



## CHAPTER 4

### THE RESTRUCTURING OF LOCAL GOVERNMENT IN SOUTH AFRICA: A HISTORICAL PERSPECTIVE UP TO 1994

#### 4.1. INTRODUCTION

In comparison with the towns and cities of Europe, North Africa and Asia, the South African towns and cities are very young. When the Dutch started a settlement at the Cape of Good Hope on 6 April 1652, there were in southern Africa no communities similar to present-day villages, towns and cities. Cape Town was the first urban area to be established in southern Africa. As the European settlers moved eastwards and northwards, further urban areas were created: for example, Durban in 1828 when Chaka, King of the Zulu, ceded the site of Durban to Nataniel Isaacs; Pietermaritzburg as the capital of Natal in 1839; and Bloemfontein in 1846 as the administrative centre (capital) of the Orange Free State; Pretoria on 16 November 1855 as the capital of the Transvaal; and Johannesburg after the discovery of gold on the Witwatersrand in 1886. It is evident, then, that except for Cape Town, the urban areas in South Africa are young in comparison with European cities which were developed centuries ago.

The settlements which were more or less comparable with urban areas were the tribal settlements established by Africans in the territories which became known as Ciskei, Transkei, KwaZulu, Qwaqwa, Bophuthatswana, Venda, Gazankulu, KwaNdebele, Lebowa and KaNgwane. The tribal villages were half-way between urban areas known as villages, towns and cities on the one hand, and rural areas consisting of farm-land on the other hand.

For many years the white urban areas were small villages as most whites and blacks stayed on farms where they had to satisfy all their own needs. They had to provide their own water by carrying it in buckets to their houses from rivers, dams, wells or bore-holes. The people had to provide their own power for cooking and heating and, for this purpose, they had to collect firewood and



dung or they had to buy coal for their stoves and paraffin for their lamps and primus stoves. The people could obtain milk from the cows on the farm. They could slaughter their own animals for meat. They could grow their own vegetables, fruit and maize or other grains. The result was that people on farms were self-sufficient and could provide for most of their needs themselves or with the assistance of their relatives, neighbours and the owners of the farms.

As the number of people on farms increased there were no longer employment opportunities for all of them. As a result the whites and blacks in search of work started moving to white villages which grew into towns and eventually cities. Most whites could afford to obtain houses in those urban areas. The blacks, who were mostly unskilled labourers, stayed in parts of white urban areas where they could erect dwellings which they could afford. The areas inhabited by the blacks were originally referred to as *locations*, but afterwards they became known as *townships*. For example, the township south-west of Johannesburg became Soweto. The urban areas in South Africa outside the African “national states” usually consisted of separate sections inhabited by whites, Africans, coloureds or Indians, respectively.

#### **4.2. EMERGENCE OF LOCAL AUTHORITIES**

Local authorities as they are known today emerged gradually at the Cape of Good Hope after Jan van Riebeeck landed there on 6 April 1652. The urban area known as Cape Town developed gradually from a hamlet into a town and eventually into a city. For many years there was no distinction between the government and the administration of the settlement and that of the urban area. The whole settlement, including the urban area and surrounding farmland, was governed by the Commander (designated Governor after 1691), who was the top official at the Cape. The Commander/Governor was subject to directives from the Council of Seventeen, which directed the Dutch East India Company from its offices in the Netherlands. However, in the performance of his governmental and administrative functions, the



Commander/Governor had to take into consideration the decisions of his Council of Policy. This Council of Policy consisted of a few top officials of the Dutch East India Company doing duty under the supervision of the Commander/Governor of the Cape (Kaapse Plakkaatboek, 1944).

It has to be borne in mind that originally all the workers at the Cape were employees of the Dutch East India Company. Even the gardeners and farmers were officials. However, in 1657 soldiers released from the service of the company were allowed to become farmers and were referred to as *free burghers*. Some of the *free burghers* settled in the area which became known as Stellenbosch and this developed into an urban area. In 1682 the governor of the Cape decided to appoint four of the *free burghers* as *heemraden* for the Stellenbosch area. Their function was to settle quarrels amongst the *free burghers* about the boundaries of their farms and other local matters. In 1685 a *lanndrost* was appointed for the Stellenbosch area. The *heemraden* and the *lanndrost*, who served as the chairman, formed a council known as the *College of Landdrost and Heemraden*. The *lanndrost* was in fact the magistrate for the area entrusted to him. The *heemraden* could be compared with justices of the peace. What is significant is that the *College of Landdrost and Heemraden* of Stellenbosch was the first South African local authority comparable to present-day South African local authorities. Every significant urban area outside Cape Town in the Cape Colony had its own *College of Landdrost and Heemraden* (Venter, 1940). This institution was, in fact, more a rural than an urban local authority because the town in its area of jurisdiction was usually little more than a hamlet.

