

The status, objects, challenges and developmental duties of local authorities

7.1 Introduction

In the new constitutional dispensation, local government has been confirmed as a sphere of government at which government authority is exercised. Although local authorities are the smallest governmental institutions in a state, they are often regarded as the cornerstone of modern democratic systems.¹ The role of local governments in democratic systems is multiple, and some important aspects can be summarised as follows:

- Local government is the branch of government that functions the closest to the inhabitants/constituents of a specific area and is involved with the rendering of wide variety of services that materially affects the lives of all the people residing in its jurisdiction.
- Local authorities serve as an effective counterweight to the over-concentration of governmental authority in the other levels/branches of government. This positive influence can be achieved only if local governments are afforded a certain measure of autonomy.²
- Local authorities are often seen as local community-based management and administrative institutions which involve both political and bureaucratic components. Through these institutions, community actions and needs are promoted and regulated. In this capacity local governments are the best positioned to provide and ensure the sustainable provision of essential services to their relevant communities.

¹ See Rautenbach and Malherbe (1999) 299.

² Rautenbach and Malherbe state that it is generally accepted as a sound principle that the local level of government should be an autonomous level of government. *Abid* 300.

- Through the exercise of their powers and functions, local governments ensure access to and bring the decision-making processes closer to the local residents. This then allows for better participation and involvement by local residents in the local government processes and decisions that affect their lives on a daily basis. By its nature, local government is best suited to allow and encourage local participation in all democratic processes and to provide an important training ground for democracy and political experiences. After gaining experience in local government affairs, local political leaders are often taken into higher levels of government.

It must be emphasised, however, that the advantages of a third or local sphere/branch of government can be severely limited if such a sphere of government is not supported through specialised expertise, financial backing and administrative infrastructure. Without such support in place, most municipalities will not be able to perform their functions and fulfil their obligations.

Apart from the advantages mentioned above, a local or third level of government is also confronted with certain disadvantages. The following disadvantages are generally accepted:³

- Most local governments often have to compete with higher levels of government over scarce resources; for example, water resources and tourism-promoting environments.
- Small municipalities are often manipulated by wealthy and powerful private enterprises. This must be guarded against, as it could lead to decisions that are not in the interests of the general public of that area.
- Through the process of decentralisation, many functions of higher spheres of government can be decentralised/delegated to local authorities in an attempt to abandon their responsibilities. Such practices can have severe negative implications on both financial and social standards and must be avoided at all costs.⁴

With reference to the abovementioned information it is important to determine specifically the status and role of local authorities within South Africa's new constitutional

³ See Rautenbach and Malherbe (1999) 300.

⁴ The Constitution specifically protects local government in this respect. National or provincial governments may not compromise or impede a municipality's ability or right to exercise its powers or functions. See the Constitution s 151(4). National and provincial governments must support and strengthen the capacity of municipalities to manage their own affairs and exercise their powers and functions.

order. The relevant status of local authorities is very important with reference to the extent of autonomy that is afforded to such a level of government.

In general, almost all modern states provide for different levels of government within their governmental structures. The division of government functions between different levels provides for a mechanism whereby government authority is distributed. It is important that government authority be distributed and exercised at the specific level where it is to be the most effective and efficient. In this regard each system differs from another and each state usually determines a specific system that is most suitable for its own circumstances. In most states provision is made for at least two, but mostly three, levels or spheres of government. Most frequently, the decision to have two or three levels is determined after various factors have been taken into account.⁵ Many of these factors differ from state to state, and therefore all states have developed their own unique structures.⁶

After the recent constitutional reform South Africa has developed a new government system according to the new constitutional requirements and has entrenched three specific spheres of government. The Constitution identifies and explains these three spheres as follows:⁷

- In the Republic, government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated.
- All spheres of government must observe and adhere to the principles of co-operative government and must conduct their activities within the parameters of such requirements.
- The importance of this division specifically lies in the confirmation that all three spheres of government are distinctive, interdependent and interrelated. The word “distinctive” protects and confirms each sphere’s independence or autonomy and it influences the manner in which each sphere is to operate and fulfil its powers and functions. The words “interdependent” and “interrelated” in turn refer to the constitutional commitment to an overall system of co-operative government in the Republic. The Constitution confirms that all spheres of government are to a

⁵ These factors include historical, political, geographical, economical and administrative information as well as specific population figures.

⁶ In some states, eg, in the Netherlands, local authorities are mere administrative organs. In Germany however, local authorities are afforded distinctive and autonomous powers and functions.

⁷ The Constitution s 40.

greater or lesser degree interdependent and interrelated and that all spheres should work together to achieve the new constitutional obligations and objectives. Section 40 was included in the final Constitution in compliance with Constitutional Principle XVI which, under the final Constitution, required the government to be structured on a national, provincial and local level.⁸ Under this division each sphere has its own constitutionally determined powers and functions, which must be exercised and fulfilled according to the newly established constitutional mandate. Before one is to investigate the implications of local government as a part of the overall governmental structure, it is important to consider the unique characteristics of the local sphere of government.

7.2 The characteristics of local governments

In essence the characteristics of a local authority are threefold. *At first* a local authority is an identifiable juristic entity which has been formed within a specific area of jurisdiction by the community of that area. The entity is then tasked and bonded together by the common interests of the people of that area. *Secondly*, all local authorities provide a forum for local community participation in the affairs of government, albeit on the local level. This protection to participation is often referred to as “grass-roots democracy”.⁹ In the *last instance* local governments are local political institutions which have been empowered with executive and legislative powers and functions. The significance and importance of the fact that local authorities are part of the political structure of the state must never be overlooked or underestimated.¹⁰

7.3 The importance of being a sphere of government

It was shown above that local government as a distinctive, interdependent and inter-related part of the overall government of the Republic of South Africa has become a constitutional fact.¹¹ Gone are the days when local authorities were mere phenomena of applied administrative law.¹² It is, however, of interest to note that the final

⁸ 200 of 1993 and CP XVI.

