46 (CC).

⁸⁰ Para 24 at 62D-E.

which the eviction in the present circumstances had been carried out had resulted in a breach of this obligation. Section 26(2) made it clear that the obligation imposed upon the state was not an absolute or unqualified one. The extent of the state's obligation was defined by three key elements which had to be considered separately: the obligation (i) to take reasonable legislative and other measures, (ii) to achieve the progressive realisation of the right and (iii) within available resources.⁸¹

(iii) Reasonable legislative and other measures (such as policies and programs) had to be determined in the light of the fact that the Constitution created different spheres of government and allocated powers and functions amongst these different spheres emphasising their obligation to cooperate with one another in carrying out their constitutional tasks. A reasonable housing program capable of facilitating the realisation of the right therefore had to clearly allocate responsibilities and tasks to the different spheres of government and ensure that the appropriate financial and human resources were available to implement it. Furthermore, the formation of a program was only the first stage in meeting the state's obligations. The program also had to be reasonably implemented, as failure to do so would not constitute compliance with the state's obligations;⁸²

(iv) The national government bore the overall responsibility for ensuring that the state complied with the obligations imposed by section 26. However, the court confirmed that section 26 did not entitle the respondents to claim shelter or housing immediately on demand.⁸³ In light of the background the court reversed, in part, the decision in *Grootboom v Oostenberg Municipality*.⁸⁴

A further reference to the right of property was made in the case of *Ex Parte Optimal Property Solutions CC*.⁸⁵ In this case the applicant had applied for the removal of a title deed restriction registered in the title deed of three erven. In

⁸¹ See pages 66-67 and 84-85.

⁸² Refer to paras 39 and 42 at 67-69.

⁸³ Paras 66-69, 93-95 at 79-80 and 86.

⁸⁴ 2000 (3) BCLR 277 (C).

⁸⁵ 2003 (2) SA 136 (C).

terms of section 3(6) of the Removal of Restrictions Act,⁸⁶ service of such application had to be given to affected property owners in both official languages and had to be published once in the Provincial Gazette. With reference to such title conditions the court held that a restrictive condition imposed in the title deed of every lot in a township subdivision that "not more than one house shall be erected on any one lot" created a reciprocal praedial servitude imposing contractual rights and obligations on all the owners of the affected erven. The registration of those servituted rights and obligations resulted in the creation of real rights in property. It followed that any alteration to or removal of such title deed conditions altered or terminated the rights and obligations of the affected property owners *inter se* and altered or expunged, as the case may be, real rights in property. The courts would not, therefore, assume the power at common law to alter or remove title deed conditions of this nature without the consent of every affected property owner.⁸⁷ The court concluded that for purposes of section 25(1) of the Constitution of the Republic of South Africa Act 108 of 1996, "property" included a registered praedial servituted right [restrictive condition] and removal or deletion of such rights was *pro tanto* a deprivation of property.⁸⁸

- (e) Arguably the most applicable right protected in the Bill of Rights for local governments is the right to access to information and just administrative action.⁸⁹ As a sphere of government, municipalities are mostly involved in executive processes which are directly relevant to the principles of administrative law. A good and sound knowledge of administrative law is essential to every municipal council or other functionaries of such a municipality. The following cases are indicative of the wide variety of administrative disputes that local authorities face regularly. In *Cape Metropolitan Council v Metro Inspection Services CC*⁹⁰ the court held that section 33 of the Constitution was not concerned with every act of administration performed by an organ of state, but was designed to control the conduct of the public administration when it exercised a public

⁸⁶ 84 of 1967.

⁸⁷ See paras 4, 5 and 6 at 139C-G.

⁸⁸ Para 19 at 143-144.

⁸⁹ See the Constitution ss 32 and 33.

⁹⁰ 2001 (3) SA 1013 (SCA).

power and that it followed that whether or not conduct amounted to "administrative action" depended on the nature of the power being exercised. Other relevant considerations were the source of the power, the subject-matter, whether it involved the exercise of a public duty and how closely it was related to the implementation of legislation.⁹¹

The court further concluded that the appellant derived its power to cancel the contract from the terms of the contract and the common law; when it had concluded the contract it did not act from a position of superiority or authority, nor did it, when cancelling, find itself in a stronger position than the position it would have been in had it been a private institution; and when it purported to cancel the contract, it did not perform a public duty or implement legislation. The court further held that different considerations applied where a contract between an organ of state and a private entity was preceded by purely administrative actions and decisions by officials in the sphere of the spending of public money by public bodies in the public interest; these amounted to administrative actions because section 217(1) of the Constitution specifically provided that, when an organ of state in the national, provincial or local sphere of government contracted for goods or services, it had to do so in accordance with a system that was fair, equitable, transparent, competitive and cost effective.⁹² The municipality cancelled the contract, however, because of a material breach of the contract whose cancellation did not amount to administrative action under section 33 of the Constitution.⁹³

In a further development the Supreme Court of Appeal held in the case of *Fedsure Life Assurance v Greater Johannesburg TM Council*⁹⁴ that it was common cause between the parties that in taking the resolutions to impose a general rate in the rand on the ratepayers in order to yield an excess of in-

⁹¹ See paras 16 and 17 at 1023B-H.

⁹² See paras 18 and 19 at 1023-1024.

⁹³ Para 22 at 1025F-G. The court thus reversed in part the decision in *Metro Inspection Services (WC) CC v Cape Metropolitan Council* 1999 (4) SA 1184 (C). See also *Frans v Groot Brakrivier Munisipaliteit* 1998 (2) SA 770 (C).