As Cape Town expanded, its inhabitants became dissatisfied with the fact that they had no local authority separate from the central authority for the settlement which was expanding beyond the boundaries of Cape Town. In 1779 the *free burghers* living in and near Cape Town submitted a petition signed by 500 of them to the Council of Seventeen which was the controlling body of the East India Company and was situated in the Netherlands. The petition asked for political reforms to give the *free burghers* a greater share in the government of the settlement. As a result of this petition, a committee of



the high court of justice was established in 1786 to serve as a local authority for Cape Town. This committee was indeed the first urban local authority in South Africa (Theal, 1919-1927).

After the British took control of the Cape in 1795, the committee of the high court of justice was replaced with the *burgher senate* consisting of six burghers appointed by the British governor. When the British handed the Cape back to the Dutch in 1802, the *burgher senate* was replaced in 1803 by the *raad der gemeente* (town council) (De Mist, 1802). The British replaced this council with the *burgher senate* when they occupied the Cape in 1806. This *burgher senate* was abolished on 26 December 1827. Cape Town then remained without a municipal council until it obtained its municipal board of 12 elected members in terms of the provisions of the *Cape Town Municipal Board Ordinance*, 1839 (Ordinance No. 4 of 1839).

In the meantime, the British authorities were taking steps to introduce responsible municipal government in the Cape in preparation for the granting of responsible parliamentary government to the colony. These steps culminated in the *Cape Municipal Ordinance*, 1836 (Ordinance No. 9 of 1836). All the towns in the Cape Colony, except Cape Town, obtained municipal councils in terms of this ordinance. Beaufort West was the first town to obtain a municipal council, on 3 February 1837. The ordinance afterwards served as the basis for the legislation establishing local authorities in Natal (Ordinance No. 5 of 1847), the Orange Free State (Ordinance No.1 of 1856) and the Transvaal (Act 11 of 1883).

Each of the four colonies which were united on 31 May 1910 to form the Union of South Africa had by that time developed its own distinctive system of local authorities. As municipal affairs were handled by provincial authorities from that date, the distinctive characteristics of the four systems were retained and further developed. However, the four systems had numerous common characteristics because they were based on Cape foundations. Popular participation through councils with elected members and financial

independence remained features of the municipal authorities developed in South Africa after 1836.

### **4.3. DEVELOPMENT OF LOCAL AUTHORITIES FOR THE URBAN AREAS POPULATED BY NON-WHITES**

Blacks started settling in the urban areas controlled by White local authorities years ago. For many years the number of Whites and Blacks resident in South African urban areas were small. It was only in a small number of cities (Cape Town, Port Elizabeth, East London, Kimberley, Durban, Pietermaritzburg, Bloemfontein, Johannesburg and Pretoria) that considerable numbers of Whites and Blacks resided. Even so the populations were so small that the White local authorities, whose councillors and officials had gained knowledge and experience of municipal affairs over the years, managed to provide only for the essential needs of the people and, even then, low standards were maintained; for example gravel streets and bucket-system sewerage services were common (Cloete, 1986: 15).

After the First World War (1914-1918), Whites and Blacks started moving to urban areas in increasing numbers. It became clear that the White local authorities under the control of White municipal councils could no longer on their own provide essential services for Black people staying in urban areas. The first step towards giving the Blacks a say in the government and administration of their urban areas was taken in 1923 when Parliament passed the Blacks Urban Areas Act, 1923 (Act 21 of 1923).

#### **4.3.1. BLACK URBAN AREAS**

The Blacks Urban Areas Act, 1923 (Act 21 of 1923) provided that for every part of a White municipality with a substantial number of Black inhabitants (known as a location or Black township) a Black Advisory Board had to be established. The members of such a Black Advisory Board were either elected

by the Black residents or appointed by the White local authority. The function of such Black Advisory Boards was to advise the White local authority concerned on all regulations made by the White local authority for the administration of the locations or Black townships.

The Blacks Urban Areas Consolidation Act, 1945 (Act 25 of 1945), repealed Act 21 of 1923. However, Act 25 of 1945 again provided for Black Advisory Boards. A Black Advisory Board had to advise the White local authority concerned on regulations which the White local authority could make for the administration of the Black location or Black township and for the promotion of the interests of the Black inhabitants of the White municipality. Coloured persons resident in the Black locations or Black townships could also be elected as members of the Black Advisory Boards.

After the National Party came into power in 1948 it passed the Group Areas Act, 1950 (Act 41 of 1950), which was superseded by the Group Areas Act, 1957 (Act 77 of 1957), which was in turn superseded by the Group Areas Act, 1966 (Act 36 of 1966). These Acts were passed to enable the Government to establish separate residential areas for Whites, Blacks, Coloureds and Indians in every municipal area. One of the ultimate objectives of these Group Areas Acts, read together with the Blacks Urban Areas Act, 1945 (Act 25 of 1945), was that each population group would eventually provide for essential services in the municipal areas populated by its own members.