⁹ One must again remember that the Constitution requires an overall democratic state in which public participation is of fundamental importance. See ss 1 and 152(1)(a) and (e) of the Constitution.

¹⁰ See Meyer (1997) 8.

¹¹ See the Constitution ss 40 and 43.

¹² Under the constitutional dispensation in South Africa prior to 1994, parliament was supreme, and local authorities were mere administrative units under mostly the control of provincial administrations. Traditionally municipalities were regarded as mere service delivery units of government. With the enactment of the interim Constitution and the final Constitution, an important paradigm

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Constitution refers to a sphere of government and not a level of government.¹³ This new reference to sphere is not unimportant and should be carefully considered.

In the first place the term sphere of government refers to a specific area of jurisdiction or territory. Many constitutional and local government scholars believe that the reference to sphere and not level of government in the final Constitution is aimed at emphasising a new relationship between the different branches of government. It is argued that the reference to sphere, as opposed to level or tier of government, indicates a radical shift away from the hierarchical division of government structures and powers of the past. It also signals a new era of co-operative, distinctive, governmental structure that is afforded constitutional recognition and protection.¹⁴ In such a relationship each sphere of government has its own distinctive status, powers and functions, which are entrenched in the Constitution. The higher government institutions are not automatically permitted to encroach or intervene in the powers or functions of lower government institutions. Disputes between the various spheres of government are to be resolved through co-operation and interaction rather than through legal battles and animosity. The reference to sphere of government thus refers to a government of distinctiveness and cooperation in contrast with a government of subordination.¹⁵

The reference to sphere rather than level is also important with regard to local government autonomy. No government institution can really be autonomous if it doesn't have a say in or isn't permitted participation in the governmental processes that have a direct or indirect influence on its own powers and functions. It is submitted that the reference to sphere of government specifically enhances not only the autonomy of the different spheres but also strengthen and advance inter-governmental participation and support.¹⁶ Suffice it to say that the reference to spheres of government truly affords each sphere distinctive status and protection and also gives government constitutional guidance on how inter-governmental relations and cooperation are to

shift took place, and local governments are now afforded autonomous status within the overall structure of government.

¹³ See the Constitution ss 40(1), 43 and 151(1).

¹⁴ See Chaskalson *et al* (1999) 5A – 26.

¹⁵ Refer to the ch on co-operative government for a more detailed discussion on all the principles regarding cooperation between the different spheres of government.

¹⁶ Good examples of local government participation in higher levels of government can be found in the Constitution ss 67, 154(2) and 163.

be developed. Through the term "sphere of government" all three divisions of government are treated independently. Although the Constitution provides the basic framework for this structure of co-operation, the total system should ultimately be completed by other national legislation.¹⁷

7.4 The status of municipalities

The status of municipalities is significantly linked to the reference to sphere of government and not level of government. The new constitutionally entrenched status of municipalities is so important to the new government structure that the Constitution includes a section specifically protecting and explaining such status. In this regard the Constitution states the following:¹⁸

- The local sphere of government consists of municipalities which must be established for the whole of the territory of the Republic.
- The executive and legislative authority of a municipality is vested in its Municipal Council.
- A municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution.
- The national or a provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions.

A few important aspects of section 151 should be emphasised:

- Through section 151, the Constitution confirms the distinctive nature of the local sphere of government, which consists of municipalities.¹⁹ The Constitution further sets the obligation²⁰ that the local sphere of government must be established for the whole territory of the Republic of South Africa. It is thus envisaged that no area in the state will be excluded from the jurisdiction of a local government in one form or another.²¹

¹⁷ See the Constitution s 41(2).

¹⁸ Refer to the Constitution s 151.

¹⁹ It should be noted here that there are three categories of municipality and various types of municipality within each category. These different categories and types will be discussed later in more detail.

²⁰ See the word "must" in the Constitution s 151(1).

²¹ This aspect also confirms the importance of local government to all legal scholars. No matter where people find themselves in South Africa they will always fall under the jurisdiction of a particular local authority.

- The Constitution also confirms that all authority, be that executive or legislative, is vested in the Municipal Council of that local authority.²²
- A limited measure of autonomy is further confirmed in section 151(3) of the Constitution. Municipalities have the right to govern all local government affairs on their own initiative. This right is, however, restricted and subjected to national and provincial legislation that is provided for in the Constitution itself. One can thus conclude that local governments do not have a comparable autonomy to what national or even provincial spheres have.²³ Although the autonomy and status of municipalities have been improved, these are still subjected to intervention by the two higher spheres. The subjection to higher intervention is curtailed by the constitutional text itself, however.²⁴ Once again it is of importance to note that national or provincial legislation also includes subordinate legislation and legislation that was in force when the Constitution took effect and that is administered by national or provincial governments respectively.²⁵
- National or provincial intervention or control over local government affairs is further restricted by the Constitution in its determination that such governments may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions.²⁶ *Prima facie* this looks like a contradiction in terms. On one hand a municipality has the right to govern on its own initiative, subject to national and provincial legislation, but on the other neither national or provincial governments may compromise or impede a municipality's ability or right to exercise its powers or perform its functions. Closer investigation of the text of the Constitution indicates that the right to govern is limited by the Constitution itself. The Constitution alone is but the framework for the new structure of government and, espe-

²² See the Constitution s 151(2). This important role of a Municipal Council will again be alluded to later.

