

CHAPTER 3

THE DEVELOPMENT OF LOCAL GOVERNMENT IN SOUTH AFRICA: A HISTORICAL PERSPECTIVE

3.1 INTRODUCTION

The development of local government over the last 400 years has been radical, bringing about extreme changes to political and social conditions. The study of the details relating to the evolution of local government would be very interesting, but it would be fruitless, since local government then and local government now are so different.

However, it is considered useful to understand how the general principles regarding the system of local government in South Africa have evolved over the years. The purpose of the following exposition is to reflect on the attempts made by citizens to become more organized and systematic in their way of living and on their dependence on the state for the provision and delivery of services.

South Africans obtained freedom from apartheid when a democratic dispensation was ushered in on 27 April 1994. However, while the citizenry enjoyed emancipation on that day, the local sphere of government was still entrenched in and subjected to apartheid planning, policies and legislation. In order to rectify these injustices, negotiations commenced for an interim dispensation for local government, to be finalized over stages.

This chapter provides an overview of the constitutional development of the country, the underlying principles contained in the *Constitution of the Republic of South Africa, 1993* on which the *Constitution of the Republic of South Africa, 1996* is based, the constitutional status and protection of local government, the

restructuring process for a new system of local government, and preparations that were made by the state in this regard.

3.2 SOUTH AFRICA'S FIVE CONSTITUTIONS

Craythorne (2003:1) states that over the period from 1910 to 1996, South Africa had five constitutions. He states further that some describe the *Constitution of the Republic of South Africa, 1996* as the product of a revolution, while others describe it as evolutionary, in that power passed from one regime to another by negotiation and without a civil war. Craythorne (*ibid.*) claims that what can be called revolutionary, however, are the provisions in the current Constitution, in that they changed the entire nature of the South African state.

3.2.1 The South Africa Act, 1909

Vosloo, Kotzé and Jeppe (1974:21) state that the foundations of the South African constitutional framework were laid by the *South Africa Act, 1909*. It was drafted by the National Convention of 1908 – 1909, and embodied in a British imperial statute which was passed by the British Parliament and thereafter assented to by King Edward VII on 20 September 1909. The *South Africa Act, 1909* took effect on 31 May 1910 when the Union of South Africa came into existence.

The *South Africa Act, 1909* introduced the Westminster system, namely, a system of a bicameral (two houses) Parliament, with Parliament being supreme. Parliament consisted of a lower house, the House of Assembly, and an upper house, the Senate. Contrary to the British system, which has only a central government and local government, the *South Africa Act, 1909* provided for four provinces, one for each colony, as well as for four provincial councils.

In 1919, South West Africa (now Namibia) came under the control of the Union as a mandate territory. The Union's status as an independent member of the British Commonwealth was recognized in the Imperial Conference of 1926 and given formal, legal effect by separate British and South African statutes in 1931 and 1934. South Africa continued to be a member of the Commonwealth until 31 May 1961, when a Republic was proclaimed, outside the Commonwealth.

According to Craythorne (2003:2), local government is mentioned under only section 85(vi) of the *South Africa Act*, 1909 which, in its 1947 version, read as follows:

“(vi) (a) ... Municipal institutions, divisional councils, and other local institutions of a similar nature; (b) any institutions or bodies other than such institutions as are referred to in subparagraph (a), which have in respect of any one or more areas (whether contiguous or not) situated outside the area of jurisdiction of any such institution as are referred to in subparagraph (a) authority and functions similar to the authority and functions of such institutions as are referred to in the said subparagraph, or authority and functions in respect of the preservation of public health in any such area or areas, including any such body as is referred to in section seven of the *Public Health Act*, 1919 (Act No. 36 of 1919).”

Meyer (1978:44) states that the courts were called upon to interpret the above section in the *South Africa Act*, 1909, and during 1923 the Natal Provincial Council enacted an ordinance to provide for the establishment of Health Committees to carry out the functions and duties of a local authority in terms of the *Public Health Act*, 1919 (Act No. 36 of 1919).

The types of local authority established by provincial councils under their legislative powers were: municipalities, town councils, town boards, divisional

councils, village management boards, health committees, etc. Because Parliament was supreme, it also legislated on local government matters.

3.2.2 The *Provincial Government Act*, 1961 (Act No. 32 of 1961)

Craythorne (2003:2), states that the main purpose of the *Provincial Government Act*, 1961 was to provide for the transition of the South African state from a constitutional monarchy to a Republic. However, in terms of section 84(1)(f) of the *Provincial Government Act*, 1961, provincial councils retained their power to legislate on local government matters.

3.2.3 The *Republic of South Africa Constitution Act*, 1983 (Act No. 110 of 1983)

The *Republic of South Africa Constitution Act*, 1983 established a system of own and general affairs. The legislative power of the Republic was vested in Parliament, which consisted of three Houses, namely, the House of Assembly (whites only), the House of Representatives (coloureds only) and the House of Delegates (Indians only). There was to be no black representation in Parliament, which subsequently led to unrest and international sanctions from 1984 onwards.

Craythorne (*ibid.*) states that an "own affair" was a matter that specifically affected a population group in the maintenance of its way of life, culture, traditions and customs. Everything else was to be a "general affair". The State President was given the power to decide what was an own affair, and the basis for such decisions was that the governmental institutions serving the interests of one population group should not be able to affect the interests of any other population group.

In terms of the *Republic of South Africa Constitution Act*, 1983 local government was split between own affairs and general affairs. For the white, coloured and

Indian race groups, local government was an own affair in terms of legislating for institutions, development, housing and so on, but norms and standards were imposed in general affairs legislation.

Because of the structure of Parliament, the *Republic of South Africa Constitution Act, 1983* did not provide for elected provincial councils, and the 1961 Constitution was amended and renamed the *Provincial Government Act, 1961*. A new *Provincial Government Act, 1986* (Act No. 69 of 1986) abolished provincial councils, and provinces were to be governed by an Administrator and multiracial executive committees (which included black persons), which had limited legislative powers.

Black people were placed under the control of the provincial administrations and their local government arrangements were regulated by separate legislation, with the exception of black communities in the homelands, whose local government was regulated by homeland legislation.

Craythorne (*ibid.*) further asserts that the *Republic of South Africa Constitution Act, 1983* was complicated and unworkable in practice, and was the foundation for a dictatorship.

3.2.4 The *Constitution of South Africa Act, 1993* (Act No. 200 of 1993)

Craythorne (2003:6) states that because the white-dominated government in 1993 was reluctant to relinquish power without a constitution in place, the negotiations in Kempton Park resulted in a two-stage constitution-making process. Hence, there was a need for an Interim Constitution.

The *Constitution of the Republic of South Africa, 1993*, also referred to as the Interim Constitution, brought fundamental change to South Africa's constitutional development. The *Constitution of the Republic of South Africa, 1993* established

South Africa as one sovereign state, thereby removing any further possibility of homelands. It was stated in the *Constitution of the Republic of South Africa, 1993* that it shall be the supreme law of the Republic and any law inconsistent with its provisions shall, unless allowed by the Constitution, be of no force and effect.

The *Constitution of the Republic of South Africa, 1993* was binding on all legislative, executive and judicial organs of state at all levels of government. This, in essence, changed South Africa into what is known as a *rechtstaat*, a state in which the Constitution of the country is supreme. The *Constitution of the Republic of South Africa, 1993* came about as a result of post 1990 multi-party negotiations, commonly referred to as the Kempton Park Negotiations.

The *Constitution of the Republic of South Africa, 1993* established a Parliament consisting of a National Assembly (400 members) and a Senate (90 members). Nine provinces with elected legislatures were also established, as well as a Commission on Provincial Government to investigate and advise on a constitutional dispensation with regard to provincial systems of government.

Chapter 5 of the *Constitution of the Republic of South Africa, 1993* dealt with the process of developing the final constitution: The National Assembly and Senate, sitting jointly, established the Constitutional Assembly to draft and adopt a new constitutional text. The *Constitution of the Republic of South Africa, 1993* also contained a set of principles with which the new constitutional text had to comply. The Constitutional Court was given the task of certifying the new constitutional text against the Constitutional Principles.

Chapter 10 of the *Constitution of the Republic of South Africa, 1993* fundamentally changed the constitutional status of local government. For the first time in South Africa, the right of local government to exist was constitutionally entrenched, as were its powers and functions. Compared with the *Constitution of the Republic of South Africa, 1996*, the powers and functions of local government

in the *Constitution of the Republic of South Africa, 1993* appear to be weak, but the fact remains that these were at least provided for in the latter.

3.2.5 The *Constitution of the Republic of South Africa, 1996*

The *Constitution of the Republic of South Africa, 1996* is the supreme law of the Republic. Any law or conduct inconsistent with this constitution is invalid, and the obligations imposed by it must be fulfilled. With respect to local government, section 151 (status of municipalities) states that:

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

According to Craythorne (*ibid.*) this is where the “new deal” for local government emerges. The three spheres of government are distinctively interdependent and interrelated, but each has its separate existence, as implied by the word “interrelated”. A municipality is not a “creation of statute”, but is an integral part of the government of South Africa by virtue of it being entrenched in the *Constitution of the Republic of South Africa, 1996*. The municipal council has the executive and legislative authority of the municipality vested in it.

Of particular reference to this study, is section 219(1) of the *Constitution of the Republic of South Africa, 1996*, which states that an Act of Parliament must establish a framework for determining the upper limits of salaries, allowances and benefits of members of municipal councils in the different categories. It is

further stated in section 219(2) that national legislation must establish an independent commission to make recommendations regarding salaries, allowances and benefits.

3.3 LOCAL GOVERNMENT DURING THE EIGHTEENTH CENTURY

Craythorne (*ibid.*) states that “initially, the first Dutch settlers governed their colony on a centralised basis, and this continued until the system of *landdrosten* and *heemraden* was established. The *landrost* was a government official with local functions, while the *heemraden* were citizens appointed by the governor, although in later developments *heemraden* were also elected. The *landrost* and *heemraden* constituted a college that decided issues by a majority vote. The system was taken by the Boer trekkers to their Republics and remained in place until the various British conquests”.

3.4 LOCAL GOVERNMENT DURING THE NINETEENTH CENTURY

During this period, Craythorne (*ibid.*) states that the “two British Colonies of the Cape and Natal received new legislation. The ordinance in the Cape Colony in 1836 set the principle of a local tax to cover the cost of local services. This was followed by an 1840 ordinance that established an elected board in Cape Town. In 1867 new legislation resulted in the election of councillors.