One of the reasons for establishing the Black Advisory Boards was that they should serve as training fields for Black persons in municipal government and administration. By 1961 it was agreed that the arrangements whereby Blacks could take part in municipal government and administration could be taken a step further. Accordingly the Urban Black Councils Act, 1961 (Act 79 of 1961), was passed by Parliament. This act provided for the establishment of Urban Black Councils to replace the Black Advisory Boards. An Urban Black Council had to consist of not less than six members elected by the Blacks resident in the Black township for which it was created. Under the control of the White



municipal authority concerned, an Urban Black Council could serve as the local authority for the Black township concerned.

The Black Affairs Administration Act, 1971 (Act 45 of 1971), provided for Administration Boards to take over the provision of services in the Black townships from White local authorities with effect from 1 July 1973. The Republic of South Africa was divided into 14 administrative areas for each of which an Administration Board was established. Each Administration Board area included a number of Black townships for each of which an Urban Black Council could be established. In 1977 Parliament passed the Community Councils Act, 1977 (Act 125 of 1977), which provided for the establishment of a Black Community Council for each Black township. A Community Council could take over from the Administration Board concerned the provision of municipal services in a particular Black urban area. The Black Advisory Boards, Urban Black Councils and Community Councils were created to give black people opportunities to gain knowledge and experience of municipal government and administration.

Parliament passed the Black Local Authorities Act, 1982 (Act 102 of 1982) to provide for the establishment of a fully-fledged municipal authority for each Black township. Each municipal authority, headed by a council consisting of elected members, replaced the community council previously established for that Black urban area. The Administration Boards that took over the provision of municipal services with effect from 1 July 1973 were retained as they could only gradually hand over the provision of municipal services to the Black local authorities.

Parliament passed the Black Communities Development Act, 1984 (Act 4 of 1984) in 1984, to provide for the Administration Boards to become Development Boards. This change made it clear that the Development Boards had to assist the municipal authorities created for the Black townships to become fully-fledged local authorities, which were, in all respects, the equals of White local authorities. The following table provides a summary of the



legislative and administrative provision for Urban Blacks over the period 1923 to 1982.

**TABLE 1: LEGISLATIVE AND ADMINISTRATIVE PROVISIONS FOR URBAN BLACKS (1923-1982)**

<b>ACTS</b>	<b>INSTITUTIONS AND THEIR FUNCTIONS</b>
Black (Urban Areas) Act 21 of 1923.	Black advisory boards to advise white local authorities on the administration of black townships.
Black (Urban Areas) Consolidation Act 25 of 1945 (repealing Act 21 of 1923).	Black advisory boards to serve the same functions as those stipulated by Act 21 of 1923.
Urban Black Councils Act 79 of 1961.	Urban black councils to which white local authorities could assign powers to perform functions of a local authority.
Black Affairs Administration Act 45 of 1971 (Amended to Black Communities Development Act 4 of 1984).	Black affairs administration boards (later renamed development boards) established for fourteen (14) regions. Took over the administration of black urban areas from the white local authorities. Continued to create urban black councils for urban areas. Development boards abolished in terms of the Abolition of Development Bodies Act 75 of 1986. Personnel and functions transferred to the then four (4) provincial administrations.
Community Councils Act 125 of 1977 (repealing Act 79 of 1961).	Community councils could be established for the urban areas by the administration boards.
Black Local Authorities Act 102 of 1982.	Black local authorities, the equivalent of white local authorities, could be established.

Black local authorities have been plagued by difficulties since their inception. Even though they have received more formal powers over the years, the fiscal inadequacies and political illegitimacy of these bodies has left them as ill-functioning and controversial institutions (Heymans & White, 1991: 7-8).





#### 4.3.2. COLOURED AND INDIAN AREAS

As in the case of urban areas populated by Blacks, urban areas previously populated by Coloureds and Indians also formed part of the municipal areas governed by White municipal councils. However, section 25 of the Group Areas Act, 1950 (Act 41 of 1950), provided that a governing body could be established for every urban area inhabited by Coloureds and Indians. In a Coloured urban area, the members of the governing body had to be Coloureds. In an Indian urban area, the members of the governing body had to be Indians. These provisions of Act 41 of 1950 also appeared in the Group Areas Act, 1957 (Act 77 of 1957). However, Act 77 of 1957 was amended in 1962 to provide that for each urban area inhabited by Coloureds or Indians a consultative committee or management committee could be established. A consultative committee could only offer advice to the White municipal council about the provision of municipal services in the Coloured or Indian areas concerned. The White municipal council could delegate some of its powers to a management committee established for a Coloured or Indian area. The management committee was thus a higher level authority than a consultative committee. It was also indicated that the management committee of an Indian or Coloured urban area could eventually be replaced by a fully-fledged municipal council for the urban area concerned.

