

Historical overview of specific local government transformatory developments in South Africa

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Samevatting

In hierdie artikel word die evolusie van plaaslike regering in Suid-Afrika sedert 1652 oorkoepelend beskou met 'n spesifieke klem op veral plaaslike bestuur vanaf 1994 Suid-Afrika bestuur het, het dit spoedig nodig geblyk in die Kaapprovinsie. Nou 'n nuwe politieke bestel dat die aard en omvang van die transformasie van plaaslike regering in terme van die verskillende bevolkingsgroepe en politieke ideologieë van die vorige politieke bestelle ondersoek en beskryf behoort te word.

'n Aantal wetgewende voorskrifte aangaande transformasie in die land se plaaslike regeringstrukture word in die artikel aangespreek. Dit word onder andere aangevoer dat die grondwetlike en ander wetgewende behoeftes en voorskrifte asook die openbare diensleweringssagterstande die skuif na ontwikkelende plaaslike regering met uitgebreide openbare raadpleging en deelname bewerkstellig het.. Die historiese plek en rol van die vorige Swart plaaslike owerhede en die Indiër en Kleurling Bestuurskomitees onder die vorige Nasionale Party regering word ook onder die loep geneem. Laastens word daar 'n opsomming verskaf aangaande die pre-interim, interim (1993 tot 1998) en finale fase (2000) van die herstrukturering van die Suid-Afrikaanse plaaslike regeringsfeer.

Keywords:

Local government transformation; Environmental acts; Evolution of local governance in South Africa.

Introduction

The development of local government in South Africa largely owes its origins to a number of factors. Such origins are found in the colonial history of the country, mainly from the Dutch and British influences. Both these countries (Holland and England) left their mark on the local government system in South Africa. The Dutch occupied the Cape of Good Hope from 1652 to 1795 and later again from 1803 to 1806.¹ The British influence took place during their period of occupation between 1795 and 1803 and again from 1806 to the time that South Africa became a Union in 1910.²

Cloete³ stated that local authorities emerged gradually at the Cape of Good Hope after Jan van Riebeeck, representing the Dutch East India Company, arrived in Table Bay by ship on 6 April 1652. The urban area known as Cape Town developed gradually from a hamlet into a town and eventually into a city. It became necessary to appoint magistrates (landdrosts) and councillors (heemraden) to also undertake the local government and administration of the districts outside the Cape peninsula.⁴

The foundations for a system of local government with an elected council, comparable with present-day city and town councils, were laid when the Municipal Ordinance for the Cape Colony took effect on 15 August 1836.⁵ The Landdrost (magistrate) system was introduced by the Dutch colonial government and the system consisted of local government groups, namely the College of Landdrost and the Heemraden or local court members, with Stellenbosch being the first seat of local government.⁶ This first college of Landdrost and Heemraden at Stellenbosch comprised the Landdrost, who acted as the chairman, and the four Heemraden who did not receive a salary.⁷ The college of Landdrost and Heemraden of Stellenbosch was the first South African local authority compared to present-day South African local

1 "Cape of Good Hope", November 2007 (Available at http://en.wikipedia.org/wiki/Cape_of_Good_Hope.html, as accessed on 23 December 2008), pp. 1-5.

2 A Venter, *South African Government and Politics* (Johannesburg, Southern Book Publishers, 1989), p. 26.

3 JJN Cloete, *South African Municipal Government and Administration* (Pretoria, JL Van Schaik Publishers, 1997), p. 9.

4 JJN Cloete, *Central, Regional and Local Government Institutions of South Africa* (Pretoria, JL Van Schaik Publishers, 1988), p. 238.

5 JJN Cloete, *Central, Regional...*, p. 238.

6 JJN Cloete, *Munisipale Regering en Administrasie in Suid-Afrika* (Pretoria, JL Van Schaik Publishers, 1971), p. 13.

7 PK Botha, "Die Funksie van die Meervoudige Komiteestelsel in Munisipale Regering en Administrasie met spesifieke verwysing na die munisipaliteit van Port Elizabeth" (Magister in Publieke Administrasie, UPE, 1982), p. 13.

authorities.⁸

The main objective of this article is to review specific transformatory local government developments from 1652 to the present.