The Natal Colony followed the example of the Cape Colony initially, but in 1854 a new ordinance based on developments in England, was passed. At that time, the Natal Colony had more effective local government laws than the Cape. The newer legislation ushered in the following new concepts:

- (i) Towns were constituted as corporate bodies;
- (ii) Representatives were elected by voters registered on a voters’ roll;
- (iii) Auditors had to be appointed;

- (iv) The town clerk and other senior officials were appointed and not elected at a public meeting; and
- (v) The committee system was introduced.”

It is interesting to note that the principle of restricting the election of public representatives to registered voters is a norm adhered to even in present day South Africa, and a criterion that is discussed *infra* (paragraph 6.6.1).

3.5 LOCAL GOVERNMENT DURING THE TWENTIETH CENTURY

During the twentieth century local government was subjected to radical transformation. Therefore the ensuing sub sections deal with the development of local government during the following three specific periods:

- The period 1900 to 1983;
- The period 1984 to 1994; and
- The period 1995 to 2000.

3.5.1 The Period 1900 to 1983

Until the 1960s, the development of local government was largely occupied with the consolidation or repeal of older legislation and the development of new legislation. Craythorne (*ibid.*) states that the provinces of Transvaal and Natal were given boards to deal with settlements that were developing in rural areas. In the Cape Province, where there were a few councillors of colour, apartheid operated to split the common voters' roll. Coloured and Indian representatives were confined to powerless management committees in the Cape, and the local affairs committees in Natal.

In the 1960s, local government aimed to become more efficient. According to Craythorne (*ibid.*) the “Marais Commission in the Transvaal Province condemned government-by-committee and introduced the management (or executive)

committee system. The Orange Free State followed and, in Cape Town the then provincial government also introduced the executive committee system for that city”.

The first tentative steps towards political reform, albeit within the policy of apartheid, were taken when the *Constitution of the Republic of South Africa*, 1983 was enacted. Black people were considered a “general affair” under the four provinces and had no representation in Parliament.

Craythorne (2003:11) indicates that the main legislative instruments for these steps were the following:

- *Promotion of Local Government Affairs Act*, 1983 (Act No. 91 of 1983);
- *Regional Services Act*, 1985 (Act No. 109 of 1985); and
- *Interim Measures for Local Government Act*, 1991 (Act No. 128 of 1991).

The legislation referred to above is outlined below.

(a) *Promotion of Local Government Affairs Act, 1983 (Act No. 91 of 1983)*

The *Promotion of Local Government Affairs Act*, 1983 (Act No. 91 of 1983) established the Council for the Co-ordination of Local Government Affairs. The council consisted of the then Minister of Provincial Affairs and Constitutional Development and his Director-General, the Minister of Finance, the secretaries of the associations representing the so-called white, coloured, Indian and black local government, as well as a number of persons appointed by the Minister of Finance. Although the *Promotion of Local Government Affairs Act*, 1983 (Act No. 91 of 1983) provided for various functions for the Council, that body was restricted to making recommendations.

(b) *Regional Services Act, 1985 (Act No. 109 of 1985)*

The regional services councils were designed to allow joint decision-making by the representatives of the institutions established for the different race groups, but as this took place within the policy of own or general affairs enshrined in the *Constitution of the Republic of South Africa, 1983*, the matters on which a council could take decisions of necessity had to be general affairs. According to Craythorne (*ibid.*) the *Regional Services Act, 1985 (Act No. 109 of 1985)* provided local government a second and sorely needed source of power.

(c) *Interim Measures for Local Government Act, 1991 (Act No. 128 of 1991)*

The *Interim Measures for Local Government Act, 1991 (Act No. 128 of 1991)* was designed to allow local communities to negotiate for a range of options, from total amalgamation to various forms of resource sharing or the establishment of joint services bodies.

However, in terms of section 9 of this Act, the proposals of the local negotiating forums had to be submitted to the Provincial Administrator for approval, and because the Administrator was appointed by the then State President, the African National Congress and other parties would not co-operate.

3.5.2 The Period 1984 to 1994

During this period, the erstwhile apartheid government implemented contradictory policies for softening, yet maintaining the policies of apartheid, for example, by modifying the group areas legislation by declaring “free settlement areas”. However, during these times, anti-apartheid political resistance at local community level led to such an escalation of conflict, that government was obliged to declare a state of emergency to restore law and order. The conflict at

local government level and the resultant deadlock contributed to the demise of apartheid.

Meyer (1997:10) states that during this dispensation, Parliament reigned supreme, and that local government merely consisted of local authorities entrusted to Provincial Councils to administer. He cites a provision in the *Local Authorities Ordinance*, 1974 (Ordinance No. 25 of 1974) of the former Natal Province, which sums it up as follows:

“Whenever in terms of this Ordinance or any regulation made thereunder, or any other law, the approval or consent of the Administrator is required, whether in respect of any by-law or the sale or lease or acquisition of immovable property, or any loan or other transaction or matter, he may, before giving such approval or consent, require to be furnished with such information or he may make such enquiry as he may deem necessary; and he may either give or withhold such approval or consent ...”

3.5.3 The Period 1995 to 2000

Towards the end of 1992, the two major conflicting parties at local government level, namely the National Party and the African National Congress, decided to settle their differences in a more peaceful manner. As a result, parallel with the negotiations in Kempton Park, a separate negotiating body called the Local Government Negotiating Forum was established. This was a bilateral forum between a statutory delegation consisting of representatives from central, provincial and organized local government on the one hand, and the South African National Civics Organization on the other hand. The Local Government Negotiating Forum eventually developed the *Local Government Transition Act*, 1993 (Act No. 209 Of 1993) which served as the basis for restructuring local government.

In terms of the political agreements incorporated into the *Local Government Transition Act, 1993* (Act No. 209 of 1993), local government restructuring would occur in three well-defined phases. The first or the “pre-interim” phase was the period from the commencement of the *Local Government Transition Act, 1993* (Act No. 209 of 1993) - (2 February 1994) to the commencement of the “interim” phase. The interim phase commenced on the first day after the elections which were held on 1 November 1995 or afterwards (KwaZulu-Natal on 26 June 1996, and on 2 May 1996 in the Western Cape) for transitional councils, and ended with the implementation of the final model of local government. The third phase was the “final” phase, which was governed by the provisions of the *Constitution of the Republic of South Africa, 1996*.

3.6 THE REMUNERATION SYSTEM UNTIL 1998 FOR MEMBERS OF MUNICIPAL COUNCILS

Prior to 1994, the different ordinances in the various provinces provided for the remuneration of councillors, subject to the approval of the then Administrator of the province.

From 1994 until 1998 the ordinances still regulated the remuneration of councillors, but the power to remunerate councillors was vested in the Premiers of the different provinces, who in turn delegated this authority to the MECs responsible for local government in the provinces. That power was subject to the provisions of the *Commission on the Remuneration of Public Representatives Act, 1994* (Act No. 37 of 1994), and provided for the appointment of a Commission to investigate the remuneration of all public representatives on an annual basis and to make recommendations thereon to the government bodies responsible for the matters covered by the recommendations.

Although these government bodies were not compelled to implement the recommendations of the Commission, they had to take note thereof. National government was not empowered to deal with councillor remuneration, and consideration of this matter at MINMEC meetings then was solely for co-ordination purposes. The power to determine councillor remuneration was vested in the MECs for local government, and unless a determination was made by the MEC, municipal councils could not grant their officials increased remuneration.

Meyer (1997:47) states that allowances were paid to mayors, deputy mayors and to councillors. These allowances were not regarded as a salary, nor did they constitute the holding of an office for profit. The allowances reimbursed councillors for the time spent and expenses incurred in fulfilling their official duties. In the case of a mayor, an additional amount was paid for the performance of ceremonial and civic duties.

3.7 CONCLUSION

Communities across South Africa are diverse and pose different challenges to local government. Yet every person in every community deserves the benefits of a municipality that is people-driven, with the aim of social and economic development for all. Many municipalities face many of the same challenges – ensuring financial viability and administrative capacity, co-ordinating and implementing good, integrated planning techniques, and co-operating with other spheres of government to provide services to communities.

Metropolitan areas face challenges such as spatially segregated communities that, though they are separated physically, depend on each other and interact together. In common with other areas, metropolitan areas face the challenge of massive poverty and the urgent need for economic development of entire communities and areas. These challenges can be summed up in three categories –

- The need to integrate metropolitan areas into whole and cohesive communities with metropolitan-wide governance;
- The need for effective, meaningful local representation for all communities in a metropolitan area; and
- The need to drastically change the manner in which services are delivered across metropolitan areas.

The new local government dispensation introduced new sets of relationships between the various spheres of government. The objective of the new system of local government must be to ensure viable and sustainable municipalities. All spheres of government must assist, within the framework of co-operative government, to make this bold transformation initiative work. This entails facing the challenges of the new dispensation and establishing appropriate monitoring procedures and support programmes.

The establishment of new municipalities was a key part of building a viable, developmental local government system within the framework of co-operative governance. Every area in the country is currently still in a fairly early state of achieving a developmental system of local government. Such transformation aims to overcome the legacy of racially divided, undemocratic and overly bureaucratic local government. It seeks to address the massive inequalities and backlogs in service delivery, as well as to increase the ability of municipalities to meet a broad range of community needs in an efficient and effective manner.

CHAPTER 4

THE DEVELOPMENT OF LOCAL GOVERNMENT IN SOUTH AFRICA: RECENT ADVANCEMENTS

4.1 INTRODUCTION

The *Constitution of the Republic of South Africa, 1996* and the *Local Government Transition Act, 1993* (Act No. 209 of 1993) formally activated the transformation of local government in South Africa. The *Constitution of the Republic of South Africa, 1996* took effect on 4 February 1997. Item 26 of Schedule 6 provided that sections 151, 155, 156 and 157 would be suspended, as it were, until a municipal council (replacing an interim phase municipal council) had been declared elected as a result of the first general election of such councils after the commencement of the Constitution. Until such time, the provisions of the *Local Government Transition Act, 1993* (Act No. 209 of 1993) remained in force.

The above-mentioned elections took place on 5 December 2000, and this ushered in a new local government dispensation. However, prior to the election of all municipal councils on that day, a distinct policy process was delineated in the *White Paper on Local Government, 1998*. Amongst other prescriptions, local government was urged to focus on realising developmental outcomes, such as the provision of household infrastructure and services; the creation of liveable, integrated cities, towns and rural areas; and the promotion of local economic development and community empowerment and redistribution. These factors would have an obvious impact on the roles and responsibilities of future councillors when compared to the “traditional” councillor.

This chapter focuses on the key interventions that had to be in place prior to the advent of the new local government dispensation. It then elaborates on the related interventions that were undertaken as South Africa prepared for the next term of municipal elections, which, in terms of the prevailing legislative provisions had to take place within 90 days after 6 December 2005.