The provisions of Act 77 of 1957 as amended in 1962 were retained in the Group Areas Act, 1966 (Act 36 of 1966). To give effect to the provisions of these Acts concerning the establishment of consultative committees and management committees for Coloured or Indian urban areas, the provincial councils passed ordinances to allow for the establishment of consultative committees and management committees. Instead of consultative committees and management committees, the Provincial Council of Natal authorized the establishment of local affairs committees which had the same functions and powers as consultative and management committees in the other three provinces.



After 1962 a number of Coloured and Indian urban areas progressed from consultative, management or local affairs committees to fully-fledged municipal councils similar in all respects to the municipal councils existing in White urban areas. The Coloured and Indian people, however, also had to gain experience and knowledge of municipal affairs before they could obtain fully-fledged municipal authorities headed by elected Coloured or Indian members.

#### **4.4. REGIONALISED STRUCTURES FOR LOCAL GOVERNMENT**

The implementation of the Regional Services Councils Act, 1985 (No. 109 of 1985), changed local government in South Africa. Regional Services Councils (RSC's), which were introduced after 1985, had originally been intended as local extensions to facilitate co-operation between Whites, Coloureds and Indians only.

The 1985 Regional Services Council Act (Act 109 of 1985) therefore provided for Black local authorities to participate in Regional Services Councils (RSC's), by means of the establishment of a regional services council for each region. This was to be established by the provincial administrator after consultation with the Minister of Constitutional Development and Planning and the Minister of Finance and with the concurrence of the relevant members of the Ministers' Councils of the three Houses of Parliament. A regional services council had no authority over the municipal councils situated in the region for which it had been established; in other words, a regional services council was a local authority established for the purpose of providing specified municipal services on a regional scale.

According to the Regional Services Council Act, 1985 (No. 109 of 1985), Regional Services Councils (RSCs) were statutory multi-racial local government bodies which were to develop and provide services on a regional basis. This concept was claimed to provide for effective power-sharing at the local level without one group dominating another. A Regional Services Council



(RSC) consisted of local governments of all population groups within a certain area and the participating local authorities nominated their own representatives to serve on the council.

In essence, Regional Services Councils (RSC's) were to use money, raised by levying businesses, to remove backlogs in infrastructure in the townships. They were also to provide bulk services to all local authorities in a particular region (Humphries, 1988: 63). The Regional Services Council Act, 1985 (No. 109 of 1985) acknowledged that township residents were citizens of the wider city, rather than merely that part of it reserved for Blacks. As such they were entitled to share in its wealth, its municipal services and its decisions, since Black local authorities, as members of Regional Services Councils (RSCs), could share in deciding how revenue was to be spent. This Act thus sounded the deathknell of the doomed notion of separate urban citizenship.

As with previous reforms, these concessions preserved important assumptions of the past. Regional Services Councils (RSC's) aimed to strengthen racially separate Black local authorities. Race segregation, however, was retained and all participating local authorities were racially exclusive. While the law allowed Regional Services Councils (RSC's) to include homeland local governments, none did until the introduction of Joint Services Boards in Natal in 1991 included homeland areas in that province only. Government strategists saw Regional Services Councils (RSC's) as a way of strengthening apartheid local government by providing Black local authorities with the resources they needed to function adequately (Ufresence, 1993: 16).

Regional Services Councils preserved White control over decisions. Local governments were allocated votes on Regional Services Councils (RSC's) in proportion to the services they consumed rather than the number of people in their area. Since White areas were far more affluent, this ensured that they would command most of the votes. Black local authorities were offered a potential veto in a stipulation that decisions must be taken by a two-thirds majority but on no Regional Services Council (RSC) did the Black local



authorities ever gain the one-third of the votes needed to block decisions. The voting formula entrenched white dominance by using wealth, rather than race, as a criterion (Ufresearch, 1993: 16).

Laurence (1985: 11) notes that, owing to social unrest in many black townships, the unacceptability of the town councils was highlighted and this resulted in the near collapse in parts of South Africa of the government's attempt to institute a system of indirect rule in urban areas. This, in turn, placed the Regional Services Councils (RSC's) in the forefront of the political and ideological conflict being waged at local government level in the country (*The Citizen*: 30 May 1987; *Pretoria News*: 18 June 1987). Schlemmer (1985: 5) states that within the constitutional constraints of local government and the Group Areas Act, 1950 (No. 41 of 1950) black local authorities symbolized their inability to aspire beyond the township, both socially, residentially and politically.