Background

South African cities and towns are relatively young in comparison with those of Asia, Europe and North Africa. Local authorities as they are known today emerged gradually at the Cape of Good Hope after Jan van Riebeeck arrived by sea on 6 April 1652.⁹ As the White community moved further inland more villages were established and for each a council of landdrost and heemraden was appointed. These councils of landdrost and heemraden continued to govern the villages in the Cape colony until they were abolished on 31 December 1827 by the British who then took over the governing of the Cape Colony from the Dutch in 1806.¹⁰

In 1836 the Cape Municipal Ordinance No. 9 of 1836 was passed. This Ordinance provided for a board of commissioners for the various towns and they were elected by the property owners. Only persons who paid property taxes could be elected as commissioners.¹¹ The tenure of office of the commissioners was for a period of three years and their functions were of a municipal nature, which included, *inter alia*, the control of basic services and administration of property taxes. Property rates were levied on an annual basis by public assembly. The Cape Municipal Ordinance provided a framework within which municipal regulations were drawn up, catering for the diverse needs of municipalities. It provided scope for the local inhabitants to use their initiative in terms of public participation. Moreover, it had far-reaching implications, which extended beyond the borders of the Cape Colony. For example, it formed the basic paradigm for the Natal Municipal Ordinance of 1847 and it was also adapted by the Orange Free State and Transvaal Boer Republics in 1856 and 1877 respectively, with minor modifications.¹²

8 JJN Cloete, *South African Municipal...*, edition 2, p. 10.

9 G van der Waldt (Ed), *Municipal man serving the people* (Pretoria, JL Van Schaik Publishers, 2007), p. 3.

10 JJN Cloete, *Towns and cities* (Pretoria, JL Van Schaik Publishers, 1993), pp. 13-14.

11 JJN Cloete, *Towns and cities*, p. 15.

12 N Ismail, S Bayat & I Meyer, *Local government management* (Halfway House, International Thomson Publishing (Southern Africa) (Pty) Ltd., 1997), p. 42.

Cloete¹³ shared the above view and stated that the effect of the above-mentioned ordinance was far-reaching and served as the basis for the legislation on municipal affairs for the former colonies of Natal, the Orange Free State and the Transvaal. Each of the four colonies which were united on 31 May 1910 to form the Union of South Africa had by that time developed their own distinctive system of local government. As municipal affairs became the responsibility of the provincial authorities from 1910, the distinctive characteristics of the four systems were retained and developed further.¹⁴ The four systems of local government enjoyed numerous characteristics as they were based on the Cape Colony's foundations. Popular participation through local councils with elected members and financial independence remained features of the municipal authorities developed in South Africa after 1836.¹⁵ However, the system of local government developed in the Cape Colony served as an example for the systems developed in the then provinces of Natal, the Orange Free State and the Transvaal.

When the Union of South Africa was established on 31 May 1910 the South Africa Act, 1909, prescribed that the provincial councils were responsible for municipal and other local authorities.¹⁶ It should be noted that this Act was an Act of the British Parliament as no South African Parliament existed at the time.¹⁷ The granting of republican status to South Africa was achieved in terms of the Republic of South Africa Constitution Act, 32 of 1961.¹⁸ This was a grant of the British Crown and the afore-mentioned Act was passed in the name of the Queen, the Senate and the House of Assembly of the Union of South Africa.¹⁹ The Act relating to the provinces was not repealed by Parliament, but retained as the Provincial Government Act, 32 of 1961, which provided that the provincial authorities would continue to regulate municipal government affairs.²⁰ At a later stage it however was decided that local government matters for the White, Indian and Coloured populations would be own affairs in terms of prescriptions contained in the Republic of South Africa Act 110 of 1983, which provided for a Tri-cameral system of

13 JJN Cloete, *South African municipal...*, edition 2, p. 11.

14 JJN Cloete, *South African municipal...*, edition 2, p. 11.

15 JJN Cloete, *Towns and cities*, p. 11.

16 RSA, *South Africa Act* (Pretoria, Government Printer, 1909).

17 D Marais, *South Africa: Constitutional development. A multi-disciplinary approach* (Johannesburg, Southern Book Publishers, 1993), p. 153.

18 RSA, *Republic of South Africa Constitution, Act 32* (Pretoria, Government Printer, 1961).

19 D Marais, *South Africa: Constitutional...*, p. 153.

20 RSA, *Provincial government, Act 32* (Pretoria, Government Printer, 1961).

government.²¹

A synopsis of local government and the policy of separate development under the former National Party government are discussed hereunder.