4.2 THE PROCESS OF DEVELOPING THE *WHITE PAPER ON LOCAL GOVERNMENT*, 1998

The white paper process went through three stages. Firstly, a discussion document was developed during April 1997, which raised a number of questions on the future structure and nature of local government, and invited comments on the policy positions contained therein.

The second phase, which consisted of issue-focused research processes, provincial and local workshops and other consultation mechanisms, resulted in the Green Paper on Local Government, which was released for public comment in October 1997. Normally, a Green Paper is “an instrument” that sets out the potential policy and invites comments. In this case, the comments received on the Discussion Document were presumably used to frame the Green Paper, together with views on how to deal with the issues raised.

The third phase, consisting of Portfolio Committee hearings, a local government summit, public submissions and sectoral consultative conferences, resulted in the White Paper on Local Government, 1998. Published during March 1998, it became government’s policy position and vision for local government in South Africa, and provided for the following main themes:

- (i) Current Reality;
- (ii) Developmental Local Government;
- (iii) Co-operative Government;
- (iv) Institutional, Political and Administrative Systems; and

- (v) Municipal Finance.

The *White Paper on Local Government*, 1998 also focused on the impending transformation process, and emphasized the speedy implementation of this policy document, and the establishment of intensive support programmes to facilitate the changes that needed to take place.

4.3 LEGISLATION FLOWING FROM THE *WHITE PAPER ON LOCAL GOVERNMENT*, 1998

The *White Paper on Local Government*, 1998 led to the development of the following key pieces of legislation:

- (i) *Local Government: Municipal Demarcation Act*, 1998 (Act No. 27 of 1998);
- (ii) *Local Government: Municipal Structures Act*, 1998 (Act No. 117 of 1998);
- (iii) *Local Government: Municipal Systems Act*, 2000 (Act No. 32 of 2000);
- (iv) *Local Government: Municipal Finance Management Act*, 2003 (Act No. 56 of 2003); and
- (v) *Local Government: Municipal Property Rates Act*, 2004 (Act No. 56 of 2004).

4.3.1 The *Local Government: Municipal Demarcation Act*, 1998 (Act No. 27 of 1998)

The *Local Government: Municipal Demarcation Act*, 1998 (Act No. 27 of 1998) was enacted on 3 July 1998. Its main objective was to establish criteria and procedures for the determination of municipal boundaries by an independent authority as required by section 155(3)(b) of the *Constitution of the Republic of South Africa*, 1996.

The Municipal Demarcation Board is empowered to determine and re-determine municipal boundaries, and to publish such determinations in the relevant *Government Gazette*. Provision is also made for any person who is aggrieved by a determination to submit his or her objections to the Municipal Demarcation Board, which must then consider the objection and either confirm, vary or withdraw its determination.

The *Local Government: Municipal Demarcation Act, 1998* (Act No. 27 of 1998) provides the objectives of demarcation, and the factors that must be taken into account when municipal boundaries are determined. It recognises city regions as metropolitan areas, and provides the procedures that must be followed when boundaries are demarcated, such as:

- (i) Public notification of the determination of boundaries;
- (ii) The holding of public meetings and the procedure at such meetings;
- (iii) The holding of formal investigations; and
- (iv) The powers of investigating committees.

The *Local Government: Municipal Demarcation Act, 1998* (Act No. 27 of 1998) also deals with the administration of the Municipal Demarcation Board, the funding and financing of the Board, and with miscellaneous matters (Zybrands, 2000a).

4.3.2 The *Local Government: Municipal Structures Act, 1998* (Act No. 117 of 1998)

The *Local Government: Municipal Structures Act, 1998* (Act No. 117 of 1998) was promulgated on 18 December 1998. Its main objective is to provide for the new constitutional dispensation for local government, in so far it relates to the different categories and types of municipalities, and the division of powers and functions between certain categories of municipalities. It also provides for the electoral system to be applied in the sphere of local government.

The *Local Government: Municipal Structures Act, 1998* (Act No. 117 of 1998) makes provision for the transformation of local government into a more citizen friendly, accountable, developmental, financially sustainable and performance orientated sphere of government. It establishes criteria for determining when an area should have a single category A municipality or when it should have municipalities of both category B and C, and defines the different types of municipalities that may be established within each category.

The number of councillors to be elected or appointed is regulated, and it provides for the holding of by-elections, the term of office of councillors, the dissolution of municipalities and the assignment of powers and duties to committees and other internal functionaries.

The *Local Government: Municipal Structures Act, 1998* (Act No. 117 of 1998) also provides criteria for determining when municipal councils may elect an executive committee, the composition, powers and functions, the term of office, the filling of vacancies, removal from office, quorums and decisions and the appointment of subcommittees of executive committees. It also provides for the election of a mayor, defines the powers and functions of a mayor, and regulates the appointment of mayoral committees.

The Schedules to the Act provide for:

- (i) The electoral system for metropolitan and local councils, ward elections, proportional representation elections, as well as the topping up and amendment of party lists;
- (ii) The electoral system for councillors of district councils;
- (iii) The election of municipal office-bearers;
- (iv) The allocation of councillors elected from party lists to metropolitan subcouncils; and

- (v) The identification of traditional leaders who are entitled to participate in the proceedings of local and district councils.

4.3.3 The *Local Government: Municipal Systems Act, 2000* (Act No. 32 of 2000)

While the *Local Government: Municipal Demarcation Act, 1998* (Act No. 27 of 1998) and the *Local Government: Municipal Structures Act, 1998* (Act No. 117 of 1998) deal with the institutional and jurisdictional aspects of the local government transformation process, the *Local Government: Municipal Systems Act, 2000* (Act No. 32 of 2000) seeks to establish the basic principles and mechanisms to give effect to the vision of “developmental local government”. Its focus is therefore primarily on the internal systems and administration of the municipality.

The legislative approach adopted therein is broadly enabling, and seeks to achieve a degree of equivalence and balance between the regulatory frameworks governing the three spheres of government. The *Local Government: Municipal Systems Act, 2000* (Act No. 32 of 2000) is mandatory only to the extent that the fundamental elements of public sector reform, socio-economic development, delivery of basic services, and public reporting and accountability need to be applied uniformly on a national basis.

The *Local Government: Municipal Systems Act, 2000* (Act No. 32 of 2000) describes the core processes or elements that are essential in realising a truly developmental local government system. These include participatory governance, integrated development planning, performance management and reporting, resource allocation and organizational change. The *Local Government: Municipal Systems Act, 2000* (Act No. 32 of 2000) links these processes into a single cycle at local level, that aligns various sectoral initiatives from national and provincial government departments with a municipality’s own capacity and

processes. This aims to ensure better synergy between local, provincial and national initiatives, and a more effective system of inter-governmental relations.

The various provisions of the *Local Government: Municipal Systems Act, 2000* (Act No. 32 of 2000) were implemented incrementally. Different provisions were phased in over different time frames for various categories and classes of municipalities, as the requisite capacity to implement the provisions of the legislation developed (Zybrands, 2000c).

4.3.4 The *Local Government: Municipal Finance Management Act, 2003* (Act No. 56 of 2003)

The *Local Government: Municipal Finance Management Act, 2003* (Act No. 56 of 2003) imposes additional responsibilities on mayors and executive committees in terms of the budget process and in relation to budgetary controls. The powers of delegation given to mayors in terms of sections 57 to 59 are important in the context of the responsibilities devolving on individual members of executive and mayoral committees.

Of particular reference to this study is section 167 of the *Local Government: Municipal Finance Management Act, 2003* (Act No. 56 of 2003) which states as follows:

“167. Councillors’ remuneration

- (1) A municipality may remunerate its political office-bearers and members of its political structures, but only –
 - (a) within the framework of the Public Office Bearers Act, 1998 (Act No. 20 of 1998), setting the upper limits of the salaries, allowances and benefits for those political office-bearers and members; and
 - (b) in accordance with section 219(4) of the Constitution.

- (2) Any remuneration paid or given in cash or in kind to a person as a political office-bearer or as a member of a political structure of a municipality otherwise than in accordance with subsection (1), including any bonus, bursary, loan, advance or other benefit, is an irregular expenditure, and the municipality –
 - (a) must, and has the right to, recover that remuneration from the political office-bearer or member; and
 - (b) may not write off any expenditure incurred by the municipality in paying or giving that remuneration.
- (3) The MEC for local government in a province must report to the provincial legislature –
 - (a) any transgressions of subsection (1); and
 - (b) any non-compliance with sections 17(3)(k) (i) and (ii) and 124(1)(a).”

It is clear from the above that this piece of legislation was an attempt to ensure that councillors were remunerated within the ambit of the prevailing legislation. Furthermore, the *Local Government: Municipal Finance Management Act, 2003* (Act No. 56 of 2003) declared certain “benefits” as unauthorized expenditure.

4.3.5 The *Local Government: Municipal Property Rates Act, 2004* (Act No. 6 of 2004)

Guidelines for the levying of property taxes are found in paragraph 2.1.1 in section G of the *White Paper on Local Government, 1998*. Property tax is the biggest single net source of income for any local or metropolitan municipality. The taxation of property has been, and always will be, a very sensitive matter.

The need for new uniform legislation must be viewed against the background of the following important aspects, namely:

- (i) The four former provinces each had their own legislation in regard to property rating. The rating cycles varied significantly from an annual basis in certain municipalities to gaps of ten years or more in the case of other municipalities – especially those in the former Cape Province;
- (ii) The government is well advanced with the process of establishing regional electricity distributors (REDs) and, once established, this could result in most municipalities losing their lucrative source of income or, at the very least, having this source of income severely reduced; and
- (iii) The whole scenario regarding the provision of water has changed as a result of the *Water Services Act, 1997* (Act No. 108 of 1997) and the *National Water Act, 1998* (Act No. 36 of 1998). With the advent of water service authorities, many municipalities will find that the sale of water as a commercial venture has become less profitable.

Furthermore, there was no uniformity on the rate base, namely whether it was the land or site value alone that should be rated, or whether improvements thereon should be included. All property is rateable, but different rates may be levied for different categories of property. These categories of property apply to the use, the status and the area in which the property is situated.

The Minister for Provincial and Local Government, with the concurrence of the Minister of Finance, may set limits on the amounts that may be levied on property. This right may give the impression of an infringement on the independence of local government.

In essence, the *Local Government: Municipal Property Rates Act, 2004* (Act No. 6 of 2004) is a mixture of the traditional and the more modern. It endeavours to establish uniformity and to deal with situations that constitute a reversal of the old apartheid policies and legislation, and it is to a large extent, an enabling act. An important innovation is the requirement that a municipality must have a rates policy. Such a policy, which must promote equity, should cover the

different rates for different categories, exemptions, rebates or reductions, the effects of rates on the poor and it should promote local, social and economic developments. Such a policy must be reviewed annually (Zybrands, 2000d).

