

LOCAL GOVERNMENT AND ADMINISTRATION FOR BLACKS IN THE URBAN AREAS OF
THE REPUBLIC OF SOUTH AFRICA, WITH SPECIAL REFERENCE TO THE AREAS
UNDER THE JURISDICTION OF THE NATALIA DEVELOPMENT BOARD

/BY

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CHAPTER 1

Introduction

1.1 The object of the study

Local government institutions and administration for Blacks in the urban areas of the Republic of South Africa merit study both because of the political significance of their capacity for local choice and because of the impact of the choices that they make upon the Black urban communities. The local choices made are deeply influenced by the external constraints imposed by the Central Government. These external factors also determine the limits of the administrative operation of these local authorities.

The mechanism by which a local authority is established, the attitudes and behaviour of those who work within such structures and the procedures followed by these authorities affect not merely the choices made, but also generate attitudes and reactions from the urban communities. To understand the impact of local government institutions both as political bodies and providers of local services, requires a detailed analysis. A detailed study embracing the various aspects of local government and administration in respect of Blacks in urban areas is essential. Such a study is still lacking. This study

provides for this deeply-felt need. Attention has thus far been focused primarily on local authorities for Whites and to a lesser extent on those for Coloureds and Indians. Local government for Blacks has received only marginal attention or only isolated aspects have been singled out for closer examination.

This study will establish and assess the ideas, dynamics and institutions that pertain to local government and administration for the Black urban communities from the establishment of the Union of South Africa in 1910 and extends to the present. The conclusion drawn from this assessment leads to the formulation of recommendations that are designed to alter, fundamentally, the current system of ideas, dynamics and institutions.

1.2 Approach and method of research adopted

The research of this field of enquiry involves an examination of the historical sources relating to the evolution and operation of local government and administration. These sources are, inter alia, Bills and Acts of Parliament, reports of commissions of enquiry and/or committees, statutory instruments and other official documents, books, articles, recorded observations of commentators on the subject as well as material obtained from newspapers and magazines.

Interviews are conducted with the Black urban political leadership serving in these local government institutions, with leaders of interest groups opposed to the Central Government's urban as well as national policies, and also with officials serving on the local authorities and development boards. These often contrasting viewpoints are canvassed and analysed, and conclusions drawn constitute the foundation upon which recommendations are formulated.

The various phases of the development of local government institutions are identified. The structures corresponding to the identified phases are described, analysed and evaluated in the light of the prevailing national policy and modifications, if any, of such policy.

1.3 The design of the study

Following the introduction, this study divides into five chapters. Chapter 2 sets out the phases in the development of local government and administration in urban areas. It provides the historical background and the legal context in which the various structures were designed and operated. It examines the objects of the respective Acts of Parliament relating to the different structures established, the nature of the institutions that were created, and the rights, powers, functions and duties conferred upon such bodies. An evaluation of the impact of each structure is undertaken.

Local government operates within a defined and recently reconstituted framework of areas and functions. It is deeply influenced by relations with the Central Government as well as certain administrative structures. The position accorded urban local government for Black urban communities in the hierarchy of authorities in South Africa is explored in Chapter 3. This is achieved through the examination of the historical perspective and by comparison of the position as it obtains in regard to urban Blacks and other racial groups, i.e. Whites, Coloureds and Indians. The position of administrative bodies such as the Department of Constitutional Development and Planning and the development boards, is explained. The role of the Director of Local Government is also examined.

Chapter 4 deals mainly with the political and administrative processes involved in the operation of the municipal institutions. The various policy-making settings; the primary and secondary participants in the respective settings; the provision of personnel; the sources of revenue and financial practices; the operational procedures and control measures are fully explored. The actors perform organizational roles as councillors and officials while settings are the organizational locations in which those roles are played. Values, assumptions and beliefs condition and support the behaviour of actors in these settings. Procedures ensure the continuity and uniformity of behaviour. The constraints imposed upon the organizational structures

and processes of the local authorities mark out the pattern of the operation of these structures.

Chapter 5 explores the attitudes and reactions of the urban Black toward local government and administration. A local authority cannot be described merely through the elements that make up its internal operation. It has boundary relations with its many publics which are conditioned by the elements in its internal working and those that transcend the limits of its jurisdiction. Processes of socialization condition and sustain behaviour in roles, in settings and in boundary relations thus inculcating values, assumptions and beliefs. Political change and a change in the balance of organizational interests can bring about change both in the activities of an authority and in the pattern of working.

Black local authorities have experienced a massive emergence of groups that are strongly opposed to the present local government institutions. These groups direct their opposition to the policies of the National Government. They object strongly to the present constitutional arrangements because they are based on considerations of race. Local government institutions for Blacks are perceived as apartheid structures and must, therefore, be viewed as illegitimate. Legitimation of such structures can be realized only through the creation of a new political system which is based on non-racialism and democratic values.

The concluding Chapter discusses some of the defects of the newly created local government institutions and makes recommendations in regard to issues such as the question of legitimacy of these structures and some administrative aspects such as personnel and financial policies. Such then is the design of this study.

1.4 Definition of certain concepts

The author has employed the current terminology as much as possible. There are, however, exceptions to this use of current official terminology. The exceptions have been aimed at facilitating the reader's understanding in an analysis often burdened with the ambiguity of the bureaucratic jargon.

Black, White, Coloured and Indian.

These terms are designations of persons belonging to the respective racial categories of persons contemplated in the Population Registration Act, 1950 (Act 30 of 1950).¹ The concept "black" is used by some political groups and persons to refer collectively to persons of African, Indian and Coloured origin,² whereas the Government uses the term to refer exclusively to Africans.³ The Government avoids the use of the term "African" when it refers to the indigenous peoples of South Africa for the reason that a certain

class of White settlers, descended from the Dutch, has adopted the designation "Afrikaner".⁴ The concepts "African" and "Black" are used interchangeably in this study.

Urban area

Urban area means an area under the jurisdiction of an urban local authority. Refer to section 1 of the Blacks (Urban Areas) Consolidation Act, 1945 (Act 25 of 1945).

Homeland or National State

These terms refer to an area for which a legislative assembly has been established under the National States Constitution Act, 1971 (Act 21 of 1971) and includes any land in a scheduled Black area within the meaning of the Development Trust and Land Act, 1936 (Act 18 of 1936). Recently there has been an increasing use, by the South African Government, of the terms dependent and independent National States. A State is a State, national or otherwise, because it possesses all the basic features constituting statehood.⁵ Independence is one of these fundamental elements.⁶ It can be concluded, therefore, that to speak of dependent and independent National States reflects a lack of terminological and semantic sophistication.

1.5 References and footnotes

1.5.1 Section 1.

1.5.2 The public statements and literature of the United Democratic Front and also the literature of the now banned South African Students Organization (SASO) and the Black Peoples Convention reflects this collective designation. One of the tenets of the Black Consciousness philosophy is that the concept "Black" represents all those peoples who are oppressed by the White Government of South Africa; refer to McDonald, S.F.: "The Black Community" appearing in Bissell, R.E. and Crocker, C.A. (eds): South Africa into the 1980's, Westview Press/Boulder, Colorado, 1979, p. 21.

1.5.3 Section 1 of the Population Registration Act, 1950 (Act 30 of 1950).

1.5.4 The Reader's Digest Great Encyclopaedic Dictionary, The Readers Digest Association, Oxford University Press, Vol. I A - L, London, 1974, p. 32.

1.5.5 Starke, J.G.: Introduction to International Law, Butterworths, London, 1972 pp. 101 - 104.

1.5.6 Ibid.

CHAPTER 2

Phases in the development of local government and administration for Blacks in urban areas.

2.1 Introduction

The drift by the Africans from the rural areas to the budding industrial growth points is said to have been a result of at least two major factors.¹ In the first place an urge was felt by the Africans to satisfy the newly discovered and rapidly increasing needs which were a consequence of some contact with White living patterns in the burgeoning towns. It has been suggested also that there is abundant historical evidence to support the view that from the first time the two races met, the victorious group fully anticipated the fruits of a policy of inducing and not infrequently coercing the African to give up his life of the kraal and move to industrial and commercial centres.

As it was fully anticipated, the gospel of the dignity of labour found many a convert and artificial wants were created and increased.² The natural consequence of this new social dimension was that some rudimentary settlements for Africans soon sprang up, like mushrooms, in the vicinity of these industrial and commercial growth points.³

These centres soon developed into towns and each town had a corresponding African settlement, designated a township or location, growing up on its outskirts.⁴ As an increasing number of Africans began to live in close proximity to the Whites in such areas, an official policy was evolved to regulate the "township".⁵ This policy has undergone continual transformation to meet the perceptions of the White policy-makers.⁶ This continual adaptation of the official policy may be explained through the examination of the various phases constituting the milestones on the road to a system of local administration and eventually local self-government of the urban areas prescribed for the Africans.