²³ *In re: Certification of the Constitution of the RSA, 1996* 1996 (4) SA 744 (CC) the court held that local government structures were given more autonomy in the new text than in the interim Constitution and this autonomy was sourced in the new text and not derived from anything given to local government structure by the provinces. Further, it held that, whereas Sch 6 of the interim Constitution listed a broad functional area of provincial legislative competence which was termed "local government, subject to the provisions of ch 10", the new text specifically listed the particular areas of local government which in terms of Schs 4 and 5 of the new text fell within the legislative competence of provinces. To this extent there was some diminution in provincial legislative power. There was also a corresponding diminution in the executive power of the provinces that flowed from their diminished legislative powers. See paras 462 and 463 at 905-906.

²⁴ Refer to the Constitution s 151(3). A *carte blanche* intervention is not envisaged.

²⁵ See the Constitution s 239 for the complete definitions of national and provincial legislation.

²⁶ See the Constitution s 151(4).

cially with regard to local government, requires the enactment of national and provincial laws to complete the structure. To exclude municipalities from such national or provincial laws will be contrary to the text of the Constitution itself. However, where the Constitution has already determined a municipality's ability or right to exercise its powers or perform its functions, such constitutionally founded protection may not be compromised or impeded by national or provincial governments. It is also important to note that section 151(4) does not refer to national or provincial legislation, but rather to national or provincial governments. It is thus possible to conclude that neither the legislative authority nor the executive authority of the two higher spheres may compromise or impede the rights or abilities of municipalities that are protected in terms of the Constitution.

It seems that the Constitution provides local government with a significant measure of at least administrative autonomy against higher levels of government. On a legislative basis this autonomy is restricted to the extent that a municipal by-law that conflicts with national or provincial legislation is invalid.²⁷ This invalidation of municipal by-laws is subject to the provisions of section 151(4), however, as was explained above.

In summary of the status of municipalities, it is safe to say that the Constitution clearly entrenches local government as a distinctive and interdependent sphere of government. The concept of a sphere is often referred to in the Constitution.²⁸ This new constitutionally entrenched status should enable local governments to defend and resist attempts to intrude on their specific terrain and also to defy attempts from other government institutions to interfere or encroach on their powers and functions in an unconstitutional manner. Municipalities are afforded much more autonomy than they had before 1993 and are thereby more assured of real independent decision-making opportunities.²⁹ All the powers and functions of local authorities are protected

²⁷ See the Constitution s 156(2).

²⁸ See the Constitution ss 40, 41, 43, 151, 205(1), 214(1), 215(2)(c), 238 and 239.

²⁹ With reference to local government autonomy the Constitutional Court in the case of *In re: Certification of the Constitution of the RSA, 1996* 1996 (4) SA 744 (CC) held that, while local government structures were given more autonomy in the new text than they were given in the interim Constitution, it had to be borne in mind that the interim Constitution contemplated that local government would be autonomous, though it did not delineate the boundaries of the autonomy as clearly as the new text. Whereas in the interim Constitution the potential concurrency of powers in parliament and the provincial legislatures was in respect of the whole field of local government, in terms of the new text power would be allocated to specific areas of competence. It was in this proc-

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in the Constitution, and higher spheres may intervene only if constitutionally mandated to do so. This protection of the autonomy of local governments is generally accepted to provide a system of effective and efficient government in the new constitutional state and to protect it. It is important, however, to emphasise that without proper financial support and the provision of infrastructure, local government autonomy can be negatively compromised.³⁰ It is in the last instance also of value to note that the Constitution does not stipulate that the field of local government *per se* is a functional area of provincial or national legislative authority.³¹ This exclusion from national or provincial legislative competence further confirms and strengthens local government autonomy as an interdependent sphere of the government. Although both national and provincial governments may exercise powers in relation to local government matters, they may do so only if permitted to do so by the Constitution. Local governments must be aware of their constitutional protection, but should also not lose sight of the fact that their entrenched status also carries a substantial burden. As a part of the government, local authorities have various constitutional obligations that they are compelled to fulfil and to which they are compelled to adhere.

7.5 The objects of local government

Apart from establishing local government as a specific sphere of government, the Constitution also directly sets specific objects for local governments that should be achieved within the lowest level of government operations. In this regard the Constitution states that:³²

- The objects of local government are
 - (a) to provide democratic and accountable government for local communities
 - (b) to ensure the provision of services to communities in a sustainable manner
 - (c) to promote social and economic development
 - (d) to promote a safe and healthy environment and

ess that the local authorities were afforded greater autonomy at the expense of both parliament and the provincial legislatures.

³⁰ See Devenish (1998) 203.

³¹ The Constitution Schs 4 and 5 provides for the functional areas of concurrent and exclusive national and provincial legislative authority. Parts B of both Sch 4 and 5 have incorporated all the traditional local government functions, thus allowing either national, provincial or even local governments to legislate over such matters. The legislative competence to legislate over local government as an institution or sphere of government is not included in either of the Schs.

³² Refer to the Constitution s 152.

(e) to encourage the involvement of communities and community organisations in the matters of local government.

- A municipality must strive, within its financial and administrative capacity, to achieve the objects set out in subsection (1).