Local government and the policy of separate development

South African local government structures have generally been designed to reproduce the urban system in accordance with the policy objectives of the government of the day as can be seen from legislative prescriptions contained in, *inter alia*, the various constitutions that South Africa has had. Racial segregation, the influx control of Blacks in urban areas and disenfranchisement of certain racial groups characterised the history of local government during the apartheid era (1948 – 1993). Local government in South Africa became the mechanism through which cultural and racial groups were divided and kept separate. This is the reason why a radical change in local government structures was required on the demise of apartheid.²²

It was at the local government sphere that the apartheid value system manifested itself most visibly. This was where laws separated communities in terms of race and it was not surprising, then, that the first signs of apartheid being untenable as a political value system, manifested itself at this sphere of government. As a result of apartheid, urban settlements were skewed, with Blacks being relegated to the so-called ‘township’ residential areas, which were often located a far distance from towns and areas of work.²³

According to Ismail, Bayat and Meyer²⁴ apartheid local government had many distinct features, such as strict control of urbanisation on racial lines; a refusal to acknowledge the expanding urban population, partly caused by “illegal” Black migration; the racial segregation of settlements; racially divided local authorities; and racial disparities in access to services and housing. Policies perpetuated the differentiation of structures and systems according to race or population group. For example, “White” local authorities served the Whites, while management committees served the Coloureds and

21 RSA, *Republic of South Africa, Act 110* (Pretoria, Government Printer, 1983).

22 VG Hilliard, *Understanding contemporary local government* (Pretoria, JL Van Schaik, 1996), p. 1.

23 PS Reddy (Ed), *Readings in local government management and development: A South African perspective* (Kenwyn, Juta and Company Ltd, 1996), p. 53.

24 N Ismail, S Bayat & I Meyer, *Local government management*, p. 42.

Indians (local affairs committees served the Indians in Natal Province). Black local authorities served the Blacks. These apartheid policies significantly influenced the development patterns of local authorities throughout the country, for example, by providing municipal services on a differential basis to local communities.

An overview of the role of Black Local Authorities now follows.

Black local authorities

Separate development legislation classified communities into different racial groups and then devised separate structures of governance. The Black (Urban Areas) Act ²⁵ provided for segregated urban areas. Under this Act, Black advisory committees were appointed to advise the White local authorities responsible for administering townships. These advisory committees had no policymaking powers themselves. All decisions were made by the White local authorities, in conjunction with the then Department of Native Affairs, later renamed the Department of Co-operation and Development.

According to Reddy,²⁶ Blacks were not allowed to own property outside of the so-called homeland areas in terms of the Group Areas Act.²⁷ In the rest of South Africa, they were treated as temporary visitors; their presence in urban areas therefore required temporary living arrangements only. Blacks were not allowed to vote in these urban areas, because they were supposed to exercise their political rights in their homelands. The basic services provided to Black townships were also of a temporary, sub-standard nature. This means that urbanisation at that time was not properly acknowledged and managed, which explains the current problems surrounding urbanisation and poor infrastructure and service delivery in South Africa's formerly disadvantaged urban areas.

The presence of Blacks in urban areas was dependent on their contribution to the urban economy. Blacks, who had no formal employment in urban areas, were not allowed to stay in such areas. The homelands were generally poor and confronted with high unemployment. This forced economically

²⁵ RSA, *The Black (Urban areas), Act 21* (Pretoria, Government Printer, 1923).

²⁶ PS Reddy (ed), *Readings in local government...*, p. 54.

²⁷ RSA, *Group Areas, Act 41* (Pretoria, Government Printer, 1950).

active people to seek employment in urban areas, robbing the homelands of economically active inhabitants. Despite the oppression experienced by the urban Blacks living in the townships, many of them preferred to remain in urban areas, because living conditions were even worse in the homelands. The homeland economies were not growing, and no jobs were being created. The result was a steady influx of Blacks into South Africa's urban areas.²⁸

Despite attempts to keep Blacks out of urban areas, it gradually became clear to the former government that the numbers of Black urban dwellers were expanding; their existence in White urban areas could no longer be ignored. Although the then National Party government finally acknowledged the permanent nature of Blacks residing in urban areas, it was still resolute to keep urban areas separated along racial lines.²⁹ In 1950, the government passed the Group Areas Act 41 of 1950. This Act instituted strict residential segregation and the compulsory removal of Black people to "own group" areas. The Act was designed to restrict Black and Coloured race groups to their own residential areas and to control the purchase or occupation of land along racial lines. Separate residential areas were created for the different population groups. The then government insisted that urban areas populated by different population groups should be governed and administered separately, even if they were located close together and municipal services overlapped or were duplicated. This concerned the democratic movements at the time and whilst they continued with their resistance, they took time to draw a picture of the ideal South Africa they were striving for, which gave birth to the Freedom Charter.