2. Phase 1

2.2.1 The period prior to 1923

The reports of the pre-Union commissions on Native Affairs, although apparently chiefly concerned with the territorial and rural conditions, had in some measure invited attention to urban conditions as well.⁷ The policy of segregation of Africans in urban areas was widely practised by the existing White local authorities.⁸

The administration of African urban communities was the responsibility of the White municipalities.⁹ There was no provision for

participation by Africans in this arrangement. According to Riekert, "Blacks had no share in this administration or in the government of their communities".¹⁰ It is evident from the reports of the Government commissions covering the period 1914 - 1921 that the various legislative enactments which gave some measure of authority to this policy were characterized by a lack of uniformity.¹¹ Godlo¹² concluded, therefore, that prior to the year 1923, there were as many policies as there were townships, because it would appear that then each local authority had to frame its own set of location regulations quite independently of other local authorities and in terms of its own conception of a location and its residents. During this phase, Godlo claims, the Department of Native Affairs, established in 1910, gave very little assistance, through its power of direction, in effecting uniformity of practice by local authorities.¹³

2.3 Phase 2

2.3.1 The period from 1923 to 1945

2.3.1.1 Adoption of the Blacks (Urban Areas) Act, 1923 (Act 21 of 1923).¹⁴

At a conference which took place between the Native Affairs Commission and the Local Government Commission some definite principles¹⁵ were

agreed upon regarding the position of the African in urban areas. These principles were incorporated into the Blacks (Urban Areas) Bill which was introduced into the House of Assembly in 1923. The Bill was subsequently adopted and the Blacks (Urban Areas) Act, 1923 (Act 21 of 1923) came into existence. The Act became operative with effect from 1 January 1924.

The promulgation of the Blacks (Urban Areas) Act, 1923 was perceived as heralding the passing away of the old order and the approach of a new outlook in urban government.¹⁶ For the first time in the history of the Union urban legislation, the African was accorded some semblance of an urban status.¹⁷ The locations were defined as places set apart for the occupation, residence and other reasonable requirements of the Africans.¹⁸ Godlo expresses the view that locations were perceived not as mere compounds or reservoirs of cheap labour that Africans could occupy only when they were there to minister to the needs of the Whites.¹⁹

Godlo²⁰ felt that as far as life in locations is concerned, the solution of the problems bound up with it is dependent on the answer given to the question as to the nature and functions of an urban location. He submitted that "if a location is to be regarded as a mere reservoir of labour, it must be treated as a compound with a minimum measure of rights. If on the other hand, it is regarded as

something very much higher than a mere reservoir, it must be treated very much more liberally".²¹

(a) Object of the Act

The Act aimed primarily at the uniformity of principles in administration throughout the Union. A plethora of conflicting by-laws and regulations were repealed, to be exact "41 in all and distributed as follows: 16 in the Cape; 3 in Natal; 11 in Transvaal; 16 in the Orange Free State".²²

The main object of the Act as reflected in the preamble was: "to provide for improved conditions of residence for (Africans) in or near urban areas and the better administration of (African) affairs in such areas: for the registration and better control of contracts of service with (Africans) in certain areas and the regulation of the ingress of (Africans) into and their residence in such areas; for the restriction and regulation of the possession and use of Kafir beer and other intoxicating liquor by the (Africans) in certain areas, and for other incidental purposes".²³

(b) Main principles of the Act

The main principles characterizing this phase of urban administration of the African are, inter alia, the following:

- (i) that industrial and urban areas have been created by and are the place of domicile of the Whites and that Africans should come to these areas as temporary workers, not acquire domicile therein but return to their rural areas. It was, however, recognized that there are many Africans already in such areas who have discarded home ties and become detribalized. The principle had been emphasized that these and indeed, all Africans during their sojourn in such areas shall be adequately and properly housed and that their reasonable needs receive close and sympathetic consideration as a part of the general system of local government;

- (ii) that local authorities have the right of acquisition of land or interest in land within or beyond their areas by agreement or by expropriation for the purpose of African housing;

- (iii) that local authorities are in the main charged with the details of the administration of the Act and are entrusted with extensive powers to frame and operate regulations to this end. Such regulations are, however, subject to Ministerial approval;

- (iv) that Coloured persons resident in locations at the time of coming into operation of the Act are entitled to continue to reside in such locations unless and until suitable

accommodation was available for them elsewhere;

- (v) that all Africans living within the municipal limits under conditions of family life shall reside in locations or African villages and that single Africans shall live in hostels for males and females;
- (vi) that Africans in locations or villages have the right to establish advisory boards and thus have some voice in their administration. It was obligatory on the part of the local authorities to consult such advisory boards, but the views of the board need not necessarily be accepted;
- (vii) that trading by Africans be allowed in areas set aside by local authorities for their exclusive occupation under conditions of family life;
- (viii) the prohibition of the establishment of private locations within a distance up to eight kilometers of the boundary of any local authority;
- (ix) that African "vagrants" or those who lead "idle," "dissolute" or "disorderly lives" are a danger to the community and can be called upon to give a good and sufficient account of themselves

to a magistrate or commissioner, failing which they can be sent to the place to which they belong or alternatively, committed to a farm colony or similar institution for a period not exceeding two years;

- (x) that the housing of Africans employed on mines and works and those employed in similar industries which employ upwards of twenty five Africans, is the responsibility of the employers concerned, but, in the latter case, is subject to regulation by the local authority;
- (xi) that in regard to the question of "traditional African beer" local authorities have the alternative of one or other of the three policies, viz. total prohibition, domestic brewing in prescribed quantities or a monopoly sale by themselves;
- (xii) the affirmation of the necessity in prescribed areas of the registration of contracts of service and the application of a pass system for Africans;
- (xiii) the exemption of certain Africans from the necessity of compliance with such a system; and

(xiv) that rentals and other moneys accruing in respect of African residents do not go into the General Revenue Fund of the local authority, but should be paid into what was termed the Native Revenue Account to be used for the betterment of the life of the African.²⁴

(c) Establishment of African advisory boards

Provision for the creation of African advisory boards for the whole Union was first made by the Natives (Urban Areas) Act, 1923.²⁵ Advisory bodies had been established in Pretoria and a few other local authorities in the Transvaal before 1923.²⁶ Reyburn states that "a form of consultation with Africans in urban areas had been recommended by the Transvaal Local Government Commission of 1921 to enable the location superintendent, as ex officio chairman of the suggested advisory committee, to keep in close touch with the Natives under his charge - their needs and aspirations - thus ensuring prudent administration and general contentment".²⁷

Section 10 of the Natives (Urban Areas) Act, 1923 required that for every location or African village under the control of an urban local authority there shall be established an African advisory board. The board was constituted by not less than three Africans resident within the area of jurisdiction of the local authority and a chairman who

might be a White person.²⁸ The section further provided that the mode of election or selection of members of such boards, the procedure, period and conditions of office and their functions shall be defined by the urban local authority. A White town council would, therefore, be responsible for exercising direction and control over the activities of advisory boards through an African Affairs Committee where such a committee was established by a town council from its own members. An African Affairs Committee, where one functioned, could seek the advice of an African advisory board. It was, however, not obliged to seek the view of the board except in the case where regulations framed under the Act were made or withdrawn.²⁹ An African Affairs Committee or a town council was not obliged to accept the advice or act on the resolutions of the board.³⁰ The Act did not assign any specific functions to the boards.³¹ It was left to the White local authorities to make regulations defining the functions and constitution of the board.³² Model location regulations were framed by the Department of Native Affairs for the guidance of local authorities, and were issued in 1924.³³

2.3.1.2 Critical assessment of advisory boards

Cooper felt that the advisory boards should be regarded as training units for African thought, that the methods of nomination and election of members should be along democratic lines, using the elective and selective machinery as a means of educating the African masses in a measure of civic responsibility.³⁴ He was of the opinion that "by these or similar means the object of satisfying for a time the outcry

for progress and teaching the Africans something of communal responsibility engendered by residence in urban areas would be obtained".³⁵

Advisory boards were regarded not only as providing a valuable cog in the administrative machine, but also as presenting to the African an opportunity of demonstrating his capacity to face civic responsibility as well as to suffer obligations.³⁶ Protagonists of this view felt that the advisory boards were or should be representative of urban African opinion and the White town councils should not hesitate to consult the board, not only on questions of making and withdrawal of regulations, but on all questions pertaining to the governance, welfare, progress and interests of the location residents.³⁷ Cooper perceived the boards as providing, for the first time, an unbroken chain of contact between the African masses and the urban local authority, and he expressed the view that "a well-balanced board representative of all shades of urban (African) opinion should be the urge, not only of those directly responsible for administration of urban (African) affairs, but also local authorities and the masses of (African) residents concentrated in our urban centres".³⁸

Godlo expressed the view that as the African was given a say in the affairs of his place of residence through the advisory board system, it was a matter for regret that the functions of these boards were not

defined by statute.³⁹ Kahn, however, perceived it as a striking anomaly of this phase that a large part of the permanently settled urban population was voiceless in the administration of local affairs by the town councils.⁴⁰ The root cause of this antimony was felt to be the determination of the urban White living in juxtaposition with the African, to preserve White dominance over municipal administration.⁴¹ In various ways this attitude found expression in rationalizations such as the expression European town.⁴² Kahn felt that according to the large majority of Whites, the African did not "belong" to the town, but was simply a temporary sojourner.⁴³ He submits that "this view was advanced before the South African Native Affairs Commission 1903 - 1905, the Transvaal Local Government Commission 1922 and the Native Economic Commission 1930 - 1932. But as the Smit Committee of 1942 rightly pointed out, many Africans were by then permanently settled in urban areas and had no other home".⁴⁴

To submit that the African affairs committees of municipal councils adequately performed the task of representing African interests was, according to Kahn, "to fly in the face of common sense. However well-disposed a European councillor might be to the Africans, he must, dependent as he was on a White electorate, avoid at all costs giving the impression that his first concern was not the interest of his White constituents. The constitution, duties, and powers of the Advisory Board provided adequate reasons for the failure of the system

since the passing of the Natives (Urban Areas) Act, 1923, to satisfy the aspirations of the urban (African). At first blush it would appear as if the Native Laws Amendment Act, 1944 (Act 36 of 1944) had considerably extended the powers and duties of an advisory board. But the amendments to the law in 1944 did little to strengthen the advisory boards which remained purely consultative institutions, whose advice (and resolutions) need not be taken⁴⁵".