The constitutional provision of specific objects of local governments is strongly linked and founded on the traditional purpose of local authorities and is in confirmation of its role and duties. In the Local Government Transition Act³³ it was stated that every municipal authority must conduct its affairs in an effective, economical and efficient manner to optimise the use of resources, to meet the needs of its respective community, to structure and manage its administration and financial management, to promote social and economical development and also to support and implement national and provincial programmes.³⁴ Section 152 now incorporates some of the provisions of the LGTA and sets the constitutional foundation for the objects of local government in general, thus creating an overarching set of obligations that are to be achieved.

In essence the specified objects are to confirm the new constitutional commitment to an overall democratic state and accountable government, to ensure the sustainable provision of services to the people of the country, to promote social and economic upliftment and development, to create a safe and healthy environment and finally to revitalise public participation and involvement. The different objects are thus clear and in no need of further explanation, but the systems and programmes that must be put in place in order to achieve these objectives present formidable challenges to all involved in local government, be they political leaders, municipal administrators or the relevant local communities themselves.

7.6 The new challenges and developmental duties facing municipalities

Local government has been entrenched as part of the new structure with its commitment of a government founded on new constitutionally protected values.³⁵ The new local government system had to be built on some of the strengths and structures of the transitional system. This in itself presented local government with interesting challenges. Apart from these challenges, almost all local authorities the world

³³ 200 of 1993.

³⁴ See the LGTA s 10G.

³⁵ See the Constitution s 1.

over are facing new demands, especially in providing viable and environmentally stable urban and rural developments. In the new South Africa many other unique challenges have also been identified. Some of these challenges are summarised as follows:³⁶

- Addressing and transforming skewed settlement patterns. Many current patterns are functionally inefficient and costly.
- Redistribution of concentrations of taxable economic resources, which are founded mostly in former white settlements.
- To address the huge backlogs in service infrastructure in almost all historically underdeveloped areas. This challenge requires municipal expenditure far in excess of the revenue that is currently available.
- To create viable municipal institutions in areas with dense rural settlements. These areas have usually large population figures with minimal access to services and little or no economic tax base to support financial limitations.
- To integrate the spatial disparities between towns and townships. The spatial disparities are largely responsible for increased demands on service provision and high transport costs.
- To create municipal institutions which recognise the linkages between urban and rural settlements.
- To change the former modes of decision making and administrative systems in local authorities and to ensure sustainable delivery and provision of services to the broad community.
- To uplift and promote private sector involvement and the poor creditworthiness of many municipal councils. Administrative capacity in most municipalities must also be reformed. Some institutions have little or no pre-existing institutional foundation to build on.
- To rebuild the relationships between newly demarcated local authorities and their local communities. Municipalities should be particularly sensitive towards the needs of people who tend to be marginalised within their communities.³⁷

As part of the government, all local authorities have been given a new constitutional mandate to uplift and sustain acceptable and viable human settlements. The chal-

³⁶ See the White Paper on Local Government (1998) at 35.

³⁷ Such people should specifically include women and persons with disabilities.

lenges mentioned above are comprehensive in nature and difficult to achieve in practice. Local governments will have to reposition and re-equip themselves in order realistically to be in a position to fulfil these challenges. All possible efforts should be set in motion to achieve optimal success, but only time will tell if they have succeeded.

7.7 Developmental duties of municipalities

7.7.1 Introduction

Apart from the constitutionally founded objects of local government, all municipalities are also constitutionally obligated to fulfil certain developmental duties. It is the task of all local government institutions to work individually and in co-operation with their local communities to ensure sustainable ways to meet the needs and to improve the quality of life for all people of South Africa. In this regard it is of fundamental importance and in the interest of the nation as a whole that local government is capacitated and transformed to play a developmental role. In essence, a developmental local government is intended to have a major impact on the daily lives of all South Africans. Developmental duties cannot be achieved without the co-operation and constructive support of both national and provincial governments, however. In instances where local authorities are not successful in developing their own strategies to meet community needs, national and provincial governments may have to adopt a more prescriptive approach. In this regard it is important to note that developmental duties should not be seen on an individual basis within each sphere of government, but should be promoted on a collective basis within government as a whole.

7.7.2 The constitutional obligations

The Constitution specifically entrenches the developmental duties of municipalities. In this regard section 153 states that a municipality must

- structure and manage its administration and budgeting and planning processes to give priority to the basic needs of the community and to promote the social and economic development of the community and
- participate in national and provincial development programmes.

The Constitution is clear on the fact that all municipalities must do their best to attend to the basic needs of people and to promote social and economic development. The Constitution is silent on how local authorities are to structure and manage their administrations, budgets and planning processes in order to fulfil their developmental duties, however. It is submitted that political policies and programmes combined with

community proposals should form the basis of most developmental plans. As a starting point such plans must give priority to people's basic needs and their social and economic upliftment. Development and upliftment should be regarded as synonymous in this regard. In a determination of whether or not priority is really given to the mentioned needs, an objective evaluation of the actions and steps taken by municipalities will be required. This will differ from case to case and will be influenced by the relevant circumstances of each situation.

It is further submitted that if the facts of a case indicate that a municipality has not given priority to the needs of its community and to promoting social and economic development, its actions or programmes will be contrary to the constitutional obligation in this regard and should be declared unconstitutional and invalid. This would further create a possible situation where the judicial authority of the country is called upon to adjudicate on the legislative or even executive powers of a local sphere of government. The judicial authority does not usually prescribe to the legislative or executive authority how it should structure and manage its administrations and how it should prioritise its programmes and policies. It is submitted, however, that the Constitution specifically allows for such judicial intervention when municipalities are not complying with their developmental duties.³⁸

7.7.2.1 The nature and characteristics of developmental local government

In principle the idea of developmental local government refers to local governments that are committed to working with the people within their respective communities in an effort to find sustainable ways to meet their different social, economic and material needs and improve their overall quality of life. This commitment is indeed the foundation of the new constitutional vision for local government. The Constitution specifically enshrines the rights of all people in our country³⁹ and, depending on the availability of resources, it commits our government to taking all reasonable measures to ensure that all South Africans have adequate access to housing, health care, education, food, water and social security.⁴⁰ The reality in many towns and, more particularly, in many rural areas is far from this ideal. Millions of people live in dire poverty and without basic services and life-sustaining support. It is the task of the

³⁸ For more detail on this point, refer to ss 2, 8 and 172 of the Constitution.