In 1961, Urban Bantu Councils were established in terms of the Urban Bantu Councils Act,³⁰ replacing the advisory committees. Although they were in many respects similar to the advisory committees, the White local authority in charge of a particular township could delegate powers to the relevant Urban Bantu Council. In 1971, the administration of African townships was taken over by the Bantu Affairs Administration Boards, which were offered the option of becoming urban Bantu Councils. Although these councils were later given certain administrative and executive powers, the key areas of taxation and finance were still reserved for the White local authorities

28 PS Reddy (ed), *Readings in local government...*, p. 54.

29 C Heymans & R White, "Playing politics without the power: The state of black local government in the South Africa of the 1980/90s", *Politikon* 18, 1, 1991, pp. 4-5.

30 RSA, *Urban Bantu Councils, Act 79* (Pretoria, Government Printer, 1961).

only.³¹

Civil organisations were established in the Black townships to galvanise and steer community resistance to the policies of the former government. The South African National Civics Organisation (SANCO) was the most dominant and powerful civic organisation. In an effort to quell uprisings and civil resistance in townships, the government introduced Black local authorities.³² It was the civics who launched the rent and services boycotts, thereby ensuring that no revenue would be forthcoming from townships, rendering the affected municipalities largely unsustainable. The Black Local Authorities Act³³ facilitated the introduction of Black local authorities for Black communities in urban areas. The four provincial administrators that existed at the time in the Cape, Orange Free State, Transvaal and Natal provinces, were given the responsibility of administering and controlling these local authorities. However, policy directives were still given to the Black local authorities by the central government, in the form of legislation.

Historically, local government revenue in urban South Africa was largely self-generated, mainly through property taxes and the delivery of basic public services to residents and businesses. This particularly suited the White municipalities, which had small populations to serve and large concentrations of economic resources and property tax. Racial regulations barred most retail and industrial developments from Black areas. This limited property tax base forced residents and retailers to spend most of their money in White areas. Municipalities in Black areas were, therefore, deprived of the means to meet the needs of local residents.³⁴

According to Tsatsire,³⁵ Black local authorities were beset with difficulties right from their inception. Firstly, they lacked political legitimacy among Blacks themselves. In addition, they were beset with fiscal inadequacy problems, since they did not have a proper tax base. Without an adequate tax base, the Black local authorities were automatically rendering inferior and substandard services. They were rejected in popular (and sometimes violent)

31 N Ismail, S Bayat & I Meyer, *Local government management*, p. 50.

32 K Shubane & P Madiba, "The struggle continues?: Civic organisations in the transition", (Centre for Policy Studies, Pretoria: Transition Series, No 25), p. 1.

33 RSA, *Black authorities, Act 102* (Pretoria, Government Printer, 1982).

34 "History of local government", June 2005, <http://www.polity.org.za/article/local-government.html>, (as accessed on 30 June 2005), pp. 1-14.

35 I Tsatsire, "Evaluation of the municipal credit control policy with specific reference to the Nelson Mandela Metropolitan Municipality" (MTech, PE Tech, 2001), p. 28.

community mobilisation in the mid-1980s.

Ismail, *et al*, comment that there were no visible improvements in living conditions in South African townships, due to the absence of a reliable tax base. No businesses wanted to invest in the townships; in effect, they were discouraged by the former government to do so. The rent and service charges boycotts initiated by numerous township communities in response to politically “illegitimate” institutions such as Black local authorities, further compounded the financial problems of these local authorities.³⁶

The conclusion was clear. African urbanisation could not be halted through influx control and the division of urban areas along racial lines. Realising that the racial separation of urban areas was unrealistic and needed to be abandoned, the government passed the Abolition of Racially Based Land Measures Act 108 of 1991. This Act removed restrictions on the freedom of individuals to acquire land anywhere in South Africa.³⁷

In an attempt to create an integrated local government system, the government in 1991 introduced the Interim Measures for Local Government Act.³⁸ However, pressure from both Black communities and the international community persisted. The changes proposed by this Act were viewed as largely cosmetic by the African National Congress (ANC) and SANCO. They argued that the arrangement to create integrated local authorities would never lead to truly non-racial and democratic local government.³⁹

The role of Indian and Coloured Management Committees in local government matters now follows.

Indian and Coloured Management Committees

According to Cameron,⁴⁰ when the National Party came to power in 1948, municipal voting rights and electoral eligibility were extended to Whites only in the then Transvaal and Orange Free State Provinces. In the Cape and Natal

36 N Ismail, S Bayat & I Meyer, *Local government management*, p. 52.

37 RSA, *Abolition of Racially Based Land Measures, Act 108* (Pretoria, Government Printer, 1991).

38 RSA, *Interim Measures for Local Government, Act 128* (Pretoria, Government Printer, 1991).

39 PS Reddy (ed), *Readings in local government...*, p. 56.

40 RG Cameron, “Local government policy in South Africa, 1980-1989 (With Specific Reference to the Western Cape): Devolution, delegation, deconcentration or centralisation?” (DPhil, University of Cape Town, 1991), pp. 1-2.