4.4 THE DEMARCATION OF MUNICIPAL BOUNDARIES

The following sections elaborate on the demarcation of municipal boundaries for the first and second terms of municipal councils.

4.4.1 The First Term of Municipal Councils

The drawing of new municipal boundaries was the first step in the further transformation of local government. Much had to be done in addition to demarcation, in order to ensure that municipalities had administrations that were properly organized, stable and adequate sources of income and well-functioning neighbourhood structures to encourage community participation.

Demarcation set the structural conditions within which these other processes of transforming and developing local government had to take place. A boundary determines the size and character of the voting population, or “electorate”, and depending on the way a boundary is drawn, the electorate may be wealthy or poor, better or worse served with municipal infrastructure, or have more or less access to economic opportunities. Because political parties tend to appeal to different constituencies, this may also affect which parties win or lose at the polls.

The demarcation process must not be politically biased or manipulated, otherwise people will lose confidence in the process and some of the objectives of the Constitution will be compromised in favour of more narrow political interests.

In essence, the Municipal Demarcation Board was tasked with considering the boundaries of the 843 municipalities, which were the product of the second phase of the transition to local government, the first being the establishment of appointed “pre-interim” municipalities. Municipal elections during 1995 and 1996 led to these “interim” municipalities, while the December 2000 elections established the final institutional form of local government.

It was also proposed that municipalities be divided into two broad types – metropolitan and non-metropolitan. Non-metropolitan local government would consist of two tiers: the district tier would focus primarily on (i) ensuring the implementation of an integrated development plan for the district as a whole and (ii) administering bulk services (water, electricity, etc.). The second tier of government in non-metropolitan areas would allow for urban, rural or urban-rural municipalities. These municipalities would have functions and powers devolved to them depending on their capacity to administer such functions and powers (*White Paper on Local Government*, 1998:58).

The demarcation process also had to address two key issues in rural areas. Firstly, the artificial division that existed between small towns and their rural hinterland had to be eradicated. The functional linkage between town and country needed to be acknowledged in the construction of new local council boundaries. This would require the incorporation of rural areas within the boundaries of currently existing town councils. Secondly, district council boundaries (the basic building block of rural local government) needed to be drawn to achieve a balance, or compromise, between the municipality’s income generating capacity (and therefore its sustainability) and its imperative to provide representation for its community. If the new district councils were too small, they would be condemned to non-viability, and if they were too large, they would remain remote and lack democratic legitimacy.

The Municipal Demarcation Board is charged with determining all municipal boundaries throughout South Africa, and sections 24 and 25 of the *Local Government: Municipal Demarcation Act, 1998* (Act No. 27 of 1998) require that the Municipal Demarcation Board must establish areas to:

- (i) Enable the municipality for that area to fulfil its constitutional obligations, including –
 - the provision of democratic and accountable government for the local communities;
 - the provision of services to the communities in an equitable and sustainable manner;
 - the promotion of social and economic development; and
 - the promotion of a safe and healthy environment;
- (ii) Enable effective local governance;
- (iii) Enable integrated development; and
- (iv) Have a tax base as inclusive as possible of users of municipal services in the municipality.

Section 25 of the *Local Government: Municipal Demarcation Act, 1998* (Act No. 27 of 1998) requires that when the Municipal Demarcation Board determines boundaries, it must take into account the interdependence of people, communities and economies as indicated by:

- (i) Existing and expected patterns of human settlement and migration;
- (ii) Employment;
- (iii) Commuting and dominant transport movements;
- (iv) Spending;
- (v) The use of amenities, recreational facilities and infrastructure; and
- (vi) Commercial and industrial linkages.

The Municipal Demarcation Board must also take into account:

- (i) The need for cohesive, integrated and unfragmented areas, including metropolitan areas;

- (ii) The financial viability and administrative capacity of the municipality to perform municipal functions efficiently and effectively;
- (iii) The need to share and distribute financial and administrative resources;
- (iv) Provincial and municipal boundaries;
- (v) Areas of traditional rural communities;
- (vi) Existing and proposed functional boundaries, including magisterial districts, voting districts, health, transport, police and census enumerator boundaries;
- (vii) Existing and expected land use, social, economic and transport planning;
- (viii) The need for co-ordinated municipal, provincial and national programmes and services, including the needs for the administration of justice and health care;
- (ix) Topographical, environmental and physical characteristics of the area;
- (x) The administrative consequences of its boundary determination on –
 - municipal creditworthiness;
 - existing municipalities, their council members and staff; and
 - any other relevant matter; and
- (xi) The need to rationalize the total number of municipalities within different categories and of different types to achieve the objectives of effective and sustainable service delivery, financial viability and macro-economic stability.

To summarize the broad legal and policy framework, the *Constitution of the Republic of South Africa*, 1996 states, “the local sphere of government consists of municipalities, which must be established for the whole of the Republic”. At a policy level, the *White Paper on Local Government*, 1998 observed that there were only “a few, very expansive sparse settlements in the country where no municipal services are provided, and no sustainable category B municipality is possible”. The inference is that most of the country would be covered, wall-to-wall, by a mix of urban, amalgamated urban-rural, and rural local municipalities.

The *White Paper on Local Government*, 1998 and the Municipal Demarcation Board concluded that there were too many municipalities in South Africa, and that many of the smaller municipalities lacked the capacity for effective delivery, and had little in the way of economies of agglomeration and scale. This implied that the configuration of future local municipalities would require amalgamation of transitional local councils and transitional representative councils. Moreover, the territories between such amalgamated councils would become eligible for incorporation into the new local municipality.

The approach that became necessary for the amalgamation and demarcation of local municipalities in such a context was as follows:

- (i) In the first instance, there were numerous city / large town candidates for local municipal status which shared several of the features of the metropolitan areas, but which lacked the overall size and multi-nodal character of the metropolitan areas. The demarcation of these areas followed much the same principles as the demarcation of the metropolitan areas – that is, the demarcation of a boundary which made some provision for the incorporation of peri-urban areas relevant to future urban growth, and which also incorporated any of the hitherto excluded functionally-linked suburbs which were the product of apartheid-era displacement; and
- (ii) Once these “urban” local municipalities had been defined in that way, the settlements in the remaining areas of the country needed to be allocated into amalgamated urban-rural local municipalities, and/or rural local municipalities. Some quantitative norms for the approximate population and geographical sizes of such local municipalities needed to be derived, given the Municipal Demarcation Board’s objective of arriving at about 350 municipalities. It was determined that a typical geographical size for a local municipality would be about 3 500 km² with a typical population size of about 80 000 people.

Only where there were obvious exceptions to the possibilities that arose from such a procedure, could district management areas be contemplated (Municipal Demarcation Board, 1999b).

In terms of the *Local Government: Municipal Structures Act, 1998* (Act No. 117 of 1998), category A municipalities are governed by single councils with exclusive executive and legislative authority. They were consequently established in metropolitan areas. Category C municipalities have overall executive and legislative authority over districts consisting of rural areas as well as some local municipalities. These district councils have power over all municipalities in the district and, theoretically, their resources and liabilities. This is a new concept in local government, aimed at ensuring equitable and sustainable municipal services for all citizens in rural and urban areas within a district.

During December 1999 and March 2000 the Municipal Demarcation Board determined 14 district management areas and 231 category B municipalities (including 8 cross-boundary local councils) in South Africa. These municipalities vary significantly in terms of their economic, financial, social and administrative bases. The metropolitan municipalities are global cities, with key international, national and local relationships. The district municipalities varied from those with single highly-resourced and dominant local municipalities (such as Vaal, East London, Pietermaritzburg, Bloemfontein) to those with any form of local government within the area (such as areas in northern KwaZulu-Natal).

The local municipalities were allocated roughly into three groups:

- (i) The aspirant metropolitan areas and secondary cities – these are dominant sub-provincial centres of economic and commercial growth;
- (ii) The mixed urban-rural amalgamations – these bring together communities which are functionally linked but have never regarded themselves in this integrated way; and

- (iii) The social welfare areas – where colonialism and apartheid destroyed the fabric of local life and thus health, welfare and educational needs are, in the short term, the major areas of activity.

Even after assessing the administrative and financial capacity of every municipality, the Municipal Demarcation Board was unable to make every new municipal structure – particularly the district councils – immediately viable. These municipalities should be able to draw on the existing capacity of other viable municipalities in the region, quite a lot of which resided in cities (Municipal Demarcation Board, 1999b).

According to Willemse (2000), traditional leaders wanted their areas to become district management areas, much like the old regional council system in KwaZulu-Natal. It emerged that, at a practical level, it was difficult to define which areas were controlled by traditional leaders. Policy makers did not know where every traditional authority area was, nor could they be accurately mapped. Secondly, many communities had divided loyalties, and this led to continuing conflict and deaths in many areas. Land claim issues were still unresolved, and district councils had power over district management areas and were to take decisions on all matters of local governance. For these reasons, it was proposed that traditional authorities should not be the basis for rural government in the new municipal system. Local government transformation is an attempt to restructure the entire socio-economic landscape, aimed at ensuring that the development potential of the whole country is realized.

The Municipal Demarcation Board published the boundaries of all category A, B and C municipalities, as follows:

TABLE 1: DETAILS OF *PROVINCIAL GAZETTES* INDICATING MUNICIPAL BOUNDARIES

PROVINCE	NOTICE NO.	PROVINCIAL GAZETTE NO.	DATE PUBLISHED
Gauteng	1175	16	2 March 2000
Limpopo	38; 53	484; 489	28 February; 17 March 2000
Eastern Cape	22; 29	486; 493	28 February; 10 March 2000
Mpumalanga	50; 59; 62	513; 517; 519	28 February; 10 and 17 March 2000
North West	37	5447	28 February 2000
Northern Cape	10	445	28 February 2000
Western Cape	69	5431	3 March 2000
Free State	-	14	28 February 2000
KwaZulu-Natal	24	5414	10 March 2000

The Municipal Demarcation Board's preliminary view was that there were a number of large areas that would have more than one local municipality within their boundary (Municipal Demarcation Board: 1999a). Subsequently, 16 cross-boundary municipalities were demarcated, as discussed in the next section.

4.4.2 The Second Term of Municipal Councils

Since the establishment of municipalities on 5 December 2000, the Municipal Demarcation Board established a forum called the Boundaries Committee, comprised as follows:

- (i) A member of the Municipal Demarcation Board, who is also the Chairperson of the Committee;
- (ii) Officials from the DPLG;
- (iii) Officials from the Independent Electoral Commission;
- (iv) Officials from the South African Local Government Association; and
- (v) Officials from the provincial departments of local government.