Dissatisfaction with the existing lack of political representation of urban Africans and the advisory board system was manifested from the many recommendations made for change. The 1920 Transvaal Local Government Commission stated that if the African was to be regarded as a permanent element in urban areas, he could not justifiably be excluded from franchise.⁴⁶ Kahn states that the Native Economic Commission "desired a member of the local authority to be chairman of the advisory board, and failing this, an official of the Native Affairs Department or another citizen willing to offer his services - but not the location superintendent, who should, however, be present at the meetings".⁴⁷ He states further that the report of the Native Affairs Commission, "published in 1943, stated that the average councillor was not usually interested in African welfare and was largely indifferent to the type of official appointed to take charge of African administration. The remedy for this state of affairs urged by the Africans and supported by the commission was some form of direct representation on the White municipal councils".⁴⁸

Kahn says that in 1942 the Natives' Representative Council passed a resolution in favour of such direct representation and "at the request of the Union Native Affairs Department, the Provincial Secretaries asked the views of local authorities. A few passed resolutions in favour of the proposals, but the great majority, including Johannesburg and East London, rejected it".⁴⁹ The Annual Report of the Department of Native Affairs for the year 1943-1944⁵⁰ after mentioning the "considerable opposition forthcoming particularly from municipal associations" to representation of the Africans on municipal councils, states that it is doubtful whether effective representation is secured through Native Advisory Boards".

2.3.1.3 Location Advisory Boards' Congress of South Africa

The Location Advisory Boards' Congress of South Africa was established in 1928 at a meeting, in Queenstown, of representatives of 14 advisory boards.⁵¹ The object of the congress was, inter alia, to further the interests of location advisory boards constituted under the Natives (Urban Areas) Act, 1923; to work for better adjustment of conditions of African residents in urban areas; to initiate, support and encourage investigations that may lead to greater knowledge and understanding of conditions obtaining in urban areas; and to co-operate with and assist bodies and persons concerned with either or all the aforesaid objects.⁵²

The congress had as its aim also to promote mutual and reasonable understanding between local authorities and African residents in urban areas; to arrange for and assist with the holding of conferences, meetings, discussions, lectures and other means for the exchange of information and views upon any matters related to the objects of the congress; to make such representations to the Central Government, provincial councils, municipal associations; municipal councils and other public bodies as may be within the scope of the aforesaid objects.⁵³ The constitution also laid down that the Congress would not identify itself with any organized political party.⁵⁴ It reserved the right, however, to examine and report upon any legislation or administrative measure likely to affect conditions amongst Africans in urban areas.⁵⁵

Reyburn remarks that a considerable number of local authorities refused, initially, to meet the Congress membership fees and the travelling allowances of delegates to the annual meeting of the Congress from their Native Revenue Accounts.⁵⁶ It was only after representations had been made to the Central Government in 1931 that an assurance was obtained from the Native Affairs Department that this expenditure would be sanctioned if it were included in the budgets of the local authorities.⁵⁷

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The meetings of the Congress were held every year from 1929 to 1956. Speakers included officials of the Native Affairs Department and senior administrators of municipal affairs. In spite of the fact that local authorities were not obliged to send representatives or to meet the expenses of delegates from their local boards, the Congress was well-supported.⁶⁰

The activities of the Congress covered a wide range of topics; viz. they dealt with purely domestic issues, local affairs of a general nature and also issues dealing with Central Government policy and administration.⁶¹ Some of the recommendations of the Congress were that "Africans should be given direct representation on local authorities, that Native Advisory Boards be given executive powers, that the pass laws be abolished, that freehold title to land in the urban areas be made available to Africans, and that technical training be provided in urban areas for Africans".⁶² The Native Affairs Department advised that the function of the Congress was to deal with matters of urban African administration.⁶³ Involvement in national politics by the Congress was, therefore, viewed with resentment by the Central Government. The Congress was dissolved in 1956 when the Central Government withdrew its financial support.⁶⁴

2.4 Phase 3

2.4.1 The period from 1945 to 1977

2.4.1.1 Historical background

The general trend of the South African Government of excluding Africans from formal participation in the political institutions of its system affected, inevitably, the position of the African to participate at the local government level even during this phase. This process of calculated exclusion of the African unfolded itself in various patterns during this phase.⁶⁶ Local administrative arrangements for Africans in urban areas manifested themselves through a variety of statutes enforcing the Central Government's group areas policy, viz. the Blacks (Urban Areas) Consolidation Act, 1945 (Act 25 of 1945), the Urban Black Councils Act, 1961 (Act 79 of 1961), and the Black Affairs Administration Act, 1971 (Act 45 of 1971), constituted significant milestones in the evolution of the policy of separate development especially at local government level.

In terms of the provisions of these laws an elaborate system of local government and administration for the African in urban areas was developed. The central direction and control vested with the Department of Native Affairs, later variously designated Department of Bantu Administration and Development, Department of Plural Relations and Development and Department of Co-operation and Development.⁶⁷ The

field activities were performed by the urban local authorities.⁶⁸ These local authorities operated on an "agency" basis for the Central Government in regard to urban African administration.⁶⁹ The administrative unit of a local authority responsible for urban African administration was designated the Department of "African" Affairs under the control of a municipal administrative official called a director.⁷⁰

In 1971 fundamental changes in this system were introduced by the establishment of Black affairs administration boards.⁷¹ These boards were vested with all the powers, functions and duties of a local authority in terms of all legislation relating to the African in urban areas.⁷² These boards assumed all the powers, functions and duties of the existing local authorities whose areas were included in the board's jurisdiction in regard to urban government and administration of the African.⁷³

2.4.1.2 Blacks (Urban Areas) Consolidation Act, 1945 (Act 25 of 1945)

(1) Object of the Act⁷⁴

~~This Act consolidated and amended various laws in force in the Union which related to Africans in urban and prescribed areas. It provided for improved conditions of residence; the better administration of African affairs in such areas; the regulation of the ingress of~~

Africans into and their residence in such areas; the procedure to deal with "idle" or "undesirable" Africans in areas outside the scheduled African and released areas and with Africans whose presence in prescribed areas is "detrimental" to the maintenance of peace and order; and other incidental matters.

(2) Main principles of the Act

The Act deals with two principal aspects:-

(a) Land within prescribed areas. ⁷⁵

The most important aspects in connection with the occupation by Africans and administration of land in the prescribed areas are:-

- (i) the procedure to be followed in proclaiming or de-proclaiming residential areas for Africans within urban areas;
- (ii) the limitations on the right of Africans to acquire or alienate land in urban areas;
- (iii) the right to carry on trade and the management of such urban African residential areas;

(iv) the powers of the development boards to run and maintain hostels; and

(v) the general financing of such services.

In terms of the Act the Minister may declare by notice in the Government Gazette an area defined therein to be a prescribed area and indicate that the local authority shall have jurisdiction in terms of the Act in that defined area.⁷⁶ Since the institution of the development boards, the boards act as urban local authorities for the purpose of the Act.⁷⁷ With the approval of the Minister, after consultation with the Administrator, a development board may set aside sites for the occupation or other reasonable requirements of Africans, on which they themselves or the board may provide buildings or other facilities.⁷⁸ Urban African residential areas are set apart for the exclusive use of Africans, other race groups can acquire a limited interest there only with Ministerial approval.⁷⁹ Africans cannot acquire an interest in land in an urban area outside an urban Black residential area.⁸⁰ Where an African acquired such ownership rights in land before the coming into operation of the Act, he could alienate his right or interest to this land only to a person who had the right to own land in that area.⁸¹

(b) The position of the African within prescribed areas

In this regard the Act provides for the circumstances under which an African may enter, remain in and be repatriated from a prescribed area.⁸² It also prescribes the procedure to be followed to deal with "redundant," "undesirable" and "idle" persons in prescribed areas.⁸³

(i) Entrance into a prescribed area

Any Black person who is not a South African citizen or who is not a former South African citizen who is a citizen of a State whose territory or portion of whose territory formerly constituted part of the Republic may not enter a prescribed area without the permission of the Department of Constitutional Development and Planning, which permission shall be given with the concurrence of the development board.⁸⁴ Any Black recruited and under written contract for employment and employed or having been so recruited and having entered into such a contract, is proceeding to employment is not prohibited from entering a prescribed area for the purpose indicated in his authorization.⁸⁵

Except in so far as foreigners are concerned, no Black person requires permission to enter a prescribed area. But if such a person does not have permanent qualifications to be in a prescribed area in terms of section 10 (1) (a), (b) and (c) of the Act, he will be entitled to

remain in such prescribed area for longer than 72 hours only if permission so to remain has been granted.⁸⁶

(ii) Residence in the prescribed area

Section 10 (1) determines which Black persons may legally remain in a prescribed area for longer than 72 hours. The qualifications for permanent residence are the following:

- (a) birth and continuous residence in such area;
- (b) continuous employment in such area for one employer for a period of not less than 10 years and thereafter continued residence in such area. Such persons must not have been employed outside such area and also have not during either period or thereafter been sentenced to a fine exceeding R500 or imprisonment for a period exceeding six months; or
- (c) such Black is a wife, unmarried daughter or son under the age of eighteen years, of any Black mentioned in paragraph (a) or (b) of this subsection and after lawful entry into such prescribed area, ordinarily resides with that Black in such area; and

(d) in the case of any other Black, permission so to remain has been granted by an officer appointed to manage a labour bureau in terms of provisions of subsection (6) of section 22 of the Black Labour Act, 1964 (Act 67 of 1964), due regard being had to the availability of accommodation in a Black residential area.