The introduction of Regional Services Councils (RSC's) in the then Orange Free State, Cape and Transvaal, and Joint Service Boards (JSB's) in Natal saw a reversal of the self-sufficiency principle. These bodies, instead of providing a sound basis for urban financing, merely attempted to make black local authorities viable (Centre for Development Studies, 1990: 122). They were also seen as symbols of apartheid as they were directly linked to the ethnic local authorities established for the different race groups. It could be said that local government management and development during this era, with the exception of white local authorities was one of oppression, illegitimacy, inefficiency and fragmentation (Johnson, 1994: 3).

Amid all the political inequities, the Regional Services Council (RSC) concept was perceived by the government as a possible solution to allowing all population groups a vote in local government affairs. The principle of maximum devolution of power and decentralization of administration at local level as well as democracy were affected by these newly-created local government structures.



#### **4.5. RESTRUCTURING OF LOCAL GOVERNMENT: 1990-1994**

A first significant development towards obtaining unified urban areas and local authorities was the passing by Parliament of the Interim Measures for Local Government Act, 1991 (Act 128 of 1991) to provide for the joint performance of functions by two or more local authorities and their eventual mergers. However, it was soon obvious that this Act would not bring satisfactory results. Intensive deliberations among the various institutions and interest groups (particularly the Department of Local Government and the South African National Civic Organization (SANCO), as well as the association of local authorities) led to the repeal of Act 128 of 1991 by the Local Government Transition Act, 1993 (Act 209 of 1993). This Act provided for revised interim measures with a view to promoting the restructuring of local government. This Act led to the abolishment of Regional Services Councils and the replacement thereof by metropolitan councils, urban councils and rural councils.

Early in 1993 the South African National Civic Organization (SANCO) had persuaded the Minister of Local Government to establish a formal national Local Government Negotiating Forum (LGNF). This body served as the main negotiating forum on local government. Act 209 of 1993 was the result of a long and complicated process of negotiations to obtain integrated urban areas and local authorities.

##### **4.5.1. COUNCIL FOR THE CO-ORDINATION OF LOCAL GOVERNMENT AFFAIRS**

The 1990's saw some major changes in the political landscape of South Africa. Major political organizations, most notably the African National Congress (ANC), were unbanned by the new F.W. de Klerk administration. The National Party (NP) government committed itself to negotiating a new constitution with all participating parties.



The first major local government development in the 1990's was an investigation by the Council for the Co-ordination of Local Government Affairs, a statutory body, which existed to advise the then government on local government matters that required co-ordination. The Council for the Co-ordination of Local Government Affairs recommended that five alternative models of local government should be the focus of further discussion and negotiation:

- (a) separate local authorities for all population groups with own areas of jurisdiction, with the provision that racially separate cities would be allowed where financially viable;
- (b) a mini-Regional Services Council (RSC) with a joint administration constituted by autonomous local authorities and local bodies, which would take some decisions together;
- (c) a joint local authority constituted of neighbourhood Management Committees, on a non-racial basis;
- (d) a simple majoritarian model with or without protection for minorities; and
- (e) any other locally negotiated model.

The report, referred to as the Thornhill Report, made no specific provision for the introduction of a metropolitan model, but did mention that the second and third constitutional options could be applied on a metropolitan basis. It also, however, stated that a metropolitan government should be the outcome of the negotiating process in a particular area and not the starting point. It went on to say that the benefits of metropolitanization should be weighed up against the need for self-determination at community level and historical developments (Republic of South Africa, 1990: 10, 24-34, 47-48; Cameron, 1993: 427-429).

The National Party (NP) government did not formally accept or reject the Thornhill Report. It merely noted the report and stated that a new system of



local government would have to be negotiated with all interested parties. This would entail circulating the various models for further comment. Meanwhile, the National Party (NP) was busy developing its own constitutional proposals.

The Co-ordinating Council also undertook an investigation into metropolitan government in 1991. It proposed that Regional Services Council (RSC) functions and sources of finance in metropolitan areas could be taken over by proposed metropolitan bodies. The report (referred to as Thornhill II) examined five different methods of metropolitanization, namely co-operative agreements, Councils of Governments, amalgamation and one-level and two-level federations. It concluded that a single-tier or two-tier system would be most likely to be accepted. The final choice of metropolitan government should, however, be negotiated by all interested parties (Republic of South Africa, 1991a: 6-10, 39-40; Cameron, 1993: 429-430). As with Thornhill I, the National Party (NP) government merely noted the document and circulated it for comment.

In response to the state of chaos in many black townships due to the rent and services boycott, the resignation of councillors and the impending collapse of many services, the government felt it could not wait until constitutional negotiations had been concluded and promulgated in the Interim Measures for Local Government Act of 1991. In terms of the said Act, existing local authorities could negotiate joint service rendering and even a new single local authority (Cameron, 1992: 33-38). However, for a number of reasons, the Interim Measures for Local Government Act of 1991 was rejected by the African National Congress (ANC) and South African National Civic Organization (SANCO) as not being a legitimate instrument for restructuring apartheid cities. These reasons were as follows:

- (a) It contained no guiding principles on which new local government structures could be based.



