

CHAPTER 3

EXTERNAL ENVIRONMENTAL INFLUENCES

3.1 INTRODUCTION

The general introduction to the study and the broad overview of the demarcated research area is followed by the analysis of the environmental influences. The influence of the external environment on the development of a model for institutional capacity creation and the empowerment of designated local government employees will be described in this chapter. The proposed model will be influenced by the external environment and will therefore have to be flexible to adapt to this dynamic and fast changing external environment.

The purpose of this chapter is to list, analyse and take cognisance of the external environmental influences. The introductory paragraphs of this chapter are used to provide a broad overview and a framework of the chapter.

3.2 INTERNATIONAL INFLUENCES

The influence of the international environment as part of the external environment is described with a special focus on relevant international institutions that influence human resource policy. Human resource practitioners, political office bearers and leading professional officials should ensure that accountable human resources practices and policies are implemented in the local government sector. These policies should be in line with international norms, standards, agreements and conventions. The

Republic of South Africa (hereafter South Africa) according to Mohr and Fourie (2000: 81-82) is part or signatory of a number of relevant development orientated international institutions and agreements. These institutions or agreements are primarily responsible for the enhancement of world peace, economical development, the eradication of hunger, unemployment, the advancement of human rights and the empowerment of the previously disadvantaged sectors of the global society. The following institutions can be cited as examples:

- International Monetary Fund (IMF) (South Africa was one of 40 original members);
- World Bank (WB) (South Africa was a founder member);
- World Trade Organisation (WTO);
- South African Development Community (SADC);
- United Nations (UN) (Section 55-56 of the United Nations Bill of Human Rights categorically states that participants and signatories worldwide must respect, protect and advance human rights) (one of the key objectives of this thesis);
- European Union (EU), (established in 1950, consisting of 15 members, with another 12 negotiating to join. Since 1994, the EU was the Country's largest donor, providing about R 800 million each year in funding human resources and other development projects);
- Human Rights Watch (HRW);
- Amnesty International (AI);
- Organisation for Economic Co-operation and Development (OECD);
- General Agreement on Tariffs and Trade (GATT); and
- Southern Africa Customs Union (SACU).

Only the International Labour Organisation (ILO) conventions (Swanepoel, 1998: 494) will be analysed as part of the external influences, as it is particularly relevant to the research and influence of the South African legislation concerning labour matters.

3.2.1 INTERNATIONAL LABOUR ORGANISATION CONVENTIONS

The re-admission of South Africa to the international arena after the first democratic election in 1994, *inter alia*, led to the re-admittance of South Africa - after 30 years of isolation - to the International Labour Organisation (ILO). The ILO took a resolution, immediately after South Africa's re-admission, to implement an intensive technical policy programme for the country. The focus was on **human capacity building and the empowerment of the historically disadvantaged** (emphasis added). This resolution read in conjunction with the *Constitution, 1996* (Section 195(1)(h)), enhancing the above ILO resolution, is therefore of particular importance for the purposes of this research. It forms, together with similar stipulations in relevant labour relation statutes, the golden thread of this research. The former Minister of Labour, Mr. Tito Mboweni, issued a directive requiring four core ILO conventions (table 2 *infra*) to receive priority attention. These conventions formed the foundation of legislation that was placed on the statute books of South Africa, and therefore influence human resource policy. These conventions are listed in Table 2 below. The relevant sections of the South African acts that flowed from the particular convention are also listed.

Table 2: Examples of Core ILO Conventions in RSA Legislation

<i>Convention</i>	<i>Comparative Act</i>
(i) Freedom of Association	Chapter 1: <i>Labour Relations Act, 1995</i> (Act No 66 of 1995);
(ii) Collective Bargaining	Chapter 3: <i>Labour Relations Act, 1995</i> (Act No 66 of 1995);
(iii) Union Rights	Chapter 4: <i>Labour Relations Act, 1995</i> (Act No 66 of 1995); and
(iv) Pregnancy Leave	Section 25, Section 26, Section 87, Section 186 and Section 187: <i>Basic Conditions of Employment Act, 1997</i> (Act No. 75 of 1997).

Other conventions with particular relevance to this research taken up in South African legislation are listed in Table 3 below.

Table 3: Examples of ILO Conventions taken up in RSA Legislation

<i>Convention</i>	<i>Description</i>
(i) Convention 100	Equal pay for equal work;
(ii) Convention 156	No discrimination on grounds of family responsibility;
(iii) Convention 111	Equal dignity amongst all persons and no discrimination;
(iv) Convention 111	Equal opportunities and affirmative action; and
(v) Convention 111	Equality between male and female.