⁹⁴ 1998 (2) SA 115 (SCA).

come over expenditure, the respondent municipalities had performed administrative acts.⁹⁵

6.7.1.5 General Constitutional requirements important to Local Government

It was explained earlier that there are many other provisions set out in the Constitution that are important to local governments. These aspects/requirements are divided in two categories. The first category is all the requirements directed at local governments alone, while the second category refers to those requirements that are relevant to all spheres of government, thus including local governments. Chapter 7 of the Constitution, under the heading Local Government, contains the aspects that are mentioned in category one. Category two aspects can be summarised as follows:

- *Principles of co-operative government* These principles are applicable to all spheres of government and as such are also very important to the local sphere of government.⁹⁶
- *Vesting of legislative authority* The Constitution specifically determines where the legislative authority of the Republic of South Africa is vested: on a national level it is vested in parliament, on a provincial level in provincial legislatures and at a local level in municipal councils.⁹⁷ Local governments are also entitled to participation in the proceedings of the National Council of Provinces and are therefore involved in the highest legislative level of the state.⁹⁸ It is of interest to note that in respect of executive authority the Constitution does not explain where such responsibility vested in one section specifically, as is the case with legislative authority. Executive authority is dealt with in three separate sections of the Constitution.⁹⁹
- *Assignment and provincial supervision of local government* Any power or function that is to be exercised or performed in terms of an Act of parliament or a provincial

⁹⁵ The court also held that it was further common cause that the interim Constitution had operated at the time the proceedings had been instituted but that the interim Constitution had been superseded by the Constitution of the Republic of South Africa, 1996 by the time judgment was given in the court *a quo*. Accordingly, in terms of the Constitution s 17 of Sch 6, the jurisdiction of the court to adjudicate on any challenge based on the lawfulness or not of administrative actions performed by the respondents had to be determined in terms of the interim Constitution, unless the interest of justice required otherwise.

⁹⁶ See the Constitution ch 3.

⁹⁷ See the Constitution s 43.

⁹⁸ See the Constitution ss 67 and 163.

⁹⁹ On the provincial levels, executive authority is vested in the premiers of the provinces, and on a local level such authority is vested in the different municipal councils. S 85(1) states that the executive authority of the Republic of South Africa is vested in the president. This refers to national executive authority.

Act can be assigned to a Municipal council.¹⁰⁰ Provincial authorities cannot assign powers or functions only to municipalities; they are also constitutionally entitled to intervene when a municipality cannot or does not fulfil an executive obligation.¹⁰¹ Assignment of functions and provincial supervision are very important considerations for local authorities and can have serious implications in general.

- *State institutions in support of constitutional democracy* The Constitution specifically provides for various institutions that have been entrenched in the text of the Constitution and have the overall aim to support and enhance constitutional democracy. Local authorities within the structure of government must also adhere to the broad constitutional objectives in creating a democratic state. Therefore, all the state institutions mentioned in the Constitution will play an important role in supporting democracy on a local government level.¹⁰²
- *Principles regarding the public administration* Public administration can broadly be defined as the administrative branch of the state; the public administration is thus divided between the different levels of government and must be governed by the democratic values and principles that are enshrined in the Constitution.¹⁰³ All local government administrations must therefore comply with the requirements governing the public administration in general.¹⁰⁴
- *The role of the security services* The Constitution specifically sets down certain requirements and obligations in respect of the overall security services of the Republic of South Africa. Although these principles are applicable to mostly national government, there are aspects that are important to local governments and must be taken into account. It is specifically provided that the national police service must be structured to function in the national, provincial and, *where appropriate*, the local spheres of government.¹⁰⁵ These requirements are thus of importance to municipalities in certain instances. It will be explained and discussed later, but in the new local government structure the functioning of security services, especially new metropolitan police services, will play and provide important security roles

¹⁰⁰ See the Constitution s 126.

¹⁰¹ See the Constitution s 139(1).

¹⁰² See the Constitution ch 9. Such institutions *inter alia* include the Public Protector, the Auditor General and the Human Rights Commission, to name but a few.

¹⁰³ See the Constitution s 195(1).

¹⁰⁴ In this regard see the whole of the Constitution ch 10.

¹⁰⁵ See the Constitution s 205(1).

and services in certain municipal areas in the future. Without the effective implementation of security services it is hard to imagine the overall success and attainment of the objectives set out for municipal governments.

- *Traditional leaders and local government* It is moot law that traditional leaders have played an important part in African development and customs. Taking the history and composition of our country into account, it is self evident that traditional leaders have and will have important roles and functions to fulfil. It is submitted that the new goals and objectives as well as effective functioning of local authorities will not be achieved without the proper and generally accepted inclusion of traditional leaders within local authorities. This aspect is specifically emphasised through the constitutional protection given to traditional leaders.¹⁰⁶
- *Principles of public/government finance* The Constitution also contains many important financial requirements and principles that are of crucial importance to all spheres of government.¹⁰⁷ Without sound fiscal policies and strict management systems, no form of government will succeed in achieving growth and ensuring compliance to its constitutional objectives. The financial aspects are thus of fundamental importance to all municipalities.

6.8 Conclusion

In this chapter many of the challenges and problems that are facing the new local government structure have been identified. The overall role and importance of the Constitution has also been highlighted and a distinction between general constitutional requirements and specific local government matters has been made. Compliance with all of these aspects and requirements are of fundamental importance for the overall success and stability of the state as a whole.

¹⁰⁶ See the Constitution ch 12.

¹⁰⁷ See the Constitution ch 13.