³⁹ See the Constitution s 7.

⁴⁰ See the Bill of Rights ss 26, 27, 28 and 29.

new developmental local government structures to ensure human upliftment and the provision of sustainable essential services. All efforts and resources must be directed carefully in order to achieve the overall developmental obligations.

7.7.2.2 Interrelated characteristics of developmental local government

According to the White Paper on Local Government, the nature of a system of developmental local government comprises four specific interrelated characteristics.⁴¹ These characteristics are: maximising social development and economic growth, integrating and co-ordinating activities, democratising development and a process of leading and learning. These four characteristics form the basis on which the new developmental local structures are to be developed, and they are thus in need of further explanation.

(a) Maximising social development and economic growth

Social upliftment and economic growth are in the forefront of developmental local government. All powers and functions that are accorded to local governments should be exercised in such a way as to ensure maximum advancement of social development. Social development can be achieved only if the basic needs of people are provided for and if financial resources are available. Without continuous growth within local economies not enough funding will be available to ensure the basic provision of services. In this regard local authorities are dependent not only on the economic policies and success of the national government, but also on their own creative initiatives to secure investment and resources.

Without doubt local governments, through the exercise of their traditional responsibilities,⁴² exert a great influence over the social and economic well-being of local communities. Local authorities collect large sums of rates and taxes, and they employ many people and pay many salaries. In some cases they are responsible for the pricing and quality of basic life necessities such as water, electricity and sanitation services, and they also control the direction of land-development projects. Local governments themselves often own substantial amounts of land, and they are frequently involved in the purchasing of goods and in other economic activities. In this regard they substantially contribute to the flow of money within their local economy. Furthermore, local governments are responsible for setting the agendas for local

⁴¹ See White Paper on Local Government (1998) at 38.

⁴² Eg, the provision of basic services and a healthy and safe environment.

political issues and providing insight in future policies and programmes. The way in which local governments operate thus sends out important signals to their own residents and also to prospective investors. Their influence on the local economy is clearly of great significance. All municipalities should therefore have a clear vision for their local area and economy and should seek strong partnerships with business enterprises to ensure job creation and to maximise investment.

It should be noted that it is not the direct responsibility of local government to ensure job creation. Job creation falls within the ambit of mainly the national sphere of government. However, municipalities are responsible for ensuring local economic and social conditions that are conducive to the creation of employment opportunities. In this regard it is generally accepted that the provision of basic household infrastructure forms the central basis for ensuring social and economic development.⁴³

Other initiatives such as changes to existing procedures, the speeding up of approval procedures and the proactive release of land for development purposes could provide further positive stimulus for social and economical progress. Social development can also be advanced through functions such as arts and culture and the provision of recreational and community facilities. Through its constitutionally entrenched powers local government has been given the strongest possible foundation to succeed in its developmental obligations.

(b) Integrating and co-ordinating activities

Within any local area there are many different agencies that contribute to development. These usually include various national and provincial government institutions, parastatals, community organisations and private-sector institutions. It is the responsibility of developmental local government to provide vision, leadership and strong co-ordination between these different role players. Poor co-ordination could severely undermine the new development effort. In this regard, it is important for all municipalities actively to develop mechanisms to ensure resources and investment initiatives from both public and private sectors in order to meet their developmental targets. An important method of ensuring better co-ordination and commitment is through the process of Integrated Development Planning. Integrated Development Planning is facilitated through the provision set out in the Development Facilitation

⁴³ See White Paper on Local Government (1998) at 39.

Act⁴⁴ which provides powerful assistance to municipalities to facilitate and co-ordinate integrated development.

Although it is true that circumstances differ from one community to another, it is submitted that the establishment of sustainable and successful human settlements depends largely on proper co-ordination and integration between all possible role players and a wide range of services and regulations.⁴⁵ Local governments have a pivotal role to play in ensuring that this co-ordination and integration is attained.

(c) The importance of democratic local development

It was stated earlier that Municipal Councils play a central role in promoting and establishing a system of local democracy.⁴⁶ One of the main objectives of local democracy is to ensure public involvement and participation.

In the previous local government dispensation, most municipalities made their presence felt through a process of abstract control and regulation of communal actions. Regulation still remains an important municipal function in the new system, but it should be supplemented with elements of leadership, accountability, support and public participation. All divisions within local communities must be encouraged and motivated to take an active part in the day-to-day functioning of their local authority. It is therefore important for municipalities to adopt inclusive approaches to community participation in all respects. This aspect is also promoted in various national programmes.⁴⁷ From its so-called “grass roots” position, developmental local government is uniquely placed to combine and ensure empowerment and redistribution of wealth through a number of specialised programmes. Examples of such programmes are:

- Specialised service subsidy schemes, which could provide low-income households with an opportunity to improve their circumstances.
- Simple technical and training courses, which should enable people to better themselves and to be less dependent on others.

⁴⁴ 67 of 1995.