South Africa as founder member of the ILO and later as a readmitted signatory of the ILO, will have to ensure that resolutions, agreements and conventions of the ILO and its goals are enshrined in legislation, policies and practices (Swanepoel, 1998: 494). The proposed model for institutional capacity creation and the empowerment of designated officials employed in local government will thus have the ILO guidelines as a fundamental cornerstone and point of departure. This places special focus on international influences, specifically the influence of the ILO on South African legislation and thus on labour policies.

• *Republic of South Africa Act, 1961 (Act No. 32 of 1961);*

3.3 NATIONAL INFLUENCES

• *Constitution of the Republic of South Africa Act, 1993 (Act No. 110 of 1993);*

• *Constitution of the Republic of South Africa Act, 1996 (Act No. 200 of 1996);*

An analysis of the national environmental influences follows. Specific attention is paid to the constitutional- and statutory environmental influences.

1996).

3.3.1 CONSTITUTIONAL ENVIRONMENT

Each of these constitutions reflected the government's views on the role of 'the

In South Africa the *Constitution, 1996* is the supreme law of the country (Section 2). No piece of legislation, policy, practice or conduct may be in conflict with the statutory prescriptions of the Constitution. It is therefore relevant to analyse the constitutional provisions. A historic introduction will be provided as the present Constitution is the result of political and other developments that have taken place over centuries. The effects of the new constitutional dispensation on local government will be analysed, particularly the constitutional guidelines and principles with a specific bearing on co-operative government and intergovernmental relations. Reference will also be made of non-discriminatory measures enshrined in the *Constitution, 1996* and of similar directives of non-discrimination in the *Federal Republic of*

Germany Constitution, 1949 as examples of efforts in other countries to eradicate discrimination in employment policies and practices.

(a) Historic development

South Africa had five constitutions between 1910 and 1996 (a period of 86 years). These are:

- The *South Africa Act, 1909* which led to the formation of the Union of South Africa;
- *Republic of South Africa Act, 1961* (Act No. 32 of 1961);
- *Republic of South Africa's Constitution Act, 1983* (Act No. 110 of 1983);
- *Constitution of the Republic of South Africa Act, 1993* (Act No. 200 of 1993); and
- *Constitution of the Republic of South Africa Act, 1996* (Act No. 108 of 1996).

Each of these constitutions reflected the government's views on the role of the state and the framework within which policies are to be formed. Therefore the present *Constitution, 1996* serves as the framework for the labour policies in general and for the requirements local government have to meet in this regard.

(b) Constitutional provisions for local government

The *Constitution, 1996* recognises local government as a distinct sphere of government with executive and legislative authority to be exercised within the scope of national and provincial legislation (Section 151). The *Constitution, 1996* grants local authorities the right to govern their own affairs with

minimum interference from national and provincial government (Section 151). The *Constitution, 1996* confirms the autonomy of the respective municipalities (Section 156). The Act further promotes the establishment of municipal areas to cover the total area of South Africa, by providing for different categories of municipalities.

(c) **The Constitution as a catalyst for change**

Changes that take place in the constitutional environment are reflected in the constitution of a country. The earlier constitution of the Republic of South Africa, namely *Republic of South Africa's Constitution Act, 1983* (Act No. 110 of 1983) for example - had a racially based foundation for service delivery, labour deployment and the procurement of labour. Specific statutory prescriptions enforced a policy of segregation. The *Constitution, 1996* and the statutes analysed in this thesis, however, strive to bring about a dispensation that differs radically from the one described above. This is due to large-scale transformation that took place after the first democratic national elections held on April 27-28, 1994. The *Constitution, 1996* makes provision for a non-racial, integrated Republic of South Africa and makes provision for the fundamental rights of all individuals in society. This implies that every person in the community has the right to equal treatment (Section 1). This fact alone has a major impact on human resource management and personnel practices.

(d) **The new constitutional dispensation for local government**

Local government is a creation of statute (*Constitution, 1996* Section 151-164) and should therefore adhere to the Constitution. The *Constitution, 1996*

read in conjunction with the *White Paper on Local Government, 1998* facilitates the total restructuring of local government and makes provision for a system of developmental local government (Section 153). Constitutional provisions for the development orientated powers and functions delegated to local government are made. A municipality must administer its area of jurisdiction to give priority to the basic needs of the community, and to promote the social and economic development of the community (Section 153 (a)).