Provinces, Coloureds and Indians were on a similar legal footing as the Whites and appeared on the same voters' roll as Whites, if they met the same voting qualifications. However, the system of electoral representation was based on property ownership of a certain value. This criterium served to restrict the eligibility to vote of the majority of Coloureds and Indians. Cameron (in Ismail, *et al*)⁴¹ states that in 1961 the Niemand Committee of Investigation was instructed to investigate the development of local government for urban Coloureds. The Committee's recommendations resulted in the following:-

- The creation of consultative committees consisting of nominated members with advisory powers only, functioning under the guidance of the White local authority of the area in which they were geographically situated;
- The establishment of management committees, with some members being elected and others nominated entrusted with advisory powers. However, in addition to these advisory powers, certain powers could be delegated by the "parent" White local authority; and
- Granting fully-fledged municipal status to the management committees, equivalent to that of White local authorities.

Before the aforementioned recommendations could be implemented, specially appointed committees had to investigate and recommend whether a specific management committee should become a local authority or not. Certain essential prerequisites, such as sufficient revenue, trained staff, minimum area size and the capability of being geographically consolidated, had to be fulfilled before such a step could be taken.

Local affairs committees were established in the Natal Province, instead of consultative and management committees.⁴² These local affairs committees enjoyed greater powers than the management and consultative committees. As corporate bodies, they could sue and be sued and, furthermore, greater executive powers could be delegated to them by their "parent" White local authorities.

From 1964 onwards, management committees and local affairs committees were established on a large scale. Their administrative staff was, however, employed by the White local authorities in their specific areas.

The areas of jurisdiction of both the local affairs and the management

⁴¹ N Ismail, S Bayat & I Meyer, *Local government management*, p. 49.

⁴² RG Cameron, "Local government policy in South Africa, 1980-1989...", pp. 131-132.

committees resembled those of the Black local authorities. They were characterised by little or no rates-generating commercial, industrial and mining areas, as well as by low rateable, low-cost housing, a shortage of trained staff, and ill-suited appointments in vacancies. Ismail, *et al*⁴³ are of the view that this lack of financial viability and the widespread community resistance rendered these committees unworkable. According to Reddy,⁴⁴ since 1962, very few Indian and Coloured urban areas progressed to become fully-fledged local authorities.

Caulfield and Schultz⁴⁵ stated that local authorities draw their legitimacy from the results of elections. The electorate should, therefore, not be treated as an incidental feature of local government, but as an essential component of the institution, legitimising the value choice. The electorate is the prime organisational characteristic that distinguishes a public institution from all other organisations in South African society. The fact that this key characteristic of democracy was being denied to Black South Africans, meant that the local government structures that existed during the apartheid era lacked legitimacy. The deepening of democracy is dependent on the participation of citizens in a civil society and political system. Moreover, such participation must be inclusive of *all* members of society.

Heymans and Totemeyer⁴⁶ defined legitimacy as a normative concept, referring to the positive response of the public to the moral basis of government. This response, in turn, depends on a number of factors, such as the viability and credibility of local government, its representivity, fairness, equality, sensitivity, and accountability.

It may, therefore, be concluded that a public institution is usually regarded as legitimate if the population accepts it positively and if the representatives are properly elected through democratic mechanisms. Under the former National Party government, the Black majority of the population did not have the vote. Consequently, they never accepted the government and many of the powers that were entrenched in the Interim Constitution of the Republic of South Africa, Act 200 of 1993.⁴⁷

43 N Ismail, S Bayat & I Meyer, *Local...*, p. 50.

44 PS Reddy (ed), *Readings in local government...*, p. 5.

45 I Caulfield and J Schultz, *Managing local government: Planning for change: Strategic planning in local government* (Essex, Longman group (UK) Ltd, 1993), p. 4.

46 C Heymans and G Totemeyer, *Government by the people* (Cape Town, Juta & Company Ltd, 1989), p. 2.

47 RSA, *Interim Constitution of the republic of South Africa, Act 200* (Pretoria, Government Printer, 1993).

Aspects relating to the pre-interim and interim phases of the restructuring of local government under the democratically elected government are now highlighted.