(iii) Removal of Blacks from prescribed areas

(a) Removal of Blacks who unlawfully remain in a prescribed area:

A Black person who has been convicted of a contravention of sections 10 and 12 of the Blacks (Urban Areas) Consolidation Act, 1945 (Act 25 of 1945) or who has been introduced into the prescribed area contrary to the provisions of section 11 or whose employer has been convicted under section 12 in respect of such Black, may with due regard to his family ties and other circumstances, be removed from the prescribed area under a warrant issued by the court which convicted him or his employer or by a commissioner to his place of origin or any other place indicated by the Department of Constitutional Development and Planning.

(b) Redundant Black persons in prescribed area

In terms of section 28 of the aforementioned Act the State President may by proclamation in the Government Gazette declare any prescribed area to be an area in respect of which the Minister may, after consultation with the Commission for Co-operation and Development, order the removal of Blacks.

On the strength of statistics on the number of Blacks and the reasonable labour requirements the Minister may instruct a development board to draw up a list of the Blacks who are redundant. The Minister may then make provision for the accommodation of these Blacks elsewhere in the Republic.

(c) Idle or undesirable Black persons

Section 29 of the abovementioned Act provides for procedure to be followed for the removal of idle or undesirable persons from an area outside a scheduled Black area or a released area as defined in the Development Trust and Land Act, 1936 (Act 18 of 1936).

(d) Black persons whose presence in a prescribed area is detrimental to the maintenance of peace and order.

Section 29 bis of the Blacks (Urban Areas) Consolidation Act, 1945 (Act 25 of 1945) vests a development board with the power, if it is of the opinion that the presence of a person is detrimental to the maintenance of peace and order in a prescribed area, to order such person to depart from the prescribed area. If he fails to leave the area, he is guilty of an offence.

(e) Removal of residents from a Black residential area

Section 38 bis of the abovementioned Act provides for the summary removal of a person from a Black residential area. Where a commissioner or magistrate finds on the ground of affidavits or oral evidence placed before him that the person has failed to observe any term or condition imposed on his residence there, he may order that such person be summarily removed by a member of the South African Police. Proper notice of such intended removal shall have been served on the person concerned beforehand.

(3) Establishment of advisory boards

The enactment of the Blacks (Urban Areas) Act, 1923 brought about some measure of participation by Africans in urban areas in the

administration of their own affairs⁸⁷ by means of advisory boards. This practice was retained and extended by the Blacks (Urban Areas) Consolidation Act, 1945 which repealed the 1923 Act. The new Act provided for the creation of advisory boards for every location or village.⁸⁸ The urban local authorities or municipalities were required to establish these advisory boards within their area and to consult them in all matters affecting the interests of their African urban population.⁸⁹

In terms of the 1945 Act,⁹⁰ an advisory board could be constituted by elected and nominated members, depending on the stipulations of the regulations drafted by the local authority and approved by the Minister. Most boards consisted of partly nominated and partly elected members and the number of the members was not less than three, in addition to a chairman who might be a White person. The lawful residents over the age of twenty one years qualified as voters. The period of office of elected members was three years. The residential area was divided into wards for election purposes.⁹¹

Section 21 of the Blacks (Urban Areas) Consolidation Act, 1945, which provided for the creation of these advisory boards in urban areas was repealed by section 14 (1) of the Community Councils Act, 1977. Cloete submits that the "advisory boards were no longer necessary because it had by 1977 been accepted that the Blacks in the White

municipalities were no longer only temporary visitors"⁹².

(4) Powers, functions and duties of advisory boards

The functions of the advisory boards were to consider and report on:⁹³

- (i) any regulations which the local authority proposes to make affecting the African in the location;
- (ii) any matter referred to it by the Minister of Native Affairs or the local authority;
- (iii) any matter specially affecting the interests of Africans in the urban area, upon which the board may consider it useful or desirable to report.

These boards were purely advisory bodies in their relationship with the parent authorities. They had no executive powers. Vosloo warns that "it should be clear that although these boards are certainly a start in the direction of democratic participation in local government and administration the system does not provide for the type of responsibility which combines representation and accountability for local policy decisions and the expenditure of public funds"⁹⁴.

2.4.1.3 Urban Black Councils Act, 1961 (Act 79 of 1961)

(a) Object of the Act

The object of the Act was to provide for the establishment of urban Black councils; the conferring of administrative, executive, judicial and police powers on certain Blacks and the establishment of community guards in certain areas.⁹⁵

(b) Establishment of Black councils

In terms of the Act, a local authority could establish an urban Black council for an urban Black residential area within its area of jurisdiction.⁹⁶ This step could be taken only after due consultation with the existing advisory boards or where there is no advisory board in existence, if the urban Black residents so desired.⁹⁷

At first these urban councils comprised elected and selected members, but as from 1970 all members were elected by the Black residents qualified to vote.⁹⁸ The number of members and the election process were determined by the local authority concerned in the form of special regulations which were based on model regulations drafted by the Department of Bantu Administration and Development.⁹⁹ Vosloo remarked in 1974 that the "system of urban 'Black' Councils is still

at a very early stage of development. By 1971, a total of 23 such councils had been established at most of the larger urban centres. Apparently there is still a large measure of hesitation on the part of most local authorities to take the next step in setting a system of representative urban 'Black' self government and administration in motion".¹⁰⁰

(c) Powers, functions and duties of urban Black councils

Defined powers and functions could be delegated to the urban councils by the urban local authorities, subject to the approval of the Minister.¹⁰¹ The primary functional categories of these powers were advisory, administrative, executive, judicial and police.¹⁰² The extent to which specific powers and functions were actually assigned to the various existing urban Black councils varied considerably.¹⁰³ Vosloo remarks that "in most cases few executive functions have been conferred on these urban 'Black' councils in view of the fact that they have consultative powers only in regard to expenditure from the Municipal Bantu Revenue Account, into which all moneys accruing to the Councils are paid".¹⁰⁴

During this phase there seemed to be considerable ambivalence in the official policy regarding the role the urban Black councils were destined to play. Vosloo states that this ambivalence was due to the

fact that there was a large measure of uncertainty as to whether the urban Black "would be recognized as a permanent member of the (urban) population and therefore entitled to the establishment of full-scale municipalities"¹⁰⁵ or whether he would continue to be regarded as a 'temporary sojourner' who would be linked to a self-governing political entity for purposes of exercising his political rights.

2.4.1.4 Black Affairs Administration Act, 1971 (Act 45 of 1971)

(a) Object of the Act

The object of the Act was the establishment of development boards¹⁰⁶ to exercise within their areas of jurisdiction the functions fulfilled in the past by local authorities; to bring about a more effective and uniform administration over larger areas; to achieve greater mobility in Black labour; and to involve experts together with the bodies having a direct interest in Black labour more actively in the administration of Black affairs.¹⁰⁷

(b) Establishment of development boards

The Minister may by notice in the Government Gazette declare any area outside the self-governing territories to be development board areas and may prescribe what areas are to be incorporated into such

development board area.¹⁰⁸ The Minister may also appoint boards in respect of such areas.¹⁰⁹ The Act provides further for the constitution of development boards which shall consist of a chairman to be appointed by the Minister and so many members as the Minister may determine and appoint.¹¹⁰

(c) The role of development boards

In terms of section 11 of the Act, each board has the power, with the approval of the Minister, to acquire by purchase, exchange or otherwise or hire land and property; to develop land and provide services and amenities, in its administration area, for Blacks; to sell, let, hypothecate or otherwise dispose of any land belonging to the board; and also to obtain loans.

Within its administrative area, a development board is vested and charged with:

"(i) all the rights, powers, functions, duties and obligations -

- (a) of an urban local authority in terms of the Blacks (Urban Areas) Consolidation Act, 1945 (Act 25 of 1945), the Black Services Levy Act, 1952 (Act 64 of 1952) Black Labour Act, 1964 (Act 67 of 1964).