(e) **Constitutional provisions for human resource management**

The constitutional provisions and statutes created imply that the management of human resources and the formulation of related policies and management practices must be transformed. It makes provision for a system of total re-engineering and remodelling of human resource practices in all spheres of government.

The constitutional requirements concerning human resources in local government in particular, include *inter alia*:

- employment must be open to all South Africans (Section 3 (2) (a));
- equality between race groups, male and female and people with disabilities must be promoted (Section 9);
- everyone has inherent dignity and the right to have their dignity respected and protected (Section 10);
- everyone has the right to freedom of association (Section 18);
- everyone has the right to fair labour practices (Section 23 (1));
- everyone has the right to adult basic education (Section 29 (1) (a));
- everyone has the right to administrative action that is lawful, reasonable and procedurally fair (Section 33 (1));

- a municipality must participate in national and provincial development programmes (Section 153 (b));
- good human resource management and career-development practices, to maximise human potential, must be cultivated (Section 195 (1) (h));
- public administration must be development oriented (Section 195 (1) (c));
- people's needs must be responded to (Section 195 (1) (e)); and
- public administration must be broadly representative of the South African people, with the employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation (Section 195 (1) (i)).

(f) Non-discriminatory constitutional provisions

The *Constitution, 1996* adopted in Section 9 (3) the International Labour Organisation's directives on discrimination (par. 3.2 *supra*). These non-discriminatory constitutional provisions have to be honoured by local government as well.

(g) Universal application of non-discriminatory provisions

Although this study does not endeavour to be comparative, limited references to other countries are made to substantiate statements. In this particular case, reference is made to Germany.

The non-discriminatory provisions (par. 3.2 *supra*) are enshrined in many constitutions all over the world. An example that could be cited is The Basic Law of the Federal Republic of Germany, 1949 (the Constitution of Germany) which provides a constitutional framework for a new democratic

system that, as in South Africa, directs the statutory, institutional, administrative and political systems (Fallon, 1998: 17). (Since October 3, 1990 the *Basic Law, 1949* has been valid for the whole nation of the United Federal Republic of Germany).

The *Basic Law, 1949* enforces the general principle that:

...all people are equal before the law by providing that no one shall be prejudiced or favoured because of their sex, birth, race, language, national or social origin, faith, religion or political opinions, nor may anyone be discriminated against on account of their disability. It expressly states that: ... men and women have equal rights and that all Germans are equally eligible for any public office.

Pride of place in the constitution is also given to a *Charter of Basic Rights* (applicable to German citizens and foreigners) which obliges the state to respect and protect the dignity of man. It furthermore ensures comprehensive protection against unconstitutional and unlawful interference by the state and all of its agencies. Basic rights are directly enforceable laws. The basic rights and freedoms as well the commitment to protect the dignity of man in the constitution of the Federal Republic of Germany are provisions of the *Basic Law, 1949* that may not be changed. The non-discriminatory constitutional provisions in the Federal Republic of Germany quoted above, provides an indication that such provisions could be implemented. It could, therefore, be argued that the following provision could indeed be implemented in South Africa.

(h) Constitutional provisions regarding non-discriminatory labour practices

The *Constitution, 1996, inter alia*, provides for the following measures to enforce non-discriminatory labour practices:

- employment must be accessible to all South African citizens which meet the criteria and requirements (Section 3 (2) (a));
- no unfair discrimination may take place (Section 9 (3));
- qualifications, level of training (also prior learning), worthiness, competency and capability of persons who qualify for a specific appointment, promotion or transfer must be taken into account in the appointment process or the filling of a vacancy (Section 195 1(i));
- appointments must be made in such a fashion that the composition of the workforce is representative and ultimately reflect the society that is served (Section 195 (1) (i));
- human resource procurement must be conducted in a fair manner with equality between men, women and the respective races in support of effective public administration (Section 9);
- human resource evaluation must be objective, unbiased, career-orientated, non-discriminatory and culture free according to fair and just management principles (Section 195 (1) (h));
- administrative justice must take place (Section 195 (1) (f));
- fundamental rights and the right of fair labour practices must be respected (Section 7 and S 23 (1)); and
- the actions and behaviour of any professional official or political office bearer may not result in improper prejudice or benefit and such a person

may not be guilty of incompetent, impolite or dishonest conduct or inexcusable delays (Section 195 (1) (a)).

It could be argued that the *Constitution, 1996* fully recognises the international requirements for non-discriminatory labour practices. These requirements have to be adhered to by local government as well.