- (b) It provided for the continuance of existing racially-based local government structures (through the amalgamation of existing racially-based local government structures).
- (c) The Act of 1991 did not force local authorities to enter into local negotiations.
- (d) Negotiations did take place and resulted in a variety of negative consequences for residents of black townships, including one-sided rationalization of Black Local Authority (BLA) staff, non-negotiated tariff increases, suspension of services and evictions (African National Congress, 1991; South African National Civic Organization, 1993).

Multi-party negotiations took place in 1992 and 1993, which ultimately culminated in the passing of the Constitution of the Republic of South Africa (Act 200 of 1993).

#### **4.5.2. CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA ACT (ACT 200 OF 1993)**

The Constitution was known as the Interim Constitution of the Republic of South Africa and included a number of power-sharing mechanisms to protect minority rights. The way forward regarding the Interim Constitution was that the Constitutional Assembly had to adopt a final constitution with a two-thirds majority within two years.

Provision was made in the Interim Constitution for a three-tier system, namely central, provincial and local government. At a central level, a 400-member National Assembly and 90-member Senate were established. In terms of power-sharing arrangements, all parties which gained more than 20 seats in the National Assembly were entitled to Cabinet seats in proportion to the number of seats held. Because of these power-sharing arrangements the government was referred to as the Government of National Unity (GNU).



Provision was also made for nine provinces in the new Constitution. Power-sharing arrangements similar to those at central level existed at the provincial executive level.

Elections for central and provincial governments were held in April 1994. The African National Congress (ANC) with 62,65% of the vote became the majority party in the Government of National Unity (GNU). The National Party (NP) and Inkatha Freedom Party (IFP) received sufficient votes to be represented on the executive. The African National Congress (ANC) won seven of the nine provinces, the National Party (NP) one and the Inkatha Freedom Party (IFP) one.

The Interim Constitution displayed many features of federalism, such as a senate representing provincial interests, a schedule of provincial powers (including local government) and a Constitutional Court as the final arbitrator of intergovernmental conflict. However, parliament had relatively extensive overriding powers over the provinces, which negated some of the federal principles.

It was at local government level that the National Party (NP) managed to entrench most power-sharing provisions. The National Party's (NP's) strategy was that minority interests, in particular those of whites, could be protected through decentralization to local authorities. There was realisation that the National Party (NP) would lose control over the central state and strong local authorities were seen as important checks and balances on any future black central government (National Party, 1991).

The major black organization in the country, the African National Congress (ANC), was originally committed to a highly centralist state. The African National Congress (ANC) originally envisaged delegation of powers from central to local government only for the purposes of more effective administration and democratic participation (as cited in *The South*, 6-12 July 1989). After the organization was unbanned, the African National Congress (ANC) formulated a more comprehensive local government policy which made

provision for autonomous local authorities (Centre for Development Studies, 1990). However, the African National Congress (ANC) still favoured a more centralist vision of local government. Extensive devolution was seen as a mechanism to protect white privilege and to prevent the essential redistribution needed to ameliorate inequalities caused by apartheid. Strong central government was regarded as the most effective guarantee of the realisation of 'second generation rights' which include the right to health, nutrition and shelter (Lodge, 1988: 19).

The local government negotiations, therefore, were largely deliberations between the National Party's (NP's) decentralized vision and the African National Congress's (ANC's) centralist vision and the end result was a compromise between these two contending positions. The details will be discussed later in this chapter, but it must be mentioned that Chapter 10 of the Constitution made provision (at least nominally) for autonomous local government.

#### **4.5.3. LOCAL GOVERNMENT NEGOTIATING FORUM (LGNF)**

Preliminary discussions took place in 1993 with the then Minister of Local Government, on national housing, local government and the provision of municipal services, as well as the desirability of holding joint discussions with organized local government with a view to establishing a local government forum (Lourens, 1993: 24). This led to the formation of the Local Government Negotiation Forum (LGNF), which was established to deal with the democratization of local government as well as the ongoing rent and services boycotts.

On 22 March 1993 the Local Government Negotiation Forum (LGNF) was established as a bilateral forum between a statutory delegation consisting of representatives of the central, provincial and organized local government on the one hand and the South African National Civic Organization (SANCO) (the non-statutory delegation) on the other hand. The terms of reference of the

Local Government Negotiation Forum (LGNF) were to try to compile and analyze the necessary data and, in close co-operation with and within the framework of the national negotiating process, to seek agreement between the two delegations on the procedure for and substance of the restructuring of local government (Local Government Negotiation Forum (a), 1993: 7). The mission of the Forum was “to contribute to the democratization of local government and the bringing about of a democratic, non-racial, non-sexist and financially viable local government system” (Local Government Negotiation Forum, 1993a: 4).