- (b) of a local authority in terms of the Sorghum Beer Act, 1962 (Act 63 of 1962) and in so far as they relate to the housing of Blacks in terms of the Housing Act, 1966 (Act 4 of 1966);
- (c) of an urban local authority in terms of section 100 bis of the Liquor Act, 1928 (Act 30 of 1928); and
- (d) in so far as they relate to Blacks only, of an urban local authority or a local government body or commissioner in terms of such laws as may from time to time be specified by the Minister by notice in the Government Gazette, but subject to such conditions, modifications or expectations or exceptions as may be specified.
- (ii) Such rights, powers, functions, duties and obligations, in so far as they relate to Blacks only, of an urban local authority or a local government body in terms of the relevant ordinance establishing local authorities or in terms of any other ordinance as the Minister may from time to time after consultation with the Administrator specify by notice in the (Government) Gazette, but subject to such conditions, modifications or exceptions as may be specified in the notice".¹¹¹

According to Riekert the creation of development boards "brought about a completely new dispensation in regard to the administration of Blacks in White areas. The functions formerly performed by the more than 420 local authorities and the more than 300 district labour offices of the Commissioners in the White area are now dealt with by the (development) boards through 394 local and 304 district labour ¹¹² bureaux".

Development boards do not have policy-making powers, neither do they have the power to make regulations. ¹¹³ Any power to make regulations vested in a local authority by virtue of particular legislation, vests, in so far as it applies to the administration area of a board, in the Minister. ¹¹⁴ A board must be consulted before the Minister can make regulations affecting that board. ¹¹⁵

2.5 Phase 4

2.5.1 The period from 1977 to the present

2.5.1.1 Historical background

As a result of the unpopularity and ineffectiveness of the system of advisory boards and urban Black councils the Central Government recognized the need to grant some measure of local autonomy to African

urban communities.¹¹⁶ This semblance of local self-government manifested itself in the adoption of a system of community councils. The Government decided to create new bodies in which provision would be made for the institution of responsible structures with some measure of executive authority.¹¹⁷ These institutions would function alongside the existing development boards.¹¹⁸ Riekert believes that community councils constituted the first proper form of local self-government to be introduced into African urban communities in the Republic of South Africa.¹¹⁹

Cloete states that when the community council system was introduced in 1977 it was intimated that these bodies would be the forerunners of real and full-fledged municipal authorities for urban areas prescribed for Africans.¹²⁰ He states further that it was pointed out also that suitable legislation would be introduced in Parliament for the creation of the envisaged local authorities.¹²¹ This major adaptation of the official policy resulted in the enactment of the Black Local Authorities Act, 1982 (Act 102 of 1982). Riekert remarks that this Act had its origin in certain recommendations advanced by the Riekert Commission.¹²² He feels that this Act "heralds a new dispensation for urban Blacks in the field of local government and is an important milestone in the history of local government in South Africa".¹²³ The then Minister of Co-operation and Development¹²⁴ also hailed the new Act as the beginning of an exciting phase for the

growing African urban community.¹²⁵ His enthusiasm for the new dispensation to be brought about by the Black Local Authorities Act, was, however, not shared by a large majority of informed African civic leaders, who have advocated non-participation on or rejection of these local authorities on the ground that, inter alia, these new municipal bodies, like their predecessors, reflect the government's intransigence to the accommodation of the aspirations and demands of the African urban dweller.¹²⁶ Probably as a consequence of this massive rejection¹²⁷ by the African urban community the Central Government decided to appoint the Cabinet Committee¹²⁸ to conduct an in-depth and comprehensive assessment of the Government's policy in respect of the African urban population. It is hoped that this committee will see its way clear to canvass extensively, among others, the views of the various urban communities.

2.5.1.2 Community Councils Act, 1977 (Act 125 of 1977)

(a) Object of the Act

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The object of the Act is to provide for the establishment of community councils; the conferring of civil, criminal and judicial power in urban residential areas on certain Blacks; and the establishment of community guards in certain areas.

(b) Establishment of community councils

The Minister may, after consultation with a development board, by notice in the Government Gazette establish a community council for an urban Black residential area after every urban Black council and every Black advisory board established for the area or any portion of the area for which the urban council is contemplated, has been consulted, and if no such advisory board or urban council has been established, after the Blacks residing in such area have been consulted.¹³⁰ The Minister may alter the areas of jurisdiction of such community council by notice in the Government Gazette, when requested thereto by a community council or he may dissolve such council.¹³¹

A community council consists of members elected by the African residents of the area who have the prescribed qualifications to hold office as members thereof and to vote.¹³² Where insufficient members are elected to such a council, the Minister may designate as many members as may be necessary.¹³³ A community council is elected for three years.¹³⁴

(c) Powers, duties and functions of a community council¹³⁵

A community council:-

- (i) shall in respect of its area and subject to the Minister's directions exercise such powers and perform such duties in respect of those matters as may be vested in it and with which it may be charged by the Minister, after consultation with the development board concerned and such community council;
- (ii) may control and manage, subject to the provisions of the Act, a community guard established under section 8;
- (iii) shall report to the Minister, the development board concerned or any other person acting under the authority of the Minister on any matter referred to it by the Minister, such board or such other person or in respect of which it deems it advisable so to report;
- (iv) may make recommendations to the Minister or the development board concerned regarding the making or application of regulations which it deems necessary or desirable in the interests of the persons in its area, the layout and renovation of such area and other matters which it considers to be in the interest of such persons;
- (v) may make recommendations to the authorities concerned in connection with transport services;

- (vi) may make recommendations to the body concerned in respect of educational matters;
- (vii) may with the concurrence of the development board concerned and subject to any conditions the Minister may impose, appoint such staff as the council may deem necessary for the exercise of its power and the performance of its functions;
- (viii) may with the approval of the Minister and after consultation with the development board concerned impose levies for specific services or purposes on persons in its area;
- (ix) may appoint from its members one or more committees and may assign to a committee so appointed any of its powers and duties; and
- (x) shall have, with regard to any power or duty which, immediately before the date on which such power was vested in it or it was charged with such duty that was exercised or performed by a development board, all the rights, powers, functions, duties and obligations of an urban local authority in terms of the laws mentioned in section 11 (1) (e) of the Black Affairs Administration Act, 1971; rights, powers, functions, duties and obligations vested in a community council

or with which it may be charged by virtue of the provisions of subsection (1) (m) shall, subject to the provisions of this Act, devolve upon such council to the exclusion of the development board or any other urban local authority.

Section 8 of the Community Councils Act also provides for the establishment of a community guard for the preservation of the safety of the inhabitants, the maintenance of law and order, the prevention of crime and the performance of the functions of a messenger according to Native Law in respect of the exercising of the judicial power of any person on whom such power has been conferred under this Act.

2.5.1.3 Black Local Authorities Act, 1982 (Act 102 of 1982)

(a) Object of the Act

The object of the Act¹³⁶ is to provide for the establishment of local committees, village councils and town councils for Black persons in certain areas; for the appointment of a Director of Local Government; and for incidental matters.

(b) Establishment of town councils and village councils

The Minister may by notice in the Government Gazette, after

consultation with the Administrator of a province in which, and with the development board in the administration area of which, the area in question is situated, establish under a name mentioned in the notice a town council or a village council for an area defined in the notice consisting of one or more townships or a portion or portions of a township or townships.¹³⁷

The Minister may dissolve any village council or two or more village councils at the request of or after consultation with that village council or those village councils and establish under a name mentioned in the notice a town council for the area for which that village council or those village councils were established.¹³⁸ He may alter the name of a town council or award the status of city council to a town council.¹³⁹ He may also dissolve a town council or village council at the request of or after consultation with that town council or village council if in his opinion the need no longer exists.¹⁴⁰

When a local authority is established under the Act for an area for which a community council has been established under the Community Councils Act, 1977 or which includes the area of such community councils, the Minister shall dissolve the community council concerned by notice in Government Gazette as from the date of the first ordinary meeting of the local authority.¹⁴¹ The Act provides for only two categories of local government, namely village councils and town

councils.¹⁴² The local committees, as provided for in section 5 are mere nominated advisory bodies and therefore do not meet the qualifications of local government.¹⁴³ The local committees are not necessarily the forerunners of a village or town council. The existing local advisory boards become local committees in terms of the Act.¹⁴⁴

(c) Rights, powers, functions and duties of Black local authorities

Section 3 of the Act stipulates the range of powers a Black local authority may exercise. It can own land and other immovable property within its area of jurisdiction; it may alienate, let, allocate, improve and develop this land or these buildings; it allocates leasehold rights to persons in respect of stands; with the approval of the Minister it may obtain mortgages or sell debentures, shares or other securities; obtain and alienate patents, licences, concessions, trademarks, open accounts at a bank or other financial institutions with the approval of the Minister, borrow money or overdraw on a bank account; impose levies for purposes it determines; and invest money, accept or make donations on the conditions determined by the Minister.

A local authority shall, subject to the provisions of the Act, in respect of its area be vested and charged with all rights, powers, functions, duties and obligations which have been conferred upon or

assigned to a development board or any local body in respect of that area by or under any law.¹⁴⁵

2.6 Summary

The evolution of a system of local administration and eventually some measure of local self-government has extended over a number of decades. The primary factor that has determined the nature and pace of this process has been the Central Government's policy of 'apartheid'. The imperatives of this segregationist policy dictate the nature of the institutions to be created, the geographical location of the prescribed areas, the type of housing, the amenities to be provided, the restrictions to be imposed on ingress into the prescribed areas and also stringent procedures for the removal of those who were not holders of the requisite qualifications to be within these prescribed areas.