Over the years, the Boundaries Committee considered and amended various municipal boundaries, by effecting minor and technical changes thereto.

4.4.3 Cross-boundary Municipalities

Following the municipal elections held on 5 December 2000, 16 cross-boundary municipalities were established, affecting five provinces. It emerged that problems pertaining to provincial boundaries were not limited to the cross-boundary areas, most notably the problems around the Eastern Cape / KwaZulu-Natal provincial boundary. Since the establishment of the cross-boundary areas, numerous problems were experienced in administering these municipalities. Several attempts were made to resolve the issues, but with little progress.

One of the main challenges experienced with the administration of municipal areas that straddle provincial boundaries was the day-to-day management of the cross-boundary municipalities. Consequently, legislative amendments had to be effected to resolve this challenge.

In effect, this meant that, firstly, the *Constitution of the Republic of South Africa, 1996* had to be amended to re-determine the geographical areas of the nine provinces of the country. Secondly, legislation had to be developed to repeal provisions in relevant legislation that provided for the establishment / administration of cross-boundary municipalities. New legislation also had to provide for consequential matters as a result of the re-alignment of former cross-boundary municipalities, and the re-determination of the geographical areas of the provinces.

Given the persistent problems surrounding the administration of cross-boundary municipalities, the Presidents' Co-ordinating Council and Cabinet decided as follows:

- (i) the notion of cross-boundary municipalities be done away with;

- (ii) provincial boundaries be reviewed so that all municipalities fall in one province or the other;
- (iii) the DPLG undertakes investigations and develops an implementation plan that will allow affected municipalities to be located within the jurisdiction of one province; and
- (iv) the *Constitution of the Republic of South Africa, 1996* be amended to provide for boundary changes in respect of the areas affected by cross-boundary municipalities.

The above provisions were facilitated through the enactment of the *Constitution Twelfth Amendment Act of 2005*, and the *Cross-boundary Municipalities Laws Repeal and Related Matters Act, 2005* (Act No. 23 of 2005).

Pursuant to the above, the Municipal Demarcation Board finalised the outer boundaries of all cross-boundary municipalities. Provincial boundaries were finalised with the allocation of the cross-boundary municipalities into a single province. The table below depicts the areas / municipalities that were affected in this regard, and the decision taken as to which province the cross-boundary areas were located:

TABLE 2: DETAILS OF ALLOCATION OF CROSS-BOUNDARY MUNICIPALITIES

NO.	MUNICIPALITY	NAMES OF AREAS INCORPORATED / DISESTABLISHED MUNICIPALITIES
1.	Ekurhuleni Metro (Mpumalanga and Gauteng).	(Khayalami, Kempton Park/Tembisa, Edenvale/Modderfontein, Brakpan, Greater Germiston, Greater Nigel, Springs, Greater Benoni, Boksburg, Alberton, Eastern Gauteng SC, Greater JHB, Eastern JHB, East Vaal, Midrand/Rabie Ridge/Ivory Park, Suikerbosrand, Randvaal, Bronberg).
	DECISION:	Municipality incorporated into Gauteng Province.
2.	Tshwane Metro (North West and Gauteng).	(Greater Pretoria, Pretoria, Centurion, Northern Pretoria, Hammanskraal, Eastern Gauteng SC, Pienaarsrivier, Crocodile River, Western Gauteng, Winterveld, Temba, Ga-Rankuwa, Mabopane, Eastern DC, Roodeplaat)
	DECISION:	Municipality incorporated into Gauteng Province.



NO.	MUNICIPALITY	NAMES OF AREAS INCORPORATED / DISESTABLISHED MUNICIPALITIES
3.	CBDC 1: Kgalagadi District Municipality (North West and Northern Cape).	(Kuruman, Kathu, Vanzylsrus, Deben, Mothibestad) See CBLC 1.
	DECISION:	Entire District to be incorporated into the Northern Cape Province – includes the Moshaweng, Ga-Segonyana and Gamagara Local Municipalities.
4.	CBLC 1: Ga-Segonyana Municipality (North West and Northern Cape).	(Hartswater, Jan Kempdorp, Pampierstad, Vaalharts) See CBDC 1.
	DECISION:	Municipality incorporated into Northern Cape Province as part of Kgalagadi DC.
5.	CBDC 2: Metsweding District Municipality (Mpumalanga and Gauteng).	(Bronkhorstspuit, Cullinan, Eastern Gauteng SC, Roodeplaat, Elands River, Bronberg, Ekgangala, Highveld DC, Pienaarsrivier) See CBLC 2.
	DECISION:	Entire District incorporated into the Gauteng Province – includes the Kungwini and Nokeng Tsa Taemane Local Municipalities.
6.	CBLC 2: Kungwini Local Municipality (Mpumalanga and Gauteng).	(Bronkhorstspuit, Ekgangala, Bronberg) See CBDC 2.
	DECISION:	Municipality incorporated into Gauteng Province as part of Metsweding DC.
7.	CBDC 3: Sekhukhune Cross Boundary District Municipality (Mpumalanga and Limpopo).	(Northern DC, Bosveld DC, Hlogotlou/Lepelle, Eastern Tubatse, Dilokong, Tubatse/Steelpoort, Ngwaritsi/Makhuduthamaga, Nebo North, Nokotlou/Fetakgomo, Highveld DC, Lowveld Escarpment DC, Groblersdal, Marble Hall, Moutse, Steelpoort/Ohrigstad/Burgersfort) See CBLC 3, 4 and 5.
	DECISION:	Entire District incorporated into the Limpopo Province – will include Makhuduthamaga, Fetakgomo, Greater Mable Hall, Greater Groblersdal, and Greater Tubatse Local Municipalities.
8.	CBLC 3: Greater Marble Hall Municipality (Mpumalanga and Gauteng).	(Greater Nebo-North, Groblersdal TRC, Hlogotlou/Lepele, Marble Hall, Moutse, Ngwaritsi/Makhudu-Thamaga) See CBDC 3.
	DECISION:	Municipality incorporated into Limpopo Province as part of Greater Sekhukhune DC.
9.	CBLC 4: Greater Groblersdal Municipality (Mpumalanga and Limpopo).	(Groblersdal TLC and TRC, Hlogotlou/Lepele, Lydenburg TRC, Moutse) See CBDC 3.
	DECISION:	Municipality incorporated into Limpopo Province as part of Greater Sekhukhune DC.
10.	CBLC 5: Greater Tubatse Municipality (Mpumalanga and Limpopo).	(Dilokong, Hlogotlou/Lepele, Lydenburg TRC, Ngwaritsi/Makhudu-Thamaga, Ohrigstad/Eastern Tubatse, Steelpoort/Burgersfort, Thubatse Steelpoort) See CBDC 3.
	DECISION:	Municipality incorporated into Limpopo Province as part of Greater Sekhukhune DC.
11.	DC 9: Frances Baard District Municipality (North West and Northern Cape).	(Diamantveld DC, Kimberley, Ritchie, Barkley-West, Ulco, Delportshoop, Windsorton, Hartswater, Pampierstad, Jan Kempdorp) See CBLC 7.
	DECISION:	Entire District incorporated into the Northern Cape Province - includes the Local Municipalities of Sol Plaatjie, Dikgatlong, Magareng, and Phokwane.

NO.	MUNICIPALITY	NAMES OF AREAS INCORPORATED / DISESTABLISHED MUNICIPALITIES
12.	CBLC 7: Phokwane Municipality (North West and Northern Cape).	(Banknara/Bodulang, Huhudu, Kuruman, Mothibistad, Rooiberg) See DC 9.
	DECISION:	Municipality incorporated into Northern Cape Province as part of Frances Baard DC.
13.	CBDC 4: Bohlabela District Municipality (Mpumalanga and Limpopo).	(Northern DC, Bushbuckridge South/North/Midlands, Hoedspruit/Makhutswi, Lowveld Escarpment, Kruger Park South, Sabie Park) See CBLC 6.
	PROPOSAL:	District Municipality disestablished. Bushbuckridge Local Municipality included into the Ehlanzeni District Municipality, and the Maruleng Local Municipality to be included into the Mopani District Municipality. The southern portion of the DMA (Kruger National Park) included into the Ehlanzeni District Municipality, and the northern portion of the DMA included into the Mopani District Municipality.
14.	CBLC 6: Bushbuckridge Municipality (Mpumalanga and Limpopo).	(Sabie Park, Bushbuckridge Midlands, BBR North, BBR South) See CBDC 4.
	DECISION:	Municipality incorporated into Mpumalanga Province as part of Ehlanzeni DC.
15.	CBDC 8: West Rand District Municipality (North West and Gauteng).	(Carletonville, Krugersdorp, Westonaria, Randfontein, Western Gauteng SC, Magaliesburg RC and TRC, Gatsrant, Vaal River, Fochville, Wedela, Southern DC) See CBLC 8.
	PROPOSAL:	Newly constituted District (Mogale City, Randfontein and Westonaria Local Municipalities) incorporated into the Gauteng Province. Merafong Local Municipality included in the Southern District Municipality within the North West Province.
16.	CBLC 8: Merafong City Local Municipality (North West and Gauteng).	(Carletonville, Fochville, Gatsrant, Southern DC, Wedela) See CBDC 8.
	DECISION:	Municipality excluded from the municipal area of the West Rand District Municipality and included in the municipal area of the Southern District Municipality.

With regard to the KwaZulu-Natal and Eastern Cape Provinces, the Sisonke and Alfred Nzo District Municipalities were re-configured as follows:

KWAZULU-NATAL PROVINCE: SISONKE DISTRICT MUNICIPALITY:

Consists of:

- (ii) Ingwe Local Municipality;
- (iii) Kwa Sani Local Municipality;
- (iv) Umzimkulu Local Municipality;
- (v) Greater Kokstad Local Municipality; and
- (vi) Ubuhlebezwe Local Municipality.

EASTERN CAPE PROVINCE: ALFRED NZO DISTRICT MUNICIPALITY:

Consists of:

- (i) Umzimvubu Local Municipality; and
- (ii) Matatiele Local Municipality.

The whole magisterial district of Maluti, together with the district management area ECDMA44, and the small Matatiele area within Umzimvubu, were excluded from the Umzimvubu Local Municipality and incorporated into the Matatiele Local Municipality. The remainder of Umzimvubu and the new Matatiele Local Municipality moved to the Alfred Nzo District Municipality.