⁴⁵ These services and regulations would include land-use planning, provision of household infrastructure, environmental management, transport issues, health and education upliftment, as well as the insurance of safety, security and housing.

⁴⁶ Local government is defined as being a cornerstone of a democratic system.

⁴⁷ The importance of empowerment to poor people and marginalised communities is emphasised in the Reconstruction and Development Programme and also the Growth, Employment and Redistribution strategy.

- Carefully designed cross-subsidising programmes to ensure financial and infra-structural support to very poor areas; for example, a developmental levy that is imposed in fast-growing areas which is then used to subsidise services in other underdeveloped suburbs.⁴⁸ It must be noted, however, that cross-subsidising is a very contentious matter and should be approached very carefully. Ill-considered cross-subsidising schemes can quickly alienate certain groups within a community. These groups are usually the more wealthy inhabitants or institutions, and their sudden opposition/dissatisfaction with the local policies can have a severe impact on local financial support, development and involvement. It is of cardinal importance that open and constructive communication and participation be introduced before any such schemes are implemented. Emphasis must also be drawn to the fact that because of the negative results of the pre-1993 local government system it will not be possible to achieve social development and upliftment without a measure of controlled cross-subsidising. It is also important to take cognisance of the fact that cross-subsidising is not in principle contrary to constitutional requirements and that such a system has indeed been allowed by our courts.⁴⁹

(d) Moving ahead through processes of leading and learning

The many changes and challenges of modern local communities are forcing local communities and institutions to re-evaluate the manner in which they organise themselves and the way in which they are governed by their local authorities. Most local communities the world over are facing the challenges of sustaining their economies in order to uplift their societies, to protect their environments, to eradicate poverty and to provide personal safety and security. Although support by higher levels or spheres of government is essential, such support alone is not enough. Municipal communities are increasingly forced to find within themselves new ways to secure sustainable development and the continuous provision of services. In this regard municipalities must take a leading role within their jurisdictions and should learn from the failures and successes of other local authorities. Municipalities must become visionary and strategic in the way in which they operate, and they have a crucial role

⁴⁸ During the transitional phases of local government, many Transitional Metropolitan Councils introduced a so-called "development levy" which was introduced to obtain financial resources mostly from private enterprises in order to provide financial assistance to certain communities in need.

⁴⁹ See *Pretoria City Council v Walker* 1998 (2) SA 363 (CC) and *Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council* 1999 (1) SA 374 (CC).

to play as policymakers, planners, innovators and providers of basic human necessities. There are many ways in which local authorities can provide for favourable development conditions.⁵⁰ Some of these steps are the following:

- Building the kind of political leadership that is able to bring together coalitions and networks of local interests that co-operate to realise a shared vision.
- Responsive problem solving and a commitment to working in open partnerships with business, trade unions and community-based organisations.
- Ensuring that knowledge and information are acquired and managed in a way that promotes continuous learning and that anyone can access easily and quickly.
- Enhancing local democracy through raising awareness of human rights issues and promoting constitutional values and principles.
- Building an awareness of environmental issues and how the behaviour of residents impacts on the local environment and encouraging citizens to utilise scarce natural resources in a prudent, careful manner.
- Investing in youth development as a key resource for the future and building on their creativity and motivation through involvement in civic and development programmes.
- Empowering ward councillors as community leaders who should play a pivotal role in building a shared vision and mobilising community resources for development.

7.7.2.3 The developmental outcomes of local government

Local governments should guard against establishing a system of developmental local governance that looks good on paper but has no real success in terms of practical achievement. Ultimately, the success of all developmental programmes will be measured by their final results. It is safe to say that all citizens and community-based institutions are positively concerned about their local areas, not only in support of their own needs but also to ensure prosperity for future generations. The success and positive outcomes which developmental local government are obligated to achieve are thus extremely important. The White Paper on Local Government has identified certain key outcomes that are relevant to all municipalities in the new structure. These outcomes are as follows:

⁵⁰ See White Paper on Local Government (1998) at 42.

(a) The provision of sustainable household infrastructure and services

In principle, all local governments are responsible for the provision of household infrastructure and basic services. These services and infrastructures form the foundation of successful social and economic development. Basic services usually include the provision of water, sanitation, local roads, electricity, drainage and refuse collection. Apart from being a constitutional right, the provision of basic services is essential to enable people to support their families and to develop their skills and to support job creation.⁵¹ The starting point for positive development must therefore be to prioritise the delivery of at least a basic level and minimum standard of services to all members of local communities. Again, this ideal depends on mostly financial capabilities and resources.⁵² Local governments are also supported through the Municipal Infrastructure Investment Framework (MIIF) and the Consolidated Municipal Infrastructure Programme (CMIP). Furthermore, local government is constitutionally entitled to an equitable share of national revenue.⁵³ Generally, the allocations from national revenue sources should enable most municipalities to help in subsidising the operating costs of basic services.

(b) Creating integrated local areas

Integrating the spatial disparities of urban and rural settlements in South Africa is of critical importance for the overall acceptance, success and prosperity of South African communities. Spatial parity will enhance economic growth to great extent and should facilitate more sustainability in the provision of services and a reduction in commuting costs of many households. All these aspects are beneficial in terms of overall social development. It is further of importance that the challenges facing urban areas and rural areas, although mostly similar, are sometimes different. Most of the challenges facing urban areas are those of integration of towns and townships. In metropolitan areas particular emphasis should be placed on future needs and infrastructure in response to the rapidly growing population figures in those areas.

⁵¹ The Constitution through the Bill of Rights protects the right of everyone to a safe and healthy environment, access to adequate housing, access to health care services, sufficient food and water, social security and appropriate social assistance. See the Constitution ss 24, 26 and 27.