There has been a very strong conviction on the part of the Government for a considerable time, that Africans should be regarded, not as a permanent feature of the urban society, but as temporary sojourners who would sell their labour in the "White areas" and eventually retire to where they "belong". The whole system of local administration had to fit in with this conviction. When faced with the stark reality that the African is, indeed, a permanent member of the urban community

the Government has eventually relented and created local government structures for the African which are divorced from those of the existing, well-developed White local authorities. It remains to be seen what the Government's next step will be in the light of the awaited findings of the Cabinet Committee investigating the position of the urban African.

2.7 References and footnotes

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Some Aspects of the Native Question, Selected
Addresses Delivered at the Fifth National European
Bantu Conference, July 5 - 7, 1933, South
African Institute of Race Relations,
Johannesburg, p. 101.
2. Ibid., p. 102
3. Ibid.
4. Ibid.
5. This policy was first embodied in the Blacks (Urban Areas) Act,
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enacted.
6. An examination of the statutes relating to the administration
of African urban communities will reveal that there have been
adjustments brought about by the Central Government in this
regard. At first, and in fact for a considerable period, the
perception was that Africans should be regarded as temporary

sojourners in urban areas and, therefore, should be provided with minimum facilities during their temporary stay in these areas. The policy has steadily shifted towards a recognition of the permanency of the African urban communities through the introduction of the right of leasehold, i.e. section 6A of the Blacks (Urban Areas) Consolidation Act, 1945 (Act 25 of 1945). The establishment of the Black local authorities in terms of the Black Local Authorities Act, 1982 (Act 102 of 1982) underscores this adjustment in official policy.

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8. Ibid., p. 89
9. Ibid.
10. Riekert, P.J.: "Black Local Government in the Republic of South Africa," Van Vuuren, D.J. et al: Change in South Africa, Butterworths, Durban-Pretoria 1983, pp. 144 - 145.

11. Cooper, op. cit., p. 89
12. Godlo, op. cit., p. 102
13. Ibid., p. 105
14. Originally the title of this Act was Natives (Urban Areas) Act, 1923. The definition of an African has varied according to the meaning reflected in the Population Registration Act, 1950 (Act 30 of 1950) as amended.
15. A detailed examination of these principles appears under 2.3.1.1. (b) infra.
16. Godlo, op. cit., p. 104
17. Section 10 of the Natives (Urban Areas) Act, 1923 (Act 21 of 1923) provided for the establishment of Native advisory boards for every location under the control of an urban local authority. See 2.3.1.1. (c) infra.
18. Godlo, op. cit., p. 104
19. Ibid.

20. Ibid.
21. Ibid.
22. Ibid., p. 105
23. See preamble to the Blacks (Urban Areas) Act, 1923 (Act 21 of 1923).
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25. Section 10.
26. Reyburn, L. The Urban African in Local Government,
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27. Ibid.
28. Section 10
29. Ibid.

30. Ibid.
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37. Ibid.
38. Ibid.
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40. Kahn, E.: "Part One, Reformation of Native Urban Area Laws," Suzman, H. and Kahn, E.: New Lines in Native Policy, South African Institute of Race Relations, Johannesburg, 1947, p. 25.

41. Ibid.
42. Ibid.
43. Ibid.
44. Ibid.
45. Ibid., pp. 25 - 26
46. Ibid.
47. Ibid.
48. Ibid.
49. Ibid.
50. Page 24
51. Reyburn, op. cit., p. 25
52. Ibid.

53. Ibid., pp 25/6
54. Ibid., p. 26
55. Ibid
56. Ibid.
57. Ibid.
58. Ibid.
59. Ibid.
60. Ibid.
61. Ibid.
62. Ibid.
63. Ibid., p. 27
64. Ibid.

65. Vosloo, op. cit., p. 34 see also Venter, F.: "South African Constitutional Law in Flux," Van Vuuren D.J. et. al: Change in South Africa, Butterworths Durban/Pretoria, 1983, p. 5.
66. These patterns are examined under 2.4.1.2, 2.4.1.3 and 2.4.1.4. infra.
67. The Government has transferred the control of local government and administration of Blacks to the Department of Constitutional Development and Planning. The former Department of Co-operation and Development has been restructured and re-designated Department of Education and Development Aid.
68. Vosloo, op. cit., p. 40
69. Ibid., p. 41
70. Ibid.
71. Black Affairs Administration Act, 1971 (Act 45 of 1971).
72. Section 11 of the Black Affairs Administration Act, 1971 (Act 45 of 1971).

73. Ibid.
74. See preamble to the Blacks (Urban Areas) Consolidation Act, 1945 (Act 25 of 1945).
75. Section 2
76. Ibid.
77. Section 11 (1) (e) of the Black Affairs Administration Act, 1971 (Act 45 of 1971).
78. Section 2 (1) (b) of the Blacks (Urban Areas) Consolidation Act, 1945 (Act 25 of 1945).
79. Section 5
80. Section 6
81. Section 15 of the Group Areas Act, 1966 (Act 36 of 1966).
82. Sections 10, 12, 28 and 29 of the Blacks (Urban Areas) Consolidation Act, 1945 (Act 25 of 1945).

83. Sections 28 and 29
84. Section 12 (1)
85. Section 13
86. Section 10 (1) (d)
87. Section 10 of the Blacks (Urban Areas) Act, 1923 (Act 21 of 1923).
88. Section 21 of the Blacks (Urban Areas) Consolidation Act, 1945 (Act 25 of 1945) which was repealed in 1977 by section 14 (1) of the Community Councils Act, 1977 (Act 125 of 1977).
89. Ibid.
90. Ibid.
91. Vosloo, op. cit., pp. 43 - 44
92. Cloete, J.J.N.: Central, Provincial and Municipal Institutions of South Africa, J.L. van Schaik, Pretoria, 1982
p. 287.

93. Section 21 of the Blacks (Urban Areas) Consolidation Act, 1945 (Act 25 of 1945).
94. Vosloo, op. cit., p. 43.
95. See preamble to the Act.
96. Section 2 (1)
97. Section 2 (2)
98. Section 8 of the Third Black laws Amendment Act, 1970 (Act 49 of 1970).
99. Vosloo, op. cit., p. 44
100. Ibid.
101. Section 4 of the Urban Black Councils Act, 1961 (Act 79 of 1961).
102. Section 4 (2)
103. Vosloo, op. cit., p. 45.

104. Ibid.

105. Ibid.

106. Administration boards were subsequently re-designated development boards in terms of the Black Communities Development Act, 1984 (Act 4 of 1984).

107. See preamble to the Act.

108. Section 2 (1) (a)

109. Section 2 (1) (c)

110. Section 3

111. Section 11 (1) (e)

112. Riekert, P. J. (Chairman):
Report of the Commission of Enquiry into Legislation Affecting the Utilization of Manpower (Excluding the Legislation Administered by the Department of Labour and Mines), Government Printer, Pretoria, 1976, p. 66.

113. Section 22 (1) (a)
114. Section 22 (1) (b)
115. Section 22 (5)
116. Riekert, P.J.: "Black Local Government in the Republic of South Africa," Van Vuuren, D.J. et. al.: Change in South Africa, Butterworths, Durban/Pretoria, 1983, p. 147.
117. Cloete, op. cit., p. 289 explains that these bodies were merely "forerunners of full-fledged municipal authorities," though Riekert is of the opinion that these structures constituted the first proper form of local self-government; see Riekert, op. cit., p. 147.
118. Section 5 of the Community Councils Act, 1977 (Act 125 of 1977).
119. Riekert, op. cit., p. 147
120. Cloete, op. cit., p. 289.

121. Ibid.
122. Riekert, op. cit., p. 147
123. Ibid., p. 148
124. Dr Piet Koornhof
125. Hansard, 1982: 9618 House of Assembly Debates
126. This position has been adopted by the Joint Rent Action Committee for the Durban-Hambanati-Shakaville Areas, the Soweto Civic Association and other political groupings such as, inter alia, the Azanian Peoples Organization and the Azanian Students Organization.
127. This rejection manifested itself in a massive stay-away of the would be voters from the polls in the last elections as urged by the groups mentioned in 126 supra. See also Survey of Race relations in South Africa 1983, South African Institute of Race Relations, Johannesburg, Vol. 37 p. 258.

128. Refer to Co-operative Coexistence: The Road to Peace, Safety Development, issued by the Ministry of Co-operation, Development and Education, January 1985. See also The New Parliament issued by the Department of Foreign Affairs, Perskor, Pretoria, 1984 p. 3.
129. See preamble to the Act.
130. Section 2 (1)
131. Section 2 (4)
132. Section 3 (4)
133. Section 3 (2)
134. Riekert, P.J.: "Black Local Government in the Republic of South Africa," op. cit., p. 145.
135. Section 5 of the Community Council Act, 1977 (Act 125 of 1977).
136. See preamble to the Act.

137. Section 2 (1) (a)

138. Section 2 (1) (b)

139. Section 2 (1) (c)

140. Section 2 (1) (e)

141. Section 4

142. Section 2

143. Section 5

144. Section 5 (4)

145. Section 23 (1)

CHAPTER 3

Position accorded urban local government for Blacks in the hierarchy of authorities in South Africa.