Section 5 of the *Cross-boundary Municipalities Laws Repeal and Related Matters Act, 2005* (Act No. 23 of 2005) provides that the provincial governments of the respective releasing and receiving provinces may enter into an implementation protocol in terms of section 35 of the *Intergovernmental Relations Framework Act, 2005* (Act No. 13 of 2005), to provide for transitional arrangements regarding the transfer of provincial functions, assets and liabilities. In terms of this section, affected provinces may enter into an implementation protocol to provide for:

- The provincial government of the releasing province to continue exercising a function or delivering a service on an agency basis in the area in question; or
- The transfer of staff in accordance with applicable labour law from the provincial government of the releasing province to the provincial government of the receiving province.

Finalised implementation protocols must be submitted to the Presidents' Co-ordinating Council for it to co-ordinate the implementation thereof. If the content of implementation protocols was not finalised before the municipal elections of 1 March 2006, the matter had to be referred to the National Council of Provinces for it to facilitate the reaching of an agreement between the affected provinces.

4.5 THE NUMBER OF COUNCILLORS

Prior to 5 December 2000 no scientific formula existed in South Africa to determine the number of councillors in the different types of municipalities. The allocation of registered voters to councillors was skewed, and varied from one province to the other. While broad national guidelines were determined for council sizes during the transitional period, fairly significant differences existed between provinces in terms of the number of councillors.

The *White Paper on Local Government*, 1998 acknowledged that there were too many councillors, and suggested that a more community-oriented political system should be built through reducing the overall number of councillors. During 1999 the number of councillors was reduced by more than 2000 through a process of political consultation, and was based on the application of mathematical formulae, as provided for by the *Local Government: Municipal Structures Act*, 1998 (Act No. 117 of 1998).

In terms of section 20 of the *Local Government: Municipal Structures Act*, 1998 (Act No. 117 of 1998), the Minister for Provincial and Local Government must publish a formula by notice in the *Government Gazette*; which formula must be based on the number of registered voters on the municipality's segment of the national common voters' roll. Despite this, the number of councillors of a municipal council:

- May not be fewer than three or more than 90 councillors in respect of a local or a district municipality; and
- May not be more than 270 councillors in respect of a metropolitan municipality.

The process of delimiting wards is linked to the determination of the number of councillors, since section 22(2) of the *Local Government: Municipal Structures*

Act, 1998 (Act No. 117 of 1998) provides that 50 per cent of the number of councillors in metropolitan and local municipalities will consist of ward councillors. (If a fraction is obtained, then the fraction is rounded upwards.) Obviously, the greater the number of councillors in a municipality, the greater is the remuneration expenditure for the municipality.

4.5.1 The First Term of Municipal Councils

The determination of the number of councillors and the delimitation of wards are inextricably linked. The delimitation of wards by the Municipal Demarcation Board cannot be done until it is known what the total number of councillors will be. This is because the electoral system for municipalities with wards states that 50 per cent of the councillors must be elected according to proportional representation, and 50 per cent to represent wards.

On 5 April 2000 the Minister for Provincial and Local Government published in the Government Gazette, formulae in terms of section 20 of the *Local Government: Municipal Structures Act, 1998* (Act No. 117 of 1998). The formulae were straight line or linear formulae, of the form $y = mx + c$. The slope of the graph (m) and c (a constant) were determined by the Minister for Provincial and Local Government. After the application of the relevant number of registered voters (x) in the formula, the number of councillors would be obtained (y). The application of the relevant formulae to all of the newly established municipalities on 5 December 2000 resulted in **8 951** councillors, and **3 759** wards throughout the country.

CATEGORY A MUNICIPALITIES:

$$y = (x \div 10\,000) + 60$$

CATEGORY B MUNICIPALITIES:

$$y = 5$$

(for municipalities that have less than 7 501 registered voters);

$$y = (x \div 1\,682) + 1$$

(for municipalities that have between 7 501 and 100 000 registered voters); and

$$y = (x \div 8\,333) + 48$$

(for municipalities that have more than 100 000 registered voters).

CATEGORY C MUNICIPALITIES:

$$y = (x \div 9\,500) + 9$$

(for municipalities that have less than 100 001 registered voters); and

$$y = (x \div 12\,000) + 12$$

(for municipalities that have more than 100 000 registered voters),

where “**y**” represents the number of councillors, and “**x**” represents the number of registered voters in the relevant municipality.

The seats (number of councillors) for each municipality were obtained by applying the relevant formula, and the number of wards for each municipality is guided by the provisions of sections 22 and 23 of the *Local Government: Municipal Structures Act, 1998* (Act No. 117 of 1998).

Refer to the attached Schedule for the number of councillors / seats that were determined for each municipality.

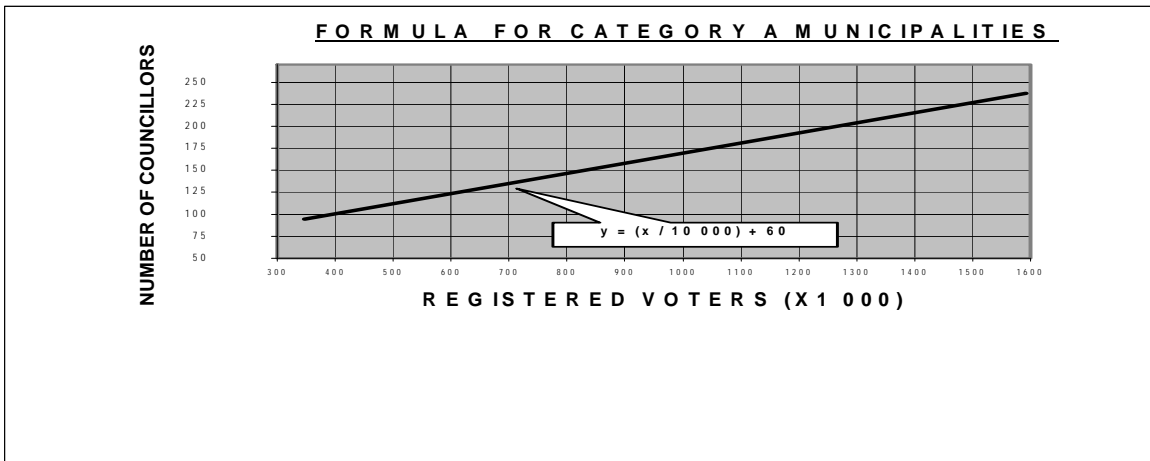
4.5.2 The Second Term of Municipal Councils

During March 2004, the Independent Electoral Commission provided to the DPLG the registered voter figures for Elections 2004 per municipality, as per the certified national common voters' roll. With regard to cross-boundary municipalities, the registration statistics were given by the respective province administering the cross-boundary municipality, and not by geographic province, i.e. if a voting district was geographically located in Limpopo but was managed by the Independent Electoral Commission's Provincial Electoral Officer / Municipal Electoral Officer in Mpumalanga, its figures were shown under Mpumalanga.

For all metropolitan municipalities (category A), the same formula was applied as for the 2000 municipal elections. A maximum number of 220 councillors was allocated to 1.6 million voters (the maximum number of voters then was 1.572 million). The lower point on the scale was 300 000 voters, which equated to 90 councillors.

The formula for all category A municipalities is represented graphically in Figure 1:

FIGURE 1: FORMULA FOR THE DETERMINATION OF NUMBER OF COUNCILLORS FOR CATEGORY A MUNICIPALITIES



For example, in the Johannesburg metropolitan area:

$$y = (x \div 10\,000) + 60$$

where “y” represents the number of councillors, and “x” represents the number of registered voters in the metropolis.

Applying the formula:

$$\begin{aligned}
 \text{The number of councillors} &= (1\,751\,381 \div 10\,000) + 60 \\
 &= 175 + 60 \\
 &= 235
 \end{aligned}$$

Therefore, the number of councillors for the Johannesburg metropolitan area is 235 (fractions disregarded).

Applying the formula to the other metropolitan areas, yields the following results:

TABLE 3: REGISTERED VOTERS AND COUNCILLORS PER METROPOLITAN MUNICIPALITY

METROPOLITAN AREA	REGISTERED VOTERS	COUNCILLORS
City of Johannesburg	1 751 381	235
Ethekwini	1 375 431	197
City of Cape Town	1 448 232	204
Ekurhuleni	1 254 407	185
City of Tshwane	1 072 466	167
Nelson Mandela	514 360	111
TOTAL	7 416 277	1 099

The number of registered voters for category B municipalities ranged from a minimum of 3 659 registered voters (WC051 – Laingsburg), to a maximum of 35 8812 (EC125 – Buffalo City) registered voters. A total of 14 municipalities had less than 7 500 registered voters, 183 municipalities had the number of registered voters ranging between 7 501 and 100 000, and 34 municipalities had more than 100 000 registered voters.

It should be noted that for the 2000 municipal elections, three formulae were implemented for Category B municipalities. In developing formulae for the 2004 municipal elections, the same formulae were “tested”.

For municipalities that had less than 7 501 registered voters, a minimum number of 5 councillors was applied (although the *Local Government: Municipal Structures Act, 1998* (Act No. 117 of 1998) stipulates a minimum of 3 councillors, for 7 500 or less voters). The formula obtained is $y = 5$.

For municipalities that had between 7 500 and 100 001 registered voters, a minimum of 5 and a maximum of 60 councillors were applied. The same situation applied for the 2000 municipal elections. The formula obtained is

$y = (x \div 1\ 682) + 1$. The results obtained after applying the formula indicated a gain of approximately 450 councillors in all municipalities (7%). It should be noted that the number of registered voters in the local municipalities increased by approximately 13%. The greatest gain was 13 (EC151 – Mbizana, EC155 – Nyandeni), and the greatest decrease was 4 (CBLC7 – Phokwane). Decreases of 3 were experienced in NW395 (Molopo) and NC071 (Ubuntu). Once again, the situation could be “normalised” (the status quo maintained) if the MEC implemented section 20(4) of the *Local Government: Municipal Structures Act, 1998* (Act No. 117 of 1998).

For municipalities that had between 100 001 and 350 000 registered voters, a minimum of 60 and a maximum of 90 councillors [as per section 20(1)(b) of the *Local Government: Municipal Structures Act, 1998* (Act No. 117 of 1998)] were applied for the 2000 municipal elections. The latter figure was slightly greater than the largest local municipality (EC125 – Buffalo City (345 304)), and catered for a presumed increase in the number of registered voters during a forthcoming registration process. The formula that applied then was $y = (x \div 8\ 333) + 48$.