(i) Constitutional provision for further legislation

The *Constitution, 1996* provides for other enabling legislation to be made by legislators. The constitutional provision for local government and employees attached to such institutions, described above, are therefore supported and extended by specific legislation that flow from constitutional provisions. Relevant laws flowing from the *Constitution, 1996* are described below.

3.3.2 STATUTORY PROVISIONS

The statutory environment as an extension of the constitutional environment is influenced by the constitution of the particular state. It implies that legislation, policy, human-resource and career-development practices that previously discriminated because of the provisions of the earlier constitutions of the Republic of South Africa, such as the *Republic of South Africa's Constitution Act, 1983* (Act No. 110 of 1983), had to be altered and adapted. The former dispensation was changed to coincide with the spirit of the new constitutional framework as provided for in the new *Constitution, 1996*. The *Constitution, 1996* makes provision for a non-racial (Section 1), integrated Republic of South Africa and makes provision for the fundamental rights of all individuals in society (Section 7). Societal values such as non-

discrimination are therefore contained in legislation such as Section 5 (1) of the *Labour Relations Act, 1995* (Act No. 66 of 1995) read in conjunction with Section 9 (3) of the *Constitution, 1996*. The *Constitution, 1996* therefore provides a point of departure as well as a structure for the development of a model and for supporting policy to obtain institutional capacity and empowerment of designated employees of local government for example the Greater Pretoria Metropolitan Council.

(a) Provisions for the advancement of designated employees

The *Labour Relations Act, 1995* (Act No. 66 of 1995) within the broad parameters of the *Constitution, 1996* determines *inter alia*:

- no discrimination against an employee (Section 5 (1));
- protection of the rights of applicants (Section 5 (3)), part-time and temporary workers (which are included in the development of the proposed management model);
- participation must be optimised specifically concerning measures designed to protect and advance persons from the designated groups (Section 79 (d)) and (Section 86 (c));
- the interests of workers must be protected and promoted (Section 79 (a)); and
- workers must be consulted on suggestions regarding training (Section 84 (1)).

The *Labour Relations Act, 1995* (Act No. 66 of 1995) - in accordance with the *Constitution, 1996* par. 3.3.1(g) - furthermore enforces the International Labour Organisation's conventions on the prevention of discrimination in the

workplace (paragraph. 3.2 *supra*), and stipulates in Section 187 (1) that no employer may discriminate directly or indirectly against any employee, on the grounds listed, however, not limited to these grounds.

(ii) *Affirmative action, non-discrimination and equity*

Other countries have special legislation to enhance the protection and advancement of employees as set out above. The Federal Republic of Germany can be cited as an example. All workers (German nationals and foreigners) are protected by a *Bill of Human Rights* in the *Constitution, 1949* which prohibits discrimination. German nationals have freedom of choice and practice of an occupation or profession and protection from forced labour. In the years since the creation of the Federal Republic of Germany, a whole range of special labour laws have been enacted to provide the citizen with various financial benefits in the event of discrimination, sickness, accident, invalidism and unemployment, as well as after retirement. Labour legislation in the Federal Republic of Germany embraces a variety of laws and collective agreements. However, it is largely based on case law. It includes in particular the *Collective Wage Agreements Act*, the *Protection Against Dismissal Act* and the *Works Constitution Act* as well as the various laws on the labour courts.

• the implementation and enforcement of affirmative action measures;

(b) Provisions for equity

(i) Fundamental Role of the *Employment Equity Act, 1998* (Act No. 55 of 1998)

• the implementation of employment equity plans.

As stipulated in the introductory part of the thesis, the *Employment Equity Act, 1998* (Act No. 55 of 1998) and the *Skills Development Act, 1998* (Act No. 97 of 1998 - par. 3.3.2 (c) *infra*) play a fundamental part in improving

institutional capacity and the empowerment of designated employees in local government.

Chapter 2 of the *Employment Equity Act, 1998* (Act No. 55 of 1998) deals

(ii) Affirmative action, non-discrimination and equity Chapter 2, Section 5

of the *Employment Equity Act, 1998* stipulates that every employer must take

The *Employment Equity Act, 1998* regulates affirmative action and equity in the workplace. The Act highlights the fact that the constitutional provisions for affirmative action, non-discrimination and equity are key priorities for the national government. It is expected of local government as part of the so-called larger designated employers to play a substantial role in the empowerment of, *inter alia*, designated employees.

appointments and the appointment process;

(iii) Main objectives of the *Employment Equity Act, 1998* (Act No. 55 of 1998)

The *Employment Equity Act, 1998* (Act No. 55 of 1998) has the following main objectives:

- the advancement of equal opportunities and fair conduct;
- elimination of unfair discrimination;
- the implementation and enforcement of affirmative action measures;
- the optimisation of the representation of designated employees (it is Black people - Africans, Coloureds, and Indians - women and employees with disabilities) that have previously been disadvantaged, in all vocational groupings and on all levels of the institution; and
- the implementation of employment equity plans.