⁵² It was mentioned earlier that financial capacity could be gained through capital grants, local cross-subsidisation schemes or private investment initiatives.

⁵³ The equitable shares and allocations of revenue raised nationally must be provided for in an Act of parliament. See the Constitution s 214 as well as the Equitable Share of National Revenue Act. These aspects will be discussed in more detail in the ch on municipal finance.

Rural areas are concerned mostly with building liveable environments and service delivery. These areas are often densely populated, with an inadequate or indeed no sustainable economic base. Many rural residents commute for many kilometres from their homes to work and back on a daily basis. Such commuting costs involve high transport costs and expenditure. Innovative strategies and programmes are needed to address these issues successfully. Both urban and rural areas must also plan and implement environmental protection programmes.⁵⁴

(c) Enhancing local economic development and providing special services

Local governments should focus much of their developmental initiative on investing in basic services. Through the provision of good quality, cost-effective services and by making a local area a pleasant place in which to live and work, significant boosting of the local economy can be achieved. Municipalities should also strive to improve and simplify many of their procedures and rules in order to achieve effective and speedy decision making.⁵⁵ Many local authorities must also review their policies and by-laws in order to ensure compliance with the new constitutional obligations. Lastly, the establishment of user-friendly one-stop service centres should significantly increase efficiency and local support.

One should also not lose sight of the fact that the Constitution specifically requires local governments to take responsibility for promoting the social and economic development of local communities.⁵⁶ Municipalities are therefore mandated to provide special services and take extra-ordinary steps. Innovative marketing and investment initiatives as well as small business support services should be provided for. Continuous research and technology upgrading together with quality training programmes are also important mechanisms to ensure competitiveness and positive developmental progress. Without proper knowledge and administrative support, continuous economic growth and development will be unnecessarily restricted.⁵⁷

7.7.2.4 Mechanisms for local governments to achieve developmental goals

In order to achieve the various developmental outcomes, significant changes in the way in which local governments function will have to be introduced. In an effort to

⁵⁴ According to the Constitution s 24, everyone has the right to an environment that is not harmful to their health or well-being and also to have the environment protected.

⁵⁵ Rezoning applications, eg, those which are frequently delayed because of stringent bureaucratic approval processes, should be simplified.

⁵⁶ Refer to the Constitution s 152.

⁵⁷ See White Paper on Local Government (1998) at 46.

become more developmental, the government in its White Paper on Local Government has put forward three interrelated approaches. These approaches were directed not only at the transformation process but also at municipal developmental strategies of the future. The approaches can be summarised as follows:

(a) Integrated development planning, budgeting and performance monitoring

In order to meet the challenges of social and economic development, all municipalities are facing extensive difficulties to ensure sustainable and acceptable human settlements. Municipalities must investigate and understand their local circumstances, needs and dynamics and accordingly develop a concrete vision to address such needs and to provide for overall quality of life. Within the new structure of developmental local government, a process of Integrated Development Planning (IDP) has been initiated, through which municipalities must establish local development plans for the short, medium and long term. In producing an Integrated Developmental Plan (IDP), various steps are to be taken. These steps include the following:

- an assessment of the current social, economic and environmental reality in the municipal area – the current reality
- a determination of community needs through close consultation
- developing a vision for development in the area
- an audit of available resources, skills and capacities
- a prioritisation of these needs in order of urgency and long-term importance
- the development of integrated frameworks and goals to meet these needs
- the formulation of strategies to achieve the goals within specific time frames
- the implementation of projects and programmes to achieve key goals
- the use of monitoring tools to measure impact and performance.

In essence Integrated Developmental Plans are planning and strategic guidelines/frameworks that have been drafted to help and guide local authorities to fulfil their developmental mandate. The idea of such plans is to build up a comprehensive integrated framework, with specific focus on the advancement of development in a particular local area. There are many advantages if proper Integrated Development Plans have been established. Some of these advantages are:

- They enable municipalities to align their financial and institutional resources behind agreed policy objectives and programmes.

- They are a vital tool to ensure the integration of local government activities with other spheres of development planning at provincial, national and international levels by serving as a basis for communication and interaction.
- They serve as a basis for engagement between local government and the citizenry at the local level, and with various stakeholders and interest groups. Participatory and accountable government has meaning only if it is related to concrete issues, plans and resource allocations.
- They enable municipalities to weigh up their obligations and to prioritise programmes and resource allocations systematically. In a context of great inequalities IDPs serve as a framework for municipalities to prioritise their actions around meeting urgent needs while maintaining the overall economic, municipal and social infrastructure already in place.
- They assist municipalities to focus on the environmental sustainability of their delivery and development strategies. Sustainable development is development that delivers basic social and economic services to all without threatening the viability of the ecological and community systems upon which these services depend.
- They help municipalities to develop a holistic strategy for poverty alleviation. Poverty is about more than the inadequacy of a low household income: it includes other deprivation such as a lack of assets to help households cope with shocks and stresses; a lack of the resources or contacts necessary to secure political advantage; a lack of access to education, health care and emergency services and the lack of safe, secure, and adequately sized housing with basic services.

Integrated Development Plans should not be viewed as fixed inflatable frameworks but should rather be seen as incremental development plans which are regularly reviewed and subject to adaptations. In essence, all integrated development planning is a municipal function and should not be outsourced to consultants. After consideration has been given to all local inputs, municipalities should manage the development and amendment of IDPs themselves.