However, the number of registered voters in Buffalo City had increased to 358 812, and when applied to the above formula, 91 councillors were generated. In order to keep within the upper limit of 90 that is prescribed in the *Local Government: Municipal Structures Act, 1998* (Act No. 117 of 1998), a minimum of 60 and a maximum of 90 councillors were applied to 100 001 and 370 000 voters, respectively. Using the above minima and maxima resulted in the formula $y = (x \div 9\ 000) + 49$. Applying the number of registered voters for Buffalo City therefore resulted in 88 councillors being determined for the municipality.

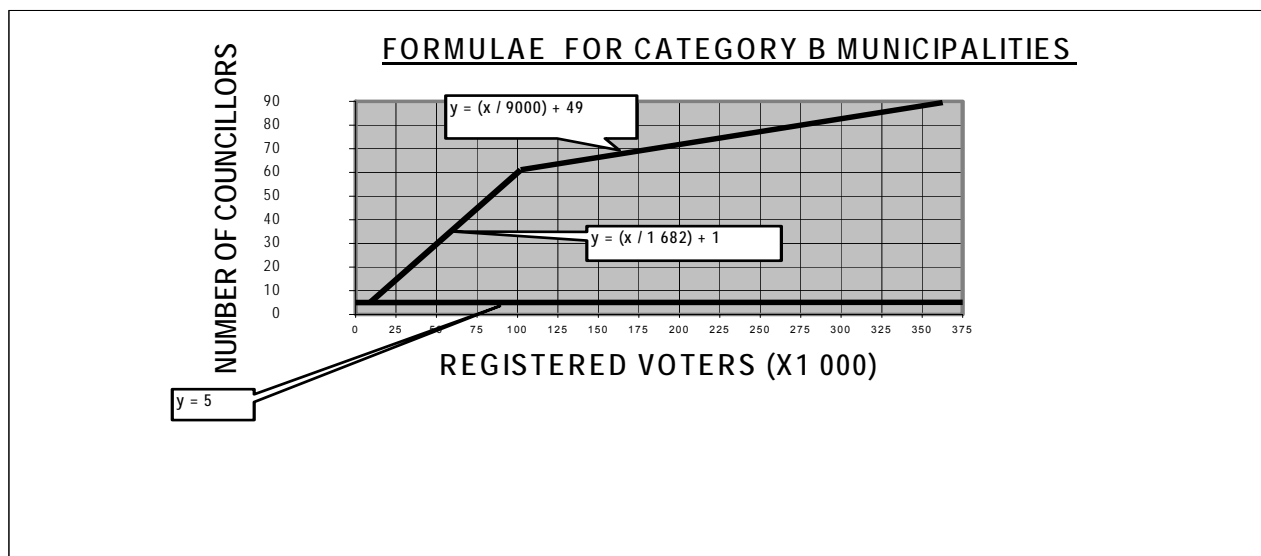
In summary, category B municipalities therefore applied one of three formulae, depending on the number of registered voters in that municipality. The formulae are:

- $y = 5$ - for municipalities that have less than 7 501 registered voters;
- $y = (x \div 1\,682) + 1$ - for municipalities that have between 7 501 and 100 000 registered voters; and
- $y = (x \div 9\,000) + 49$ - for municipalities that have more than 100 000 registered voters,

where “y” represents the number of councillors, and “x” represents the number of registered voters in the relevant municipality (fractions are disregarded).

The formulae for all category B municipalities are depicted graphically in Figure 2:

FIGURE 2: FORMULAE FOR THE DETERMINATION OF NUMBER OF COUNCILLORS FOR CATEGORY B MUNICIPALITIES



Of the 47 district municipalities (category C) during 2000, the following relevant statistics prevailed:

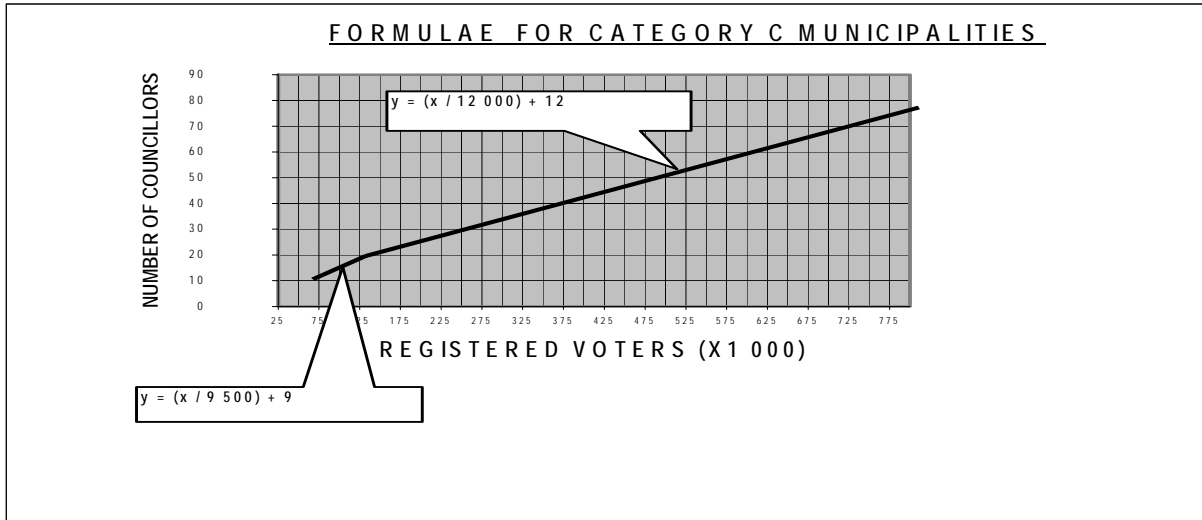
- (i) 7 municipalities had less than 100 000 registered voters;
- (ii) 7 municipalities had between 100 000 and 200 000 registered voters;
- (iii) 13 municipalities had between 200 001 and 300 000 registered voters;
- (iv) 11 municipalities had between 300 001 and 400 000 registered voters;
- (v) 4 municipalities had between 400 001 and 500 000 registered voters;
- (vi) 3 municipalities had between 500 001 and 600 000 registered voters;
- (vii) 1 municipality had between 600 001 and 700 000 registered voters; and
- (viii) 1 municipality (Amatole District Municipality) had 776 303 registered voters.

Bearing the above in mind, and having regard to item 15(3) of Schedule 2 in the *Local Government: Municipal Structures Act, 1998* (Act No. 117 of 1998), formulae for this category of municipality were developed by allocating a minimum of 12 councillors for 24 000 voters, and a maximum of 20 councillors for 100 000 voters. For these maxima and minima, the equation $y = (x \div 9\,500) + 9$ was generated – as was done for the 2000 municipal elections.

For between 100 001 and 700 000 voters, a minimum of 20 councillors and a maximum of 70 councillors were applied respectively – the *Local Government: Municipal Structures Act, 1998* (Act No. 117 of 1998) stipulates a minimum of 3 and a maximum of 90 councillors for this category of municipality. For these maxima and minima, the equation $y = (x \div 12\,000) + 12$ was generated – as was done for the 2000 municipal elections.

The formulae for all category C municipalities are depicted graphically in Figure 3:

FIGURE 3: FORMULAE FOR THE DETERMINATION OF NUMBER OF COUNCILLORS FOR CATEGORY C MUNICIPALITIES



Refer to the attached Schedule for the number of councillors / seats that were determined for each municipality.

4.6 THE DELIMITATION OF WARDS

In terms of section 22 of the *Local Government: Municipal Structures Act, 1998* (Act No. 117 of 1998) the number of wards in a metropolitan or local council must be equal to 50 per cent of the number of councillors determined for the municipality in terms of the above formulae. If the number of councillors obtained is a fraction, then it must be rounded upwards. Further, local municipalities with fewer than seven members have no wards, and district councils have no wards.

4.6.1 The First Term of Municipal Councils

In approaching the finalisation of ward boundaries, the Municipal Demarcation Board resolved that the building blocks for wards should be the voting districts as defined by the Independent Electoral Commission.

In terms of the *Local Government: Municipal Structures Act, 1998* (Act No. 117 of 1998), the Municipal Demarcation Board must take into account the following criteria:

- (i) The need to avoid as far as possible the fragmentation of communities;
- (ii) The object of a ward committee as set out in section 72(3), which is to enhance participatory democracy in local government;
- (iii) The availability and location of a suitable place or places for voting and counting if appropriate, taking into consideration:
 - communication and accessibility;
 - density of population;
 - topography and physical characteristics; and
 - the number of voters that are entitled to vote within the required time-frame;
- (iv) The safety and security of voters and election material; and
- (v) Identifiable ward boundaries.

In terms of the *Local Government: Municipal Structures Act, 1998* (Act No. 117 of 1998), the Municipal Demarcation Board must publish its delimitation of wards for a municipality in the *Provincial Gazette*. Any person aggrieved by a delimitation may within 14 days of publication, submit objections in writing to the Municipal Demarcation Board. The Board must consider those objections and confirm, vary or withdraw its determination. In order to make the process as participatory as possible within the tight time frames, the Municipal Demarcation Board invited the public to assist it in delimiting wards. The process was as follows:

- (i) From 14 March 2000 until 31 March 2000 the public was invited to indicate to the Municipal Demarcation Board which voting districts should be combined to form a ward;
- (ii) On 10 April 2000 the Municipal Demarcation Board availed draft ward boundaries to the public, which were the subject of public hearings held between 12 and 24 April 2000;

- (iii) On 2 May 2000 the Municipal Demarcation Board published the final ward boundaries allowing two weeks for objections, if any; and
- (iv) On 14 September 2000 the Municipal Demarcation Board confirmed all ward boundaries for the country.

Within a municipality, wards must be approximately equal in terms of the numbers of registered voters. This requirement of representative democracy, namely that there be proportionality in the system, does not always mean that the requirements for a participatory democracy are met. Wards are the most vital instrument in bringing together these two fundamental aspects of a democratic society (Municipal Demarcation Board, 2000).

South Africa moved from the interim phase of local government into the final phase of local government on 5 December 2000, which also marked the beginning of the first term of municipal councils. It will be noted from the Schedule that there was a significant reduction in the number of municipalities (from 843 to 284), the number of councillors / seats (from 11 368 to 8 951) and the number of wards (from 5 416 to 3 747).

4.6.2 The Second Term of Municipal Councils

Although the *Local Government: Municipal Structures Act*, 1998 (Act No. 117 of 1998) allows for minimum public participation, the Municipal Demarcation Board's decision to follow a participatory process over an extensive period of time proved to be of great value in improving the ward boundaries within the limits of the criteria provided for in the Act. In the spirit of the *Constitution of the Republic of South Africa*, 1996 and other local government legislation, the Municipal Demarcation Board opted for a more open, transparent and lengthy process, in order to ensure maximum public participation. Three different sets of ward boundaries were published for public comments. Public opinion was also

tested at more than 50 public hearings throughout South Africa, between October and December 2004. More than 1 600 valid submissions were received.