Chapter 2, Section 6(1) of the *Employment Equity Act, 1998* (Act No. 55 of 1998) stipulates that:

(iv) Operational requirements of the Act

Chapter 2 of the *Employment Equity Act, 1998* (Act No. 55 of 1998) deals primarily with the prohibition of unfair discrimination. Chapter 2, Section 5 of the *Employment Equity Act, 1998* stipulates that every employer must take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice. Chapter 1, Section 1 of the *Employment Equity Act, 1998* defines *employment policy or practice* to include, but not to be limited to:

- recruitment procedures, advertising and selection criteria;
- appointments and the appointment process;
- job classification and grading;
- remuneration, employment benefits and terms and conditions of employment;
- job assignments;
- the working environment and facilities;
- training and development;
- performance evaluation systems;
- promotion;
- transfer;
- demotion;
- disciplinary measures other than dismissal; and
- dismissal.

Chapter 2, Section 6(1) of the *Employment Equity Act, 1998* (Act No 55 of 1998) stipulates that:

no person may unfairly discriminate, directly or indirectly, against an employee.

Any employment policy or practice relevant to the aspects set out in the Act under the definition of “employment policy or practice” and any other relevant policy or practice in existence in the workplace, relevant to employees, shall be deemed to be included. It could be argued that the *Employment Equity Act, 1998* (Act No. 55 of 1998) fully recognises the international requirements for non-discriminatory labour practices. These have to be adhered to by local government as well.

Of particular importance for this thesis is to take note of what is considered to constitute affirmative action measures. Section 15(1) of the *Employment Equity Act, 1998* (Act No. 55 of 1998) stipulates that affirmative action measures are measures designed to ensure that suitably qualified people from designated groups have equal employment opportunities and are equitably represented in all occupational categories and levels in the workforce of a designated employer. This indicates that local government should develop an enabling framework and policies to ensure that the appointment and advancement of suitably qualified designated employees take place on all levels.

Section 15(2) of the *Employment Equity Act, 1998* (Act No. 55 of 1998) stipulates that affirmative action measures implemented by a designated employer must include:

- measures to identify and eliminate employment barriers, including unfair discrimination, which adversely affect people from designated groups;

- measures designed to further diversity in the workplace based on equal dignity and respect of all people;
- reasonable accommodation for people from designated groups in order to ensure that they enjoy equal opportunities and are equitably represented in the workforce of a designated employer;
- preferential treatment and numerical goals, but excluding quotas;
- measures to ensure the equitable representation of suitably qualified people from designated groups in all occupational categories and levels in the workforce;
- to retain and develop people from designated groups; and
- to implement appropriate training measures, including measures in terms of an act of Parliament providing for skills development.

(c) Provisions for equality

Apart from the more general affirmative action measures cited above, the *Employment Equity Act, 1998* (Act No. 55 of 1998) makes provision for more specific measures of particular importance for the study. These specific affirmative measures are:

- appointment of members from designated groups;
- increasing the pool of available candidates;
- training and development of people from designated groups;
- promotion of people from designated groups;
- retention of people from designated groups;
- reasonable accommodation for people from designated groups;
- steps to ensure that members of designated groups are appointed in such positions that they are able to meaningfully participate in the corporate decision-making processes;

- steps to ensure that the corporate culture of the past is transformed in a way that affirms diversity in the workplace and harnesses the potential of all employees; and
- any other measures arising out of the consultative process.

The employer is under no obligation to introduce an absolute barrier relating to people who are not from designated groups, for example having a policy of not considering white males at all for promotion or excluding them from applying for vacant positions. This will play a fundamental part in obtaining institutional capacity as white male employees, for purposes of this thesis, will play an important role in the empowerment of designated employees.

(c) Provisions for equality

Provisions for equality, the protection and the advancement of designated employees are made in the *Promotion of Equality and Prevention of Unfair Discrimination Act, 2000* (Act No. 4 of 2000).

(i) Constitutional provision for equality legislation

Section 9 of the *Constitution, 1996* provides for the enactment of national legislation to prevent or prohibit unfair discrimination and to promote the achievement of equality. It is against this backdrop that the Act came into being.