Within the new local government dispensation, many municipalities are required in

terms of the Development Facilitation Act⁵⁸ to produce Land Development Objectives (LDOs). LDOs should provide the basis for further strategic development in a specific area. LDOs fulfil a critical role. They are submitted to the provincial government of a province for approval. Once approved, they have legal status and become powerful instruments in directing and managing development initiatives in a particular area. Development planning will be discussed in more detail in later chapters.

In order to achieve service delivery, municipalities must develop and implement action plans to ensure continuous sustainability. Two types of plan should be considered. The first is institutional plans, which should be aimed at assisting municipalities with functioning and administration. The second plan should be directed at the financial and budgeting aspects of the local authority. These financial plans should involve medium- to long-term projections of capital and expenditure. Through capital planning and control a municipality should be able to manage infrastructure targets and enhance possible investment opportunities.

(b) Municipal performance management

Performance management is a crucial component of any successful private or public institution. The critical role of performance management in local government is to ensure that local objectives and duties are implemented, monitored and corrected if necessary. In the new system of local government, municipalities will set their own standards of performance. These measures or standards are often referred to as Key Performance Indicators (KPI). KPIs will vary from one municipality to another, depending on the relevant circumstances and requirements within each jurisdiction. KPIs can provide valuable assistance to local authorities in assessing the impact and effectiveness of their plans and ultimately their compliance with the constitutional obligations. Community involvement in setting KPIs is also very important. Priorities in communities differ from community to community. By involving the community, efficiency, accountability and local trust will be enhanced.

KPIs should also be developed in consultation with internal municipal stakeholders. Such stakeholders would include management, administrative personnel and also organised labour interests. The involvement of all such role players can entrench a shared organisational vision and in turn improve performance and delivery goals.⁵⁹

⁵⁸ 67 of 1995.

⁵⁹ See White Paper on Local Government (1998) at 51.

Without doubt performance management will play an integral and important part in the ultimate success of the new local government institutions. According to international experiences, a system of poorly designed performance indicators usually has a negative effect on delivery and efficiency.⁶⁰ It is of significant importance that KPIs should focus on outcomes specifically and not only on inputs and outputs.⁶¹

Performance management should also be implemented on a national level. Integrated performance management must be advanced to assess overall effectiveness. This could provide so-called “early warning indicators” in instances where local authorities are experiencing problems and could enable other spheres of government to provide assistance and support before a crisis situation has developed. Proper and controlled performance management is thus of great importance, not only within local government systems but within the overall governmental framework.

(c) Municipal co-operation with local citizens and private partners

It was explained above that one of the strengths of integrated development planning is the fact that it recognises the linkages between development, service delivery, upliftment of quality of life and public participation and democracy. Again emphasis should be placed on the importance of local governments to ensure local democratic principles. This can be achieved only if citizens and private institutions are involved within all affairs of local government. The White Paper on Local Government has identified four levels/areas of public participation in municipal affairs.⁶² These areas are the following:

- (a) *As voters*: As voters residents should ensure maximum democratic accountability of their elected political leadership. As is the position in all democratic systems, South African municipalities must ensure that voters are frequently informed about the need to vote and to participate in the local electoral procedures. If voter participation declines, democratic accountability is diluted. Voter participation can

⁶⁰ See White Paper on Local Government (1998) at 52.

⁶¹ To illustrate this principle the following example can be used. Imagine a municipality has a programme for cutting the grass verges in its care with the aim to maintain an orderly and clean appearance and to discourage rubbish dumping of garden refuse by residents. The municipality's original objective would be defeated, if the performance management system would only measure the frequency of cutting the grass (the output) and not its effect in relation to the aim/objective (the outcome). Such a performance management system would provide a misleading report on the effectiveness of the municipality's performance.

⁶² See White Paper on Local Government (1998) at 53.

be enhanced through educational programmes, creative electoral campaigning and by ensuring that the electoral process is accountable and legitimate.

- (b) As participants in the policy process: Local residents should convey their views and preferences regarding local policies and development priorities. All municipalities should develop mechanisms to ensure citizen participation. This can be achieved through the creation of various public forums.
- (c) As consumers and end-service-users: The only contact most local citizens have with their local government is through the consumption and utilisation of municipal services. Municipalities should be responsive to the needs of local inhabitants and private businesses. People should demand value-for-money, affordable and effective services. It was stated elsewhere that improved customer management and service provision are critical in ensuring socio and economic development. Various principles have been identified to ensure participation and involvement of local customers. These principles include consultation initiatives, the establishment of basic service standards, easy access to services, the provision of accurate information, openness and transparency, mechanisms to redress mistakes efficiently and courteously and products that represent value for money.
- (d) Local partners in resource mobilisation: All local governments are expected to enhance service delivery within their available resources. In order to achieve more effective and efficient service delivery, local authorities will have to involve private institutions and enter into various types of partnership initiatives. Some of these initiatives could include, for example, community development corporations, public-private or public-public partnerships, community contracting for services, information and learning centres, training and capacity-building initiatives.

7.8 Conclusion

It is safe to say that all South African municipalities are facing extensive challenges in promoting human rights, meeting basic needs, addressing past backlogs and spatial distortions and ensuring a sustainable and democratic local future. This can be achieved only through commitment, training and working hand in hand with all role players. The Constitution provides local government with a sound foundation as a distinctive sphere of government, with its own entrenched autonomy and specified powers and functions. Local government alone will not be able to fulfil and comply with its various objectives and duties without the constructive assistance of other spheres of government, the positive and committed support of administrators, a

purposeful and public-orientated, effective, efficient and accountable political leadership and a supportive, informed and fully committed local community.