Local government in South Africa, 1993 to 1998

The year 1993 was marked by a number of fundamental political changes towards a democratic new South Africa. Stakeholders represented the entire political spectrum, some in alliance with others and some on their own.⁴⁸ The negotiations led to the final date for a general election in April 1994 and the promulgation of the Interim Constitution of the Republic of South Africa Act, 200 of 1993 on 22 December 1993.⁴⁹ The Act came into effect on 10 May 1994.⁵⁰

In terms of chapter 10 of the 1993 Constitution (Act 200 of 1993) and the Local Government Transition Act, 209 of 1993, the face of local government in South Africa was to change fundamentally. Although negotiations for new local government structures began prior to the national negotiations, they were somewhat disjointed and depended largely on the initiatives of the stakeholders, namely individual local authorities, political parties and the civic organisations.⁵¹

The focus of local government and its closeness to communities made this sphere of government very difficult and challenging to transform. It was easier to transform the provincial and national spheres of government, because they were more distant from communities and dealt with inclusive – not specific – issues. It was for this reason that the impact of the former government's policy of separate development was felt most significantly at the local sphere of government. This is a possible reason why the current basic public service delivery and socio-economic challenges experienced by South African communities are felt most by local government, which may be described as the cold-face of government.

It was at the local sphere of government that the effects of the plethora of race laws separated local communities. Legislation that introduced and

48 *SA yearbook* (Pretoria, The South African Communication Services, 1994), p. 115.

49 *SA yearbook* (Pretoria, The South African Communication Services, 1993), p. 115.

50 JN Cloete, *South African municipal...*, 1994, p. 14.

51 PS Reddy (ed), *Readings in local government...*, p. 57.

entrenched the so-called ‘group areas’, whereby residential areas were separated according to race, were among the first statutory discriminations based on race. These laws went hand in hand with unequal access to basic public services, including essential services like water, electricity, sanitation and housing. Institutions such as Black local authorities, which governed Black residential areas, were created to maintain the *status quo*. The imbalances left by the previous governance system of separate development are still visible, despite the progress made by the present ANC-led government. Service delivery backlogs still exist and have sparked conflict, such as the recent demonstrations against poor service delivery throughout the country. Protests have occurred, for example, in areas such as Secunda in Mpumalanga, Ocean View in the Western Cape and in Port Elizabeth in the Eastern Cape.⁵² Protests started in 2004 in Harrismith in the Free State and spread to other parts of the country, such as, the Western Cape and Tshwane.⁵³ This is a national pattern, although the regional demonstrations have differed in magnitude.⁵⁴

Civic organisations such as SANCO and other broad pro-democratic forces joined hands in applying pressure on the former South African government. The pressure exerted both externally and internally intensified. It was as a result of this pressure that in the early 1990s the former government agreed to enter into negotiations with the democratic forces led by the ANC. This process was later managed through the Local Government Negotiating Forum (hereafter referred to as the LGNF). The establishment of the LGNF was the first direct step towards establishing democratic local government in South Africa.⁵⁵ This was followed by the establishment of a transitional arrangement, which was divided into three phases between 1993 to 1999. These transitional phases were known as the pre-interim, interim and final stages of the restructuring of local government.

According to Reddy,⁵⁶ the transition from apartheid to a democratic, non-racial, non-sexist South Africa was largely managed by the Multi-Party Negotiating Council (hereafter referred to as the MPNC). It soon became clear that local government was of key importance and transitional arrangements were required in terms of the statutory and non-statutory composition of

52 D Atkinson, *State of the nation South Africa, 2007* (Cape Town, HSRC Press, 2007), pp. 54-57.

53 “Unrest at the local sphere of government in South Africa: Unrealistic expectations or the inability to implement policies?” 2007 (available at https://www.up.ac.za/dspace/bitstream/2263/4212/1/Roux_Unrest (2005).pdf, as accessed on 08 January 2008), p. 57.

54 PS Reddy (ed), *Readings in local government...*, p. 57.

55 “LGNF” (*Sunday Times*, 1993), 1 August 1991.

56 PS Reddy (ed), *Readings in local government...*, p. 58.

municipal councils. The LGNF was then established. The principal negotiators were the government (or statutory body) and various non-statutory bodies, led by the ANC alliance and SANCO. This heralded the first step towards the establishment of a democratic local government system in South Africa.

The two negotiating forums, namely the Convention for a Democratic South Africa (CODESA) and the LGNF, accomplished the passing of two important pieces of legislation, namely the Interim Constitution of the Republic of South Africa Act 200 of 1993, and the Local Government Transition Act 209 of 1993, which paved the way for the creation of democratic structures in all three spheres of government.