- the engagement in any activity which is intended to promote, or has the effect of, maintaining exclusive control by a specific race group (Section 7(c));
- the provision of inferior services to any racial group compared to those of another racial group (Section 7(d));
- the denial of access to opportunities (Section 7(e));

(ii) Purpose of the act

It is necessary to consider the purpose of the Act and its impact on the development of a model for capacity creation and the empowerment of designated employees. The main purpose of the *Promotion of Equality and Prevention of Unfair Discrimination Act, 2000* (Act No. 4 of 2000) as set out in Section 2 read with the preamble of the said Act is:

- to prevent and prohibit unfair discrimination;
- to promote equality;
- to prevent unfair discrimination;
- to provide measures for the eradication of unfair discrimination; and
- to provide for procedures to determine when discrimination is unfair.

(iii) Prohibition of unfair discrimination

The Act specifically prohibits unfair discrimination on ground of race, gender and disability, including:

- the engagement in any activity which is intended to promote, or has the effect of promoting exclusively based on race (Section 7(b));
- the exclusion of persons of a specific race group under any rule or practice that appears to be legitimate but which is actually aimed at maintaining exclusive control by a specific race group (Section 7(c));
- the provision of inferior services to any racial group compared to those of another racial group (Section 7(d));
- the denial of access to opportunities (Section 7(e));

- prohibition based on gender (Section 8); and
 - failing to eliminate obstacles that unfairly limit or restrict persons with disabilities from enjoying equal opportunities or failing to take steps to reasonably accommodate the needs of such persons (Section 9).
- (iv) Fair discrimination for purposes of affirmative action

The Act (Section 14) stipulates that it is not unfair discrimination to take measures designed to protect or advance persons or categories of persons disadvantaged by unfair discrimination or the members of such groups or categories of persons.

The cited sections of the act leads to the conclusion that employers such as municipalities should introduce measures to prevent unfair discrimination and it provides an enabling framework to take the steps required to protect and advance designated employees (one of the objectives of the proposed management model).

(d) Education and training provisions

Legislation was promulgated to make provision for the education and training related needs of designated employees in the *Skills Development Act, 1998* (Act No. 97 of 1998).

(i) Purpose of the *Skills Development Act, 1998* (Act No. 97 of 1998)

The purposes of the Act (Section 2) are, *inter alia*, to:

- develop the skills of the workforce;

- improve the quality of life of workers;
- improve productivity in the workplace;
- increase the levels of investment in education and training;
- use the workplace as an active learning environment;
- provide employees with the opportunities to acquire new skills;
- provide opportunities to gain work experience;
- employ persons who find it difficult to be employed;
- encourage workers to participate in learnerships and other training programmes;
- improve the employment prospects of persons previously disadvantaged by unfair discrimination and to redress those disadvantages through training and education; and
- ensure the quality of education and training in and for the workplace.

It could be argued that the provisions contained in the *Skills Development Act, 1998* (Act No. 97 of 1998) provide an enabling environment that could be utilised by employers such as municipalities to empower designated employees. Opportunities are created within this environment for designated employees to improve their quality of life, prospects for work and labour mobility. Designated employees could, through the implementation of this legislation, actively participate in learnerships and other training programmes. This could improve productivity in the workplace and result in better service delivery.

The *Skills Development Act, 1998* (Act No. 97 of 1998), furthermore makes provision for learnerships. Learnerships within the broad parameters of the said Act are formal learning programmes that link theoretical learning and structured workplace experience to prepare employees and the unemployed

(ii) Statutory provisions

The *Skills Development Act, 1998* (Act No. 97 of 1998), *inter alia*, determines:

- all the training that will be provided will have to comply with Sector Skills Programmes (SSP);
- institutions will have to ensure that all training programmes are aligned to Outcomes Based Education and Training (OBET);
- learners must be enabled to become competent against national standards;
- all training programmes must:
 - be occupationally based;
 - be credit bearing on the National Qualifications Framework (NQF);
 - and
 - be delivered by an accredited education and training provider and comply with the prescribed requirements.

This indicates that the training and development endeavours of local government, particularly the advancement of designated employees should comply with the overarching, occupational and accreditation requirements of the *Skills Development Act, 1998* (Act No. 97 of 1998).