The Forum consisted of 60 members, 30 of whom were nominated by statutory local government bodies and 30 by non-statutory bodies with an interest in local government. The Local Government Negotiation Forum (LGNF) operated according to the two-sided formula, with half of the representatives being drawn from the statutory side and the other half from the non-statutory side (Local Government Negotiation Forum, 1993a: 4). The statutory delegation consisted of representatives of central, provincial and local government. These representatives were drawn from the central government’s Department of Local Government, the four provincial administrations’ Departments of Local Government, the United Municipal Executive (UME), the Major Cities Association and the National Committee of Local Government Associations (NCOLGA). The non-statutory side was represented by the South African National Civic Organization (SANCO), whose constituent civics had spearheaded rent and service boycotts. Furthermore, political parties were specifically excluded from the Local Government Negotiation Forum (LGNF). The official reason for this was that political parties could participate in the Multi-Party Negotiating Forum (MPNF) which was negotiating the Constitution at Kempton Park, where local government interest groups were excluded. However, Robinson (1995: 10) says that this was a strategic decision by the African National Congress (ANC) alliance to keep smaller political parties out. In reality, a number of senior African National Congress (ANC) local government department members were also South African National Civic Organization (SANCO) delegates (Cameron, 1994: 7). Members of the South African Municipal



Workers Union (SAMWU) were also included in the South African National Civic Organization (SANCO) delegation.

**TABLE 2: COMPOSITION OF THE LOCAL GOVERNMENT NEGOTIATION FORUM (LGNF) (a)**

<p>Statutory members (50%)</p> <ul style="list-style-type: none"> <li>• Department of Local Government</li> <li>• Four Provinces (Local Government)</li> <li>• United Municipal Executive</li> <li>• Transvaal Municipal Association</li> <li>• Major Cities Association</li> <li>• Association of Management Committees</li> </ul> <p>Non-statutory members (50%)</p> <ul style="list-style-type: none"> <li>• South African National Civics Organization (SANCO)</li> <li>• African National Congress (ANC)</li> <li>• National Party (NP)</li> <li>• Democratic Party (DP)</li> </ul> <p>Management Committee</p> <ul style="list-style-type: none"> <li>• Considered new members</li> </ul>
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(a) Source: *Local Government Negotiation Forum (LGNF)(a)*, 1993: 8.

The Local Government Negotiation Forum (LGNF) functioned under the dual chairmanship of the Deputy Minister of Local Government, Y. Makda, from the statutory group, and, on behalf of the non-statutory group, D. Tsenoli, deputy chairperson of the South African National Civic Organization (SANCO). Each of the delegations had five technical advisors to provide assistance on policy making and analysis. A management committee (Mancom) consisting of two co-chairpersons and ten members of the Local Government Negotiation Forum (LGNF) (five from each delegation) dealt with the management of



Forum business on a daily basis (Local Government Negotiation Forum (a), 1993: 8). The Local Government Negotiation Forum (LGNF) only met three times:

- (a) at its inception on 22 March 1993 when it appointed a full-time secretariat and three working groups charged with the formulation of draft agreements on outstanding issues and with working out the technical detail of agreements (Local Government Negotiation Forum (LGNF)(a), 1993); and
- (b) on 30 June 1993 when it approved an interim progress report submitted by the various working groups and its Mancom (Local Government Negotiation Forum (LGNF)(b), 1993);
- (c) on 18 November 1993 when it ratified the final agreements reached in the form of the above-mentioned documents (Local Government Negotiation Forum (LGNF)(c), 1993).

The technical working groups appointed were a legal and constitutional working group; a services and finance working group; and a management, administration and training working group (Local Government Negotiation Forum (LGNF) (a), 1993: 8).

The working groups conducted most of the bargaining and negotiations on the rationalisation of local government in their respective *ad hoc* task teams and in the Mancom. Initially the working groups and their task teams met twice a week on average, but the process had to be streamlined because of the costs involved (which were borne by the State) and time constraints. Initially the Mancom met infrequently, but during the last three months of the negotiations it took over the work of the three working groups and convened virtually every week until most of the outstanding issues were resolved (Cloete, 1995: 5).

The different stakeholders were initially adamant on their respective policy viewpoints, but were eventually compelled to find compromises because of time constraints. There were some unresolved issues which were negotiated



at the Multi Party Negotiation Forum (MPNF) in bilaterals between the National Party (NP) government and the African National Congress (ANC). It is in these bilaterals that some of the bruising battles over the future of local government were fought. Indeed, at one stage it looked as if the inability to reach consensus about local government was going to derail the entire constitutional process (Cameron, 1994). There was concern that Local Government Minister, Tertius Delport (who had replaced Wessels), with his insistence upon the entrenchment of minority rights, was going to destroy local government. A non-statutory interviewee said that Minister Delport had threatened to scrap the entire constitutional process by arguing that without an interim local government deal there could be no interim constitution and, as a corollary, no national elections (Robinson, 1995: 16). They eventually came up with the model for local government reform, namely the Local Government Transition Act, 1993 (Act 209 of 1993).