3.1 Introduction

The Republic of South Africa is a unitary State comprising a three level governmental structure. There is a Central Government which is vested with the highest authority in and over the whole State,¹ four provincial authorities² and a large number of local authorities within each province.³ The Central Government's policy of apartheid has resulted in the mushrooming of several self-governing territories for the various African ethnic groups.⁴ Some of these self-governing units have been granted political separation from the South African State system and are regarded by South Africa as having been accorded political independence.⁵ The independence of these entities, viz. Transkei, Bophuthatswana, Venda and Ciskei, is recognized only by its creator and no other State has extended recognition to any of these fledgelings.⁶

The self-governing territories fall under the direct control of the Central Government⁷ and they are, for all practical purposes, virtually equivalent to the second tier authorities though, according

to Adlem and Fourie, they have been endowed with powers which exceed those normally exercised by the provincial authorities.⁸ These self-governing territories have in turn, like the Central Government, a three tier governmental structure consisting of a legislative assembly vested with the authority over the whole territorial area, several regional authorities and a large number of tribal, community and township structures constituting the local authority level.⁹ The townships in the self-governing areas are administered in terms of regulations proclaimed by the State President of the Republic of South Africa.¹⁰ Provision has been made for township councils to be established for these townships.¹¹ Township councils have very limited powers, the actual administration of the township is vested in the managers and superintendents appointed by the Central Authorities of the self-governing territories.¹²

Urban local authorities for Africans recently instituted in terms of the Black Local Authorities Act, 1982, constitute a new dimension in the South African political system. This Act may be regarded as a manifestation of the eventual recognition by the Central Government of the view¹³ expressed over a number of decades that the African in the urban areas should be accepted as a permanent member of the urban community. The position accorded these local authorities in the hierarchy of authorities in South Africa has still to be clearly spelt out.¹⁴ The place accorded to these urban local government structures in terms of the present constitutional arrangements will be examined hereunder.

3.2 Historical perspective

When South Africa acquired the political status of a Union in 1910, all its inhabitants became subjects of the British Government.¹⁵ The exercise of governmental power was, in terms of the provisions of the South Africa Act, 1909 accessible only to members of the White race.¹⁶ The members of the other racial groups were relegated to the position of objects of administration.¹⁷

In terms of the South Africa Act, 1909 the general administration of African affairs was vested in the Governor-General.¹⁸ These powers were assumed by the State President with effect from 31 May 1961.¹⁹ On 31 May 1910 the Department of Native Affairs was established for the administration of areas set aside for Africans and for African Affairs in general.²⁰ This State department was the first executive institution to be established in the Union to cater exclusively for the perceived unique needs of a specific population group.²¹ A Minister of Native Affairs was appointed to serve as a political head of the new department. According to Cloete "the Department of Native Affairs (was) created for the administration of Blacks within and outside those parts of the country which were their traditional homelands".²²

This event marked the incorporation into official policy and legislation of the pattern of separation between the various racial

groups in South Africa.²³ In terms of this policy special provision was devised for Africans who had become resident in urban areas.²⁴ The effect of this policy was that urbanization in the case of the African occurred in residential areas exclusively demarcated for this purpose.²⁵ This arrangement created a pattern whereby urban residential areas for Africans were located on the outskirts of the towns and cities.²⁶

The administration of these urban residential areas for Africans was, according to Cooper, haphazard and constituted a blot on the White local authorities.²⁷ In 1923 the Blacks (Urban Areas) Act, 1923 (Act 21 of 1923) provided that local authorities were charged with the details of the administration of the Act and were also entrusted with extensive powers to frame and operate regulations, subject to Ministerial approval.²⁸ Africans in urban areas had no structures in which they could exercise political rights in respect of local government.²⁹ The Blacks (Urban Areas) Consolidation Act, 1945 (Act 25 of 1945), which repealed the 1923 Act, still did not provide for effective participation by the Africans in urban areas as the advisory committees or boards were ineffective structures.³⁰

The official policy was still that the industrial and urban areas had been established by and were the place of domicile of the Whites and Africans were expected to come to these areas as temporary workers and should return to the rural habitats when their contracts of labour expired.³¹ With the advent of urban Black councils established in

terms of the Urban Black Councils Act, 1961 (Act 79 of 1961) the Central Government continued its control over local administration of the urban African.³² The councils were not in reality local government bodies in which civic rights could be exercised.³³ The Black Affairs Administration Boards, subsequently re-designated Development Boards,³⁴ established in terms of the Black Affairs Administration Act, 1971 (Act 45 of 1971), which assumed the powers and duties of local administration from the local authorities³⁵ did not in any manner affect the Central Government's control over local administration.³⁶

The community councils established in terms of the Community Councils Act, 1977 (Act 125 of 1977) are, as Van Vuuren asserts, the "result of the policy of bringing about a new dispensation and giving the Blacks in White cities a say in their own affairs".³⁷ These councils did not constitute local government structures though they were endowed with powers greater than those granted to any previous structures in which Africans could air their views.³⁸ Black local authorities constituted in terms of the Black Local Authorities Act, 1982 (Act 102 of 1982) were designed to satisfy the demand for political rights for the African urban community.³⁹ This arrangement was designed in respect of the third level of government only. The position is still that Africans have been excluded from political participation at the first and second

tier governmental structures⁴⁰ which are still the preserve of the Whites, though the new political dispensation⁴¹ accommodates representation of some sort⁴² for Coloureds and Indians as well, at the first tier of government only.

For the various African ethnic groups, constitutional measures were designed with their traditional cultures and homelands as focal points for ultimate independent nationhoods.⁴³ The Promotion of Black Self-Government Act, 1959 (Act 46 of 1959), apart from terminating all⁴⁴ forms of African representation in the South African parliament, explicitly recognizes the various Black territories designated by the Government as homelands for the different ethnic groups including those members not domiciled in the homelands, i.e. the African in urban areas.⁴⁵ It provided for the transfer of powers, from the Central Government, of self-government to the Territorial Authorities created in terms of the Black Authorities Act, 1951 (Act 68 of 1951).⁴⁶

The next step was the enactment of the National States Citizenship Act, 1970 (Act 26 of 1970) which provided that every African in the Republic who is not a citizen of a self-governing area will acquire citizenship of one or other self-governing area.⁴⁷ Vosloo explains that "those who will be citizens of a particular territorial authority are (Black) persons born in the area and/or domiciled there; (Black) persons born in the Republic but

speaking the language used by the (Black) in the area; and (Black) persons in the Republic who have relatives in that area, or who have identified themselves with any part of such population by virtue of their racial or cultural background".⁴⁸ To confirm its intention⁴⁹ of leading each "Black Nation" to self-government and ultimate independence, the Government enacted the National States Constitution Act, 1971 (Act 21 of 1971). This Act provided for the replacement of territorial authorities by legislative assemblies, the establishment of executive councils and administrative agencies.⁵⁰

Africans in urban areas were expected, in terms of the official policy, to find political expression at all levels in the homelands.⁵¹ Venter submits that "the introduction of the Community Councils in the Black residential areas heralded what can be termed tertiary South African constitutional law. That is, the constitutional law in terms of which Blacks in South Africa with citizenship of an independent National State or South Africa, can achieve (some semblance of) self-determination at local government level. Although there has so far been no indication that the government is prepared to recognize urban Blacks as a population group separate from National States, the Act was clearly aimed at creating local authority structures for a permanent Black urban population (large proportions of which are technically aliens because they are citizens of independent National States)".⁵²

3.3 A comparison of the position as it obtains in regard to urban Blacks and other groups

3.3.1 Existing position of the Whites

When the Union of South Africa was created in 1910 the status quo in each province was retained by vesting the provincial authorities with the power to control local government matters.⁵³ The Provincial Government Act, 1961 (Act 32 of 1961), provides that each province shall have a provincial council⁵⁴ and subject to this Act, the Financial Relations Act, 1976 and the assent of the State President, a provincial council may make ordinances, inter alia, in relation to municipal institutions, divisional councils and other local institutions of a similar nature.⁵⁵

From the Republic of South Africa Constitution Act, 1961 (Act 32 of 1961) it will be realized that the Act provided only for two tiers of government.⁵⁶ Craythorne states that "local government as a form of government is not especially created or guaranteed by the Constitution".⁵⁷ The third level, i.e. local government, comes into existence at the will of a provincial council.⁵⁸ The constitutional and legal position accorded to White local government is that it is subordinate to the two higher tiers of authorities and "it is controlled by (these) two tiers of government in virtually every important respect".⁵⁹

The procedure adopted by each provincial authority was to pass a general local government ordinance which contained general directives regarding the powers and duties of local authorities and the procedure they are to follow.⁶⁰ According to Vosloo these "ordinances are continually revised and supplemented with other ordinances dealing with various functional areas such as town planning, elections, taxation, traffic, etc".⁶¹ "In addition," Cloete observes, "it was always laid down in all provinces that the legislation passed by municipal councils was subject to assent by the Administrators of the provinces".⁶² All provincial ordinances, inter alia, bestowing powers on local authorities are subject to the approval of the Central Government.⁶³ An Act of Parliament has priority over a provincial ordinance and Acts and ordinances on their part enjoy precedence over municipal bylaws.⁶⁴