(iii) Learnerships

The *Skills Development Act, 1998* (Act No. 97 of 1998), furthermore makes provision for learnerships. Learnerships within the broad parameters of the said Act are formal learning programmes that link theoretical learning and structured workplace experience to prepare employees and the unemployed

with the relevant skills and knowledge required to perform competently in an occupation for which there is a clear demand. The learnership consists of a structured learning component. The learnership includes practical work experience of a specified nature and duration. The employer has the following statutory obligations:

- employ the learner for a period specified in a learnership agreement;
- provide the learner with specified practical work experience; and
- release the learner to attend the education and training specified in the agreement.

The learnership provision indicates that employers such as municipalities can empower designated employees through the provision of education and training and practical work experience while the said employees are working for the employer. This provides an opportunity for structured work experience and remuneration for designated employees. The employers, such as municipalities, have the following benefits when entering into formal learnership agreements:

- it facilitates the use of the services of the learner;
- it creates an effective pre-employment screening device as learners are evaluated in the working environment;
- it allows institutions to align new skills to precise institutional specifications;
- it leads to reduce recruitment costs; and
- it contributes towards social responsibility of the institution.

(e) Funding of education and training

The *Skills Development Levies Act, 1999* (Act No. 9 of 1999) has an important influence on local government institutions. The reason being the financial resources that will become available for education and training through the implementation of the Act, the increase of labour productivity and the redress of skills shortages.

(i) Aim of the Act

The main aim of the *Skills Development Levies Act, 1999* (Act No. 9 of 1999), is to obtain and redistribute sufficient funds for relevant skills training. It focuses on the improvement of productivity in the workplace and the advancement of the competitiveness of employers. The Act was promulgated, *inter alia*, to redress the critical skills shortages within local government and other sectors. The Act makes provision for pay back incentives to encourage employers to participate and in so doing capacitate and empower, *inter alia*, designated employees. Measures are introduced in the Act to assign funds to be utilised as operational costs by education and training authorities. It furthermore provides legislation for skills development and the empowerment of designated employees. The deduction that could be made from the above, is that the *Skills Development Levies Act, 1999* (Act No. 9 of 1999) read with the *Skills Development Act, 1998* (Act No. 97 of 1998), are skills development legislation that were introduced in an attempt to improve and develop the skills of South Africa's mainly unskilled labour force. It furthermore is an attempt to develop and promote the quality and advancement of education and training in South Africa.

(ii) Obligation to pay levy

Designated employers become liable according to the *Skills Development Levies Act, 1999* (Act No. 9 of 1999) to pay a skills development levy to the Sector Education and Training Authority (SETA) co-ordinating the relevant sector. Local government is designated to the Local Government, Water and Related Functions Sectoral Education and Training Authority (SETA).

(iii) Amount of the Levy

The *Skills Development Levy Act, 1999* (Act No. 9 of 1999), determines that the levy payable from April 1, 2000 will be 0,5 % of the institution's wage bill. This will be doubled to 1 % on April 1, 2001.

(iv) Contributions towards grants and learnerships

During the first year (April 1, 2000 - March 31, 2001) 20 % of the contributed levy of the employer's levy contribution will go to the National Skills Fund.

The levy will, *inter alia*, be used for the:

- development of learnerships for the sector; and
- grants to training providers and workers.

(v) Claim back of percentages of the levy

According to Strong (1999: 5), employers who meet the statutory requirements can claim back a relative large percentage of the said levy. Fifty percent will be available as grants for employers that could be claimed back.

The *Skills Development Levy Act, 1999* (Act No. 9 of 1999) analysed above makes provision for an additional annual compulsory training levy on the total salary budget. This levy is in addition to the costs that local government institutions pay for their own internal training incentives. The *Skills Development Levy Act, 1999* (Act No. 9 of 1999) makes special provision for and targets the unemployed, new entrants to the labour market and designated employees to be advanced and prepared for the labour market. This is achieved through a system of career planning, career management, career development, mentor-/learnership programmes and affirmative action-, skills- and competency training. The secondary aim of the programme is to promote productivity. It is focused specifically on the substantive number of unemployed individuals of the population in the labour-active age group and designated employees.

The statutory programmes for designated employees will be costly and time consuming and will only produce sufficient human resources in the long term. If the *Skills Development Levy Act, 1999* (Act No. 9 of 1999) is scrutinised, it is clear that a large additional financial burden of between 0,5% and 1% of the salary bill is placed on municipalities. In the case of the Centurion Metropolitan Local Council this levy amounts to R1 460 913 from April 1, 2001, i.e. 1% of the total human resource budget (Van Wyk, 2000). The R1 460 913 that Centurion Metropolitan Local Council has to pay towards the

compulsory Skills Development Levy could, for example, be used for the filling of positions that are required to render services to an enlarged area of jurisdiction. Twenty-three (23) additional Learner Emergency Officer positions (i.e. schooled positions) could be created on the permanent staff establishment, filled and financed for one financial year. (Learner Emergency Officers are remunerated on a job level 14. The qualifications and work experience required for these positions are standard ten (10) plus two years experience. Incumbents of the said positions qualify for a basic salary of R38 460 and the successful applicants receive the following benefits apart from the basic salary:

- housing;
- pension; and
- medical aid.