Though many proposals for changes to wards boundaries were favourably considered during the delimitation process, some proposals had to be rejected for various reasons, such as non-compliance with the criteria, and the knock-on effect on the boundaries of other wards. One provision in the *Local Government: Municipal Structures Act, 1998* (Act No. 117 of 1998), which disallows an ideal reconfiguration of boundaries in some areas, is the provision that the number of registered voters in each ward may not vary by more than 15 per cent from the norm. Of all the criteria, this is the only mandatory and quantifiable one, and the Municipal Demarcation Board had no choice but to comply with the legislation in this regard.

During the objection phase (after the third set of ward boundaries was gazetted), 389 submissions were received and considered. In this phase, 566 wards in 92 municipalities were varied as a result of public inputs. After further consultation with the Independent Electoral Commission, 123 wards in 23 municipalities were technically corrected to align ward boundaries to municipal and voting district boundaries. The final ward boundaries were handed to the Independent Electoral Commission on 20 May 2005.

4.7 THE DIVISION OF POWERS AND FUNCTIONS BETWEEN CATEGORY B AND CATEGORY C MUNICIPALITIES

Vosloo, Kotzé and Jeppe (1974:26) state that the range of functions performed by municipalities includes the construction and maintenance of streets, bridges, sewers, drains, public places, etc.; the provision and maintenance of fire and ambulance services, public transport, recreation grounds, parks, gardens, museums, art galleries, markets, public conveniences, cemeteries, abattoirs, clinics, isolation hospitals, wash houses, etc.; the control of traffic, building

construction, public health, food supplies, trades and business occupations; urban renewal and township development; the provision of housing for low-income groups, etc.

The legal framework regulating the division of powers and functions between category B and category C municipalities may be summarized as follows:

- section 155(3)(c) of the *Constitution of the Republic of South Africa, 1996* provides that national legislation must, subject to section 229, make provision for an appropriate division of functions and powers between municipalities, when an area has municipalities of both category B and category C;
- section 229 of the *Constitution of the Republic of South Africa, 1996* sets out the fiscal functions and powers of municipalities and provides for an appropriate division of fiscal functions and powers where two municipalities have the same fiscal powers;
- section 156 of the *Constitution of the Republic of South Africa, 1996* provides that a municipality has the executive authority and the right to administer the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5;
- chapter 5 of the *Local Government: Municipal Structures Act, 1998* (Act No. 117 of 1998) deals with the functions and powers of municipalities, the division of those powers and functions between district and local municipalities, and the adjustment of the division of functions and powers as follows:
 - section 83 provides that all municipalities have the functions and powers assigned to them in terms of sections 156 and 229 of the *Constitution of the Republic of South Africa, 1996*; and
 - section 84 (as amended) divides the functions and powers referred to in section 83 between district and local municipalities. Section 84(1) contains a list of the functions and powers allocated to district municipalities, section 84(2) allocates all the section 83(1) functions and

powers to local municipalities, excluding those functions and powers vested in district municipalities in terms of section 84 (1).

More specifically, section 84 of the *Local Government: Municipal Structures Act*, 1998 (Act No. 117 of 1998) allocates the following functions to district councils:

- (a) Integrated development planning for the district municipality as a whole, including a framework for integrated development plans of all municipalities in the area of the district municipality;
- (b) Potable water supply systems;
- (c) Bulk supply of electricity which includes for the purposes of such supply, the transmission, distribution and, where applicable, the generation of electricity;
- (d) Domestic waste-water and sewage disposal systems;
- (e) Solid waste disposal, in so far as it relates to the determination of a waste disposal strategy; the regulation of waste disposal; and the establishment, operation and control of waste disposal sites, bulk waste transfer facilities and waste disposal facilities for more than one local municipality in the district;
- (f) Municipal roads which form an integral part of a road transport system for the area of the district municipality as a whole;
- (g) Regulation of passenger transport services;
- (h) Municipal airports serving the area of the district municipality as whole;
- (i) Municipal health services;
- (j) Fire fighting services serving the area of the district municipality as a whole, which include planning, co-ordination and regulation of fire services; specialized fire fighting services such as mountain, veld and chemical fire services; co-ordination of the standardisation of infrastructure, vehicles, equipment and procedures; training of fire officers;

- (k) The establishment, conduct and control of fresh produce markets and abattoirs serving the area of a major proportion of the municipalities in the district;
- (l) The establishment, conduct and control of cemeteries and crematoria serving the area of a major proportion of the municipalities in the district;
- (m) Promotion of local tourism for the area of the district municipality;
- (n) Municipal public works relating to any of the above functions or any other functions assigned to the district municipality;
- (o) The receipt, allocation and, if applicable, the distribution of grants made to the district municipality; and
- (p) The imposition and collection of taxes, levies and duties as related to the above functions, or as may be assigned to the district municipality in terms of national legislation.

The Minister for Provincial and Local Government may, after consulting the relevant line function Minister and the MEC's, authorize a local municipality to perform the following functions:

- Potable water supply systems;
- Bulk supply of electricity which includes for the purposes of such supply, the transmission, distribution and where applicable the generation of electricity;
- Domestic waste-water and sewage disposal systems; and
- Municipal health services.

The *Local Government: Municipal Structures Act, 1998* (Act No. 117 of 1998) does not prescribe any criteria or conditions in terms of which the Minister for Provincial and Local Government must exercise this power. In other words the Minister has unfettered discretion (except for the consultation requirement) to authorize local municipalities in terms of section 84(3), and is not subject to a recommendation from the Municipal Demarcation Board in exercising this power.

4.7.1 The First Term of Municipal Councils

In the run-up to the 2000 municipal elections, it was decided that in order to ensure the provision of services was not disrupted and the transfer of staff was kept to a minimum, powers and functions were allocated by the Minister for Provincial and Local Government and MECs along the following lines:

- Category B municipalities would be authorized to perform the functions of transitional local councils and transitional representative councils; and
- Category C municipalities would be authorized to perform District / Regional Services council functions.

These authorizations have become known as maintaining the status quo in respect of the four national functions and the other section 84(1) functions (excluding the four national functions), as well as the section 84(2) functions. The result in having maintained the status quo in respect of the division of powers and functions between district and local municipalities is that where a disestablished local municipality performed a function (say water) within its area, the newly established local municipality continued to perform that function, but only for the disestablished municipal area. This resulted in a situation where in areas of certain local municipalities, specific functions (water) were being performed by different entities such as the new local municipality, the new district municipality or a water board.

Although this situation was not ideal, it resulted in the uninterrupted provision of services and disruption was restricted to a minimum.

Until 5 December 2002, the MEC for local government in a province could, subject to the recommendation of the Municipal Demarcation Board, authorize a local municipality to perform or exercise, in its area, the following functions and powers or aspects thereof:

- (i) Solid waste disposal sites in so far as this related to determination of a waste disposal strategy; the regulation of waste disposal; the establishment, operation and control of waste disposal sites, bulk waste transfer facilities and waste disposal facilities for more than one local municipality in the district;
- (ii) Municipal roads which form an integral part of a road transport system for the area of the district municipality as a whole;
- (iii) Regulation of passenger transport services;
- (iv) Municipal airports serving the area of the district municipality as a whole;
- (v) Fire fighting services serving the area of the district municipality as a whole including planning, co-ordination and regulation of fire services; specialized fire fighting services such as mountain, veld and chemical fire services; co-ordination of the standardisation of infrastructure, vehicles, equipment and procedures, and the training of fire officers;
- (vi) The establishment, conduct and control of fresh produce markets and abattoirs serving the major proportion of the municipalities in the district;
- (vii) The establishment, conduct and control of cemeteries and crematoria serving the area of a major proportion of the municipalities in the district;
- (viii) Promotion of local tourism in the area of the district municipality; and
- (ix) Municipal public works relating to any of the above functions or any other functions assigned to the district municipality.

In addition, the MEC for local government in a province could also, by notice in the *Provincial Gazette*, authorize a district municipality to perform or exercise, in the area of a local municipality, the functions and powers of a local municipality or aspects thereof (provided for in sections 156 and 229 of the *Constitution of the Republic of South Africa*, read with section 84(2) of the *Local Government: Municipal Structures Act, 1998* (Act No. 117 of 1998)).

The Municipal Demarcation Board has conducted annual capacity assessments since 2001, and pursuant to each of those processes, made recommendations to

the relevant MECs for local government to adjust (in some cases) certain powers and functions between local and district municipalities.

4.7.2 The Second Term of Municipal Councils

During August 2005, the Municipal Demarcation Board embarked on a process to assess the capacity of all local and district municipalities to perform their municipal powers and functions.

A compact disc is enclosed on the inside of the back cover of this dissertation which provides a detailed assessment of capacity of all the functions listed in Parts B of Schedules 4 and 5 to the *Constitution of the Republic of South Africa*, 1996 for each local and district municipality for the 2005 / 2006 period.

4.8 CONCLUSION

The new local government system can be compared to a puzzle, with many parts that fit together to make a whole picture. It takes thought and strategy to put all the pieces together, and the puzzle is incomplete until each piece is in place. The pieces of the puzzle are the processes necessary to start change, the structures necessary to put change into place, the principles to make change really happen, and finally, mechanisms to assist all role players in putting these pieces together. When the puzzle is complete, local government will truly fulfil its constitutional role of being a people-friendly, efficient, viable and developmental agent for change across the country.

While transformation ultimately rests with each municipality, there are a number of ways in which national government can enable and support transformation. The process of establishing the new local government system is likely to result in extraordinary costs, and a transitional fund has been established to assist municipalities to manage the transformation process.

The development of the systems required to support municipal transformation should be managed in partnership with local government. This will both build the capacity of local government and result in effective systems which municipalities can use to lever change in their operations and in their approaches to meeting community needs. Given the scale of need in local communities, it is essential that skills, resources and capacity from a number of institutions and sectors are harnessed behind the vision of developmental local government, to contribute actively to making this vision a reality.

However, successful transformation ultimately rests in the hands of each municipality. Transformation is not a choice – it is an obligation placed on each municipality to fulfil its constitutional mandate and to play a role in the development of the nation. Local government has a critical role to play in consolidating our new democracy, and each councillor, each official, and each citizen is tasked with making their contribution in the areas where they live.

One of the biggest challenges in the process of transforming municipal governance is to address the many anxieties (some well-founded and others less so) which exist among councillors, officials, the private sector and other stakeholders. Some of these anxieties are heightened through gate-keepers trying to control access to information and holding councils to ransom.