#### **4.5.4. THE LOCAL GOVERNMENT DEMOCRATIZATION PROCESS**

Local government was formally democratized and restructured through the provisions of Chapter 10 of the Interim Constitution and the Local Government Transition Act (LGTA), which was promulgated on 2 February 1994. The local government restructuring process was divided into three phases.

- (a) The first or the pre-interim phase was the period from the commencement of the Act (2 February 1994) to the commencement of the interim phase, which commenced on the first day after the elections were held for transitional councils as contemplated in Section 9 (Section 1 (xi)) of the Act). This phase was regulated in Part IV of the Act. During this period regard would also be given to the Agreement (Local Government Transition Act, 1993: Part IV). The pre-interim phase commenced from the promulgation of the Local Government Transition Act, 1993 (Act 209 of 1993) (February 1994) and continued until the elections in November 1995.

- (b) The second or interim phase commenced, as stated, on the day after the elections for transitional councils as contemplated in Section 9 of the Act and ended with the implementation of final arrangements to be enacted by a competent legislative authority. This meant the introduction of the final model of local government which was envisaged as taking place in 1999. This phase was to be regulated in Part V of the Act and regard will also be given to the Constitution and the Agreement (Local Government Transition Act, 1993: Part V).

In terms of the provisions of Chapter 10 of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993) the municipal councils established after the elections to be held on 1 November 1995 or afterwards (KwaZulu-Natal on 26 June 1996 and in the Western Cape on 2 May 1996) would be metropolitan councils, urban councils (known as city or town councils) and rural area councils. In every metropolitan area there would be an overarching metropolitan council to perform specific functions for the whole area and a number of councils for the substructures of the metropolitan area.

- (c) The third phase was the final phase, which would be governed by the provisions of the final Constitution. There is no reference to this phase in the Act (Cloete, 1995: 6).

The Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), and the Local Government Transition Act, 1993 (Act 209 of 1993), have formally activated the restructuring of local government in South Africa, so that the country can embark on the final democratized dispensation for local government.

#### **4.6. CONCLUSION**

Local authorities became essential institutions long before the Union of South Africa was established on 31 May 1910. From that date, a variety of local



government systems were established in the four provinces which acted on their own albeit under the provisions of Acts passed by Parliament. It was at local government level that the apartheid value system manifested itself most forcefully. This was where laws separated racial communities in every sphere of life and where whites enjoyed privileges at the expense of other racial communities. It is hence not surprising that the first signs of apartheid being untenable as a political value system manifested at local government level. During the early eighties, social and economic pressure resulted in the breakdown of spatial ordering of different racial groups. It then became clear that the apartheid objectives of racially pure families and communities were not viable.

The implementation of the Regional Services Councils Act, 1985 (No. 109 of 1985), changed local government in South Africa. The Regional Services Council Act (Act 109 of 1985) provided for Black local authorities to participate in Regional Services Councils by means of the establishment of a regional services council for each region. These were to be established by the provincial administrator after consultation with the Minister of Constitutional Development and Planning and the Minister of Finance and with the concurrence of the relevant members of the Ministers' Councils of the three Houses of Parliament. A Regional Services Council had no authority over the municipal councils situated in the region for which it had been established; in other words a Regional Services Council was a local authority established for the purpose of providing specified municipal services on a regional scale.

After 1985 anti-apartheid political resistance at local community levels in South Africa led to such an escalation of conflict that government was obliged to declare a state of emergency to restore law and order. The intensity of the conflict at local government level and the virtual deadlock that resulted contributed substantially to the demise of apartheid. Toward 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.





On 22 March 1993 the Local Government Negotiation Forum was established as a bilateral forum between a statutory delegation consisting of representatives of the central, provincial and organized local government on the one hand and South African National Civic Organization (the non-statutory delegation) on the other hand. The terms of reference of the Local Government Negotiation Forum were to try to compile and analyze the necessary data and, in close co-operation with and within the framework of the national negotiating process, to seek agreement between the two delegations on the procedure for and substance of the restructuring of local government. The Local Government Negotiation Forum eventually came up with the model for local government restructuring, namely the Local Government Transition Act, 1993 (Act 209 of 1993).

In terms of the political agreements incorporated in the Local Government Transition Act, 1993 (Act 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 Act (2 February 1994) to the commencement of the interim phase, on the first day after the elections which were held on 1 November 1995 or afterwards (KwaZulu-Natal on 26 June 1996 and in the Western Cape in May 1996) for transitional councils. This phase was to end with the implementation of the final model of local government. The following chapter will evaluate the restructuring of local government in the pre-interim – and interim phase, by evaluating the legislation promulgated during this phase.