The deduction that could be made from the above is that the additional levy would result in a substantial amount that the Centurion Metropolitan Local Council would have to budget for on an annual basis. It was indicated earlier in the dissertation that municipalities such as the Centurion Metropolitan Local Council have limited financial resources to satisfy the increasing needs of society.

Implementing this requirement of the *Skills Development Levy Act, 1999* (Act No. 9 of 1999) and other acts will be time consuming, labour- and capital intensive. However, a true constitutional democracy needs capacitated competent human resources, and this has to be weighed against the effect of the levy on the employers.

The following constructive criticism could be given:

- Compensating funds are not made available by national and provincial governments to implement the statutory stipulations and to deliver delegated functions such as empowerment and advancement of designated employees.
- No substantial effort concerning financial and human resources is made to assist local government to adhere to the increasing development demands and realities that modern local governments are faced with.
- Statutory progressive programmes enforced by legislation do not, in the short term, provide local government with sufficient capacitated and competent human resources that meet affirmative action, equity and other requirements.
- Implementation of special programmes to advance the designated groups are implemented too hastily, which may result in officials who should still be on a learning curve being appointed in positions for which they are not ready for. This results in a loss of productivity and could detrimentally affect service delivery.
- Experienced qualified officials are forced out of institutions before replacements are ready.
- Affirmed public sector officials who are competent, multi-skilled and experienced are always in demand and the so-called *public auctions* for employees result in a relative high staff turnover which weakens the output of institutions.

In obtaining institutional capacity and the empowerment of designated local government employees, cognisance should be taken of these realities and shortcomings and alternatives should be proposed to avoid fruitless exercises.

3.4 REGIONAL INFLUENCES

Agreements by the South African Local Government Bargaining Council (SALGBC) and the Greater Pretoria Bargaining Council Division (GPBCD) on affirmative action, employment equity and the advancement of designated employees, as well as the relevant policies, will have to be taken into consideration. This due to the fact that it has a direct influence on obtaining institutional capacity creation and the empowerment of designated local government employees. Standardised policies also exist in the Greater Pretoria Metropolitan Area which are implemented by the respective metropolitan local councils. The influence thereof should be explored in detail when the management model is implemented.

3.5 CONCLUSION

Due to the changes that took place in the constitutional environment enshrined in the *Constitution, 1996*, specific emphasis is placed on the advancement and protection of the fundamental rights of people. This entails, *inter alia*, the right to equal treatment and the eradication of discrimination against race and culture groups. Management models, personnel policy and procedures should therefore be analysed to ensure that it is in line with the constitutional provisions.

The statutory environment that flows out of the constitutional environment has a major influence on the development of a model for the creation of institutional capacity and the empowerment of designated local government employees. The statutory environment impacts on employment practices such as industrial relations, collective agreements and metropolitan council labour

policies. The provisions and stipulations of these agreements and policies will have to be analysed and will have to be considered to empower designated local government employees. The continuously changing environment brings escalating demands to local government. Creative and innovative solutions for the advancement and empowerment of designated employees will have to be found.

In this chapter the exposition of a model for the creation of institutional capacity and the empowerment of designated local government employees is described. It will be indicated that broad affirmative action measures (such as education and job growth) should be introduced in tandem with narrow affirmative action measures (such as the creation of equality within the specific local government institution). The capacity creation measures introduced include strategies to address and remove the barriers that resulted in under-representation of designated employees in the organisational structure. It has as a specific focus the accelerated advancement (appointment, promotion, retention and progress) of designated employees. The proposed management model to facilitate change is based on, and serves as a culmination of the findings from the literature review, data collection, data analysis, data integration and the results of the research.

4.2 MANAGEMENT MODEL

A management model is a simplified abstract of reality with the purpose to describe, explain and predict a given situation (Harrison, 1981: 495). It can also be described as a simplified presentation of selected aspects of a problem and has the purpose to propose particular steps (methods) according to which specific problems could be addressed (Dunn, 1994: 152). Models propose possibilities to solve problems in a given situation (Quade, 1989: 137). A