The Local Government Transition Act 209 of 1993 did not provide a blueprint for a new local government system, but simply sketched a process for transformation. The process put forward by this Act was essentially a locally negotiated transition, which resulted in a wide diversity of forms of local government. The Act emphasised the necessity for disjointed urban and rural communities to combine their efforts in forming non-racial local government institutions that could cope effectively with the diverse needs and aspirations of all citizens in its geographical jurisdiction areas. These negotiations at the local government sphere were known as “one city negotiations”.⁵⁷ Furthermore, this Act provided a framework for an orderly transition to fully-fledged local government democracy. It mapped out three phases of transition for local government, namely the pre-interim phase (1993–1995); the interim phase (1995–1999); and the final phase (post-1999).⁵⁸

The pre-interim phase comprised the establishment of local forums to negotiate the appointment of temporary councils, which would govern until democratic municipal elections were held. The interim phase comprised the municipal elections and lasted until the design and legislation of a new local government system. The final phase would see the establishment of a new local government system, such as the current developmental local government system.

The November 1995 local government elections were aimed at facilitating the transition from a non-democratic to a democratic local government dispensation. According to Reddy,⁵⁹ the first chapter in the democratisation

57 VG Hilliard, *Understanding contemporary local government*, p. 2.

58 DL Craythorne, *Municipal administration, The handbook* (Pretoria, JL Van Schaik, 2006), p. 11.

59 PS Reddy (ed), *Readings in local government...*, p. 13.

of South Africa was brought to a satisfactory conclusion with the 1995 local government elections. The December 2000 local government elections completed the local government transitional process, putting new local government democratic structures and councils in place.⁶⁰

The Local Government Transition Act⁶¹ did not refer to transition only. In terms of this Act, the entire ethos of local government had to change from a passive and unresponsive approach to a responsive, participatory and developmental approach. Hence, the Act referred to the local sphere of government as “developmental local government”.

The adoption of the Constitution of the Republic of South Africa Act, (Act 108 of 1996)(hereafter referred to as the Constitution)⁶² was a significant occasion, which entrenches the historic Bill of Rights and finally put an end to constitutional discrimination and the policy of separate development.

An overview of certain salient local government developments between 1998 and 2000 now follows.

Local government, 1998-2000

With the publication of the White Paper on Local Government, 1998⁶³ the focus on local government evolved with greater emphasis on, *inter alia*, developmental local government and enhanced public consultation and participation. This signalled the official start of a deliberate legislative and transformation process, anticipated to last three years, up to the 2000 local government elections. It must, however, be emphasised that transformation is not a finite, but a continuous process. The transformation of South African local government is still continuing.

It is proposed that local government is both the most complex and closest sphere of government to communities in South Africa. The new structure of local government was finalised by the Municipal Demarcation Board in mid 2000, with the first local government elections taking place on 5 December

60 “Statement on the conclusion of the 2000 local government elections”, December 2000 (available at <http://www.dfa.gov.za/docs/speeches/2000/mbek1207.html>, as accessed on 08 January 2009), p. 1.

61 RSA, *Local Government Transition, Act 209* (Pretoria, Government Printer, 1993).

62 RSA, *Constitution, Act 108* (Pretoria, Government Printer, 1996).

63 RSA, *White Paper on Local Government* (Pretoria, Government Printer, March, 1998).

that same year. According to Bekink,⁶⁴ in order to facilitate the transformation of local government, the Constitution mandates national government to enact laws in order to facilitate the new municipal dispensation.

The White Paper on Local Government (1998) was a forerunner to two key pieces of legislation on local government, namely the Local Government: Municipal Structures Act (117 of 1998)⁶⁵ and the Local Government: Municipal Systems Act (32 of 2000).⁶⁶ It became clear that local government could not deliver on its new mandate with the then old structures and systems; hence, the need for the above two acts. The Local Government: Municipal Demarcation Act 27 of 1998⁶⁷ had already also set new boundaries with the merging of the over 800 municipalities to only 284 covering the whole country in a wall-to-wall manner.

In terms of prescriptions contained in the Constitution and the Local Government: Municipal Structures Act, three categories of municipalities are proposed for South Africa, which are:

- 6 category A metropolitan municipalities which are found in highly populated metropolitan areas with vigorous movement of people, goods and services;
- 231 category B local municipalities which are public sector institutions that share executive authority in areas that have a category C municipality; and
- 47 category C municipalities which encompass areas that do not match the description of a category C district municipality and which include more than one municipality. Within each category C municipality there are a number of smaller category B local municipalities.

A brief overview of the final phase of the restructured local government (post 2000) follows.

Developmental local government, post 2000

In terms of section B of the White Paper on Local Government, 1998, a new “developmental” local government was envisaged for South Africa. It described the kind of leadership municipalities need to build with their

⁶⁴ B Bekink, *Principles of South African local government law* (Durban, Lexisnexis Butterworths, 2006), p. 27.

⁶⁵ RSA, *Municipal Structures, Act 117* (Pretoria, Government Printer, 1998).

⁶⁶ RSA, *Municipal Systems Act 32* (Pretoria, Government Printer, 2000).

⁶⁷ RSA, *Municipal Demarcation, Act 27* (Pretoria, Government Printer, 1998).

communities, organisations, business and others who can contribute towards the local development of their geographical areas of jurisdiction. It also described, *inter alia*, integrated development planning (IDP) which is a new approach to planning to assist municipalities to fulfil their developmental role. Developmental local government should also ensure that all communities have access to basic public services, that all can participate in the decision-making processes and planning, that the local economies grow, that job opportunities increase and that local resources are used wisely to improve the quality of life for all, now and in the future.

In terms of prescriptions contained in the White Paper on Local Government, 1998, developmental local government has four interrelated characteristics, which are:

- To maximise social development and local economic development;
- To integrate and co-ordinate;
- To lead and to learn; and
- To demonstrate development.

It is proposed that developmental local government is local government committed to working with all citizens and groups within the community to find sustainable ways to meet their social, economic and material needs and to improve the quality of life of local communities. In order to achieve this it is proposed that local government councillors will need, *inter alia*, the political commitment and specialised skills pertaining to local government. However, government is currently reviewing how the provincial and local government structures might function in the future to enhance service delivery.

In terms of general Notice 936 of 2007,⁶⁸ it is proposed that the culmination of the reviews on provincial and local government will be policy papers. These are papers that set out what government and communities believe to be the best vision, purpose and structure for a particular activity or organisation. In this case the national government is looking at policy to reorganise some aspects of the current system of provincial and local government.

The first policy paper released for comment during a government policy-making process is called a Green Paper. This paper is put *in* the Government

⁶⁸ RSA, *General notice 936 of 2007, Ministry for provincial and local government (Pretoria, Government Printer, August, 2007)*.

Gazette for comment. The Gazette is published by the government printer and is available from their offices. For this process, a Green Paper on Provincial Government and a Discussion Document on Local Government was expected to be published by December 2007. After the Green Paper has been commented on and inputs received from the public, work will commence on the final policy paper, called a White Paper.

The current local government policy paper under review will compliment the White Paper on Local Government, which was published in 1998. It was proposed by government that by the end of 2008, there would be a new White Paper on Provinces and a Review Report on Local Government, which will be considered by Parliament and Cabinet.

Conclusion

In this article selected aspects relating to the transformation of local government in South Africa were traced from 1652 up to the present. The article also reviewed contemporary local government in South Africa, and the transition from a racial to a non-racial dispensation, heralding the start of a transformation era. The new developmental mandate assigned to municipalities has also been highlighted.

The evolution of local government into a developmental sphere advocates community involvement. In the past, racially based municipalities were often characterised by intense antagonism and conflict with the very communities they were required to serve. The former system of government was also largely characterised by a lack of transparency, accountability and access to information, which were considered privileges, and not rights. This has now changed in terms of; *inter alia*, the Freedom of Access to Information Act.

The former government created separate local authorities for the different racial groups. Black local authorities were created for Blacks; and Coloured and Indian management committees for Coloureds and Indians. These local authorities had no meaningful powers and lacked resources. They were largely viewed as illegitimate in the eyes of the majority they were supposed to represent. Their situation was in sharp contrast to the White local authorities, which were well resourced and rendered services of quality. These service delivery gaps are still visible today, and will take some time to correct. However,

with workable policies, structures, systems and processes, it is envisaged that progress will be made.

The crises in local government were major forces leading to the national reform process, which began in 1990. Debates on local government reform took place in the Local Government Negotiating Forum (LGNF). This Forum also negotiated the Local Government Transition Act 209 of 1993, which provided a framework for the process of change at local government sphere. However, it soon became clear that addressing backlogs, huge infrastructural disparities and inequalities could not be achieved within the then institutional framework. For this reason, new transitional structures were established.

From 1998 onwards, local government is now expected to perform a critical role in developing communities, hence its new name and mandate: developmental local government. Its new constitutional status as a sphere of government elevated its new-found mandate, and empowers it to deal with developmental as well as other issues reflected in both the Freedom Charter and the Constitution (1996). However, it can be concluded that there is still a long road ahead and numerous challenges to address, manage and overcome before municipalities in South Africa will fully meet all of their developmental obligations in a more effective, efficient and economical manner.