Local authorities for Whites have been used, to a considerable extent, as decentralized executive agencies of the Central Government departments in fields such as health,⁶⁵ African Affairs⁶⁶ and housing.⁶⁷ Vosloo explains that "central control takes the form of either requiring local authorities to obtain prior sanction to specific projects or of approving schemes and the expenditure involved before financial aid is granted. Otherwise control is implemented by means of regulations framed under the provisions of enabling legislation. There is no central department solely responsible for local government

matters and individual local authorities are required to deal with several government departments depending on the nature of the matters concerned".⁶⁸

3.3.2 Existing position of the Coloureds and Indians

The development of urban local government for Coloureds as well as Indians is provided for in the Group Areas Act, 1966 (Act 36 of 1966). The Act provides for the demarcation of group areas for occupation by the various race groups.⁶⁹ The development of the process of urban local government occurs in three phases, viz. consultative committees with nominated members functioning under close official guidance; management committees with partly elected and partly nominated members exercising such powers and functions as may be conferred upon them under the supervision and control of the adjacent White local authority and subject to any conditions prescribed by the Administrator of the province; and ultimately full-fledged local authorities.⁷⁰ Cloete states that "in pursuance of the provisions of these Acts, the provincial councils passed ordinances to provide for the establishment of consultative and management and local affairs committees or full-fledged local authorities for the group areas populated by Coloureds".⁷¹

The main aim of the consultative, management and local affairs committees appears to be to provide the Coloureds and Indians

communities with the necessary experience in local government and administration.⁷² The Act provides that when the Minister, after consultation with the provincial Administrator, is satisfied, after an investigation, that a local authority can be established in respect of a particular group area where a management or local affairs committee is in existence, a proper local authority may be instituted for such a group area.⁷³ Although the establishment of consultative, management or local affairs committees vests in the Minister of Home Affairs, the "operation of the system is regulated by the various provincial ordinances and the regulations made thereunder by the Administrator concerned. What this amounts to in practice is that effective control of the development of the system of local government bodies for Coloureds rests with the Administrators concerned".⁷⁴

The establishment of autonomous local authorities for the Coloureds and Indians is the last phase in the process of development envisaged by the arrangements for local government in terms of the Group Areas Act, 1966.⁷⁵ According to the Theron Report, there is so far "no example of a Coloured municipality that has been established in terms of the Group Areas Act, 1966. The only existing Coloured municipality, Pacaltsdorp, has been under the control of its own Village Management Board since 1886 and acquired the status of an independent municipality in 1975 in terms of the new Municipal Ordinance of the Cape Provincial Council".⁷⁶

The main inhibiting factors in the establishment of autonomous local government structures for the Coloured group areas have been identified as "the lack of revenue which would be available to such local authorities... (and) opposition from the Coloured leaders to separate local authorities for the Coloured group areas"⁷⁷. Cloete points out further that the "whole matter of separate local authorities was still under consideration after the President's Council had reported to Parliament in 1982 about, inter alia, local authorities for urban areas populated by Coloureds and Indians"⁷⁸.

The Indian community has been treated like the Coloured group for purposes of creating local government structures for their group areas. According to Cloete, "a number of the urban areas populated by Indians have already established their own full-fledged local authorities, viz. Verulam, Isipingo, Umzinto-North and Marburg"⁷⁹.

3.3.3 Existing position of the urban Blacks

Venter asserts that up to 1977, when community councils were established, there could hardly have been any mention of governmental institutions, outside the self-governing areas, in which Blacks had any part.⁸⁰ The creation of community councils marked, according to Venter, the emergence of a new phase in the constitutional evolution of the position of the urban Black, i.e. "the constitutional law in

terms of which Blacks in South Africa with citizenship of an independent National State or South Africa, can achieve self-determination at local government level".⁸¹

Though the community councils were perceived as the manifestation of the policy of bringing about a fresh outlook and affording Blacks some semblance of participation in their own affairs they are not, however, autonomous or truly parallel structures that could be equated to local government.⁸² The Black local authorities established in terms of the Black Local Authorities Act, 1982 were the first measure adopted to institute parallel structures for the urban Blacks at local government level. This major shift in official policy was preceded by the recognition of the permanency of the urban Black through the introduction of the leasehold system in 1978.⁸³ Koornhof acknowledged that the Central Government now accepts that the urban Blacks are permanently resident in South Africa.⁸⁴

Urban Black local government as embodied in the Black Local Authorities Act, 1982 is not in any manner linked constitutionally to the governments of the self-governing or independent territories. The stipulation of liaison procedures in respect of representatives of self-governing territories based in urban areas, is actually the only indication that the ethnic links have not been completely ignored.⁸⁵

Black local authorities are not created and controlled by an intermediate authority, i.e. a provincial authority as is the case in regard to White,⁸⁶ Coloured⁸⁷ and Indian local authorities. Black local authorities are established by, placed and function under the general control of the first tier of government now through the Department of Constitutional Development and Planning.⁸⁸ Although the Black Local Authorities Act, 1982 does not endow the development boards with powers to create Black local authorities, these boards must assist with the development of Black local authorities.⁸⁹ When these local authorities become viable local self-government institutions they will most probably lead to the demise of the development boards.⁹⁰

3.4 The position of the Department of Constitutional Development and Planning in urban local government and administration for Blacks

3.4.1 General remarks

As pointed out above, the foundations of the system of urban African administration were laid by the Blacks (urban Areas) Act, 1923. In terms of the Act, each local authority was, subject to Central Government control through the Department of Native Affairs, responsible for all the Africans in its municipal area. Local

authorities were required to provide segregated areas for African residence and to establish advisory committees for liaison with the Africans.⁹¹ These stipulations were further tightened and extended by the Blacks (Urban Areas) Consolidation Act, 1945 as amended. As the local authorities were slow to accept the responsibilities placed upon them by the Act, the Department of Native Affairs was empowered to direct them to set aside townships or locations and to provide housing and other public amenities within the township.⁹² Later provision was made in the Black Affairs Administration Act, 1971 as amended, for the establishment of administration boards to assume, subject to the Department of Co-operation and Development, the administration of urban Black laws from the White local authorities in certain areas.⁹³

Through these basic laws an elaborate system of local government and administration for the urban Black has been evolved over a span of decades. The central direction and control of the system vested in the Department of Co-operation and Development while the field activities were performed "by the Departments of (African) Affairs established by the various local authorities".⁹⁴ The field activities performed by the local authorities in connection with urban Black affairs were executed on an agency basis, i.e. local authorities acted as agents of the Department of Co-operation and Development.⁹⁵ These activities are now the responsibility of the development boards⁹⁶ and the recently established local authorities.⁹⁷

3.4.2 Development boards

In 1971 far-reaching modifications in the system of urban Black local government and administration were introduced by the Black Affairs Administration Act, 1971 as amended by the Black Communities Development Act, 1984 (Act 4 of 1984). The object of the Act was to introduce more efficient administration over larger areas, and within such areas to promote a greater mobility of labour.⁹⁸

In terms of the Act, the Minister may declare any area outside a homeland to be a development board area.⁹⁹ Such area may include the area or portion of the area, under the jurisdiction of an urban White local authority.¹⁰⁰

A development board is vested with all the rights, powers, functions and duties of a local authority in terms of all legislation and provincial ordinances relating to Blacks.¹⁰¹ Local authorities whose areas are included in the board's area of jurisdiction lose all their powers and functions in regard to Black affairs.¹⁰²

¹⁰³ Riekert is of the opinion that consultation by the Minister with a development board prior to the establishment of a local authority will be of decisive significance as the development board is intimately involved in the administration of the residential area concerned. "The right of ownership to the land, houses, public buildings as well

as services and other movable goods belong to the development board and are transferred to the local authority only after exhaustive negotiations. Where there is a drastic shortage of trained manpower in local government for Blacks, the official of the development board must play an important role in the training of personnel and functioning of Black local government bodies".¹⁰⁴

3.4.3 Director of Local Government

As the Black local authorities are the responsibility of the Central Government, the Act provides for the creation of the position of Director of Local Government.¹⁰⁵ In terms of the Act, the incumbent of this office must be appointed subject to the laws governing the public service¹⁰⁶ and the office now falls under the jurisdiction of the Director-General of Constitutional Development and Planning,¹⁰⁷ who controls and directs the operation of this new office.

The Director of Local Government shall,

- "(a) perform the functions assigned to him by this Act and any other law;
- (b) promote the establishment of local authorities or local committees for or in townships;

(c) advise, and give such assistance as may be determined by the Minister to local authorities and local committees in connection with the exercise of a power or the performance of a function or duty assigned to a local authority or local committee by or under this Act".¹⁰⁸

3.5. Summary

The place accorded to urban local government for Blacks in the hierarchy of authorities in South Africa has not yet been clearly identified. At present these local authorities are the direct responsibility of the Central Government through the Department of Constitutional Development and Planning. As the present constitutional arrangements do not provide for the exercise of political rights by the Black urban community beyond the local government level, an investigation is, at this point, being conducted by the Special Cabinet Committee to determine, inter alia, the place of these local authorities in relation to the higher tiers of government.

3.6 References and footnotes

1. Section 30 of the Republic of South Africa Constitution Act, 1983 (Act 110 of 1983).
2. Cape, Natal, Orange Free State and Transvaal, see section 1 of the Republic of South Africa Constitution Act, 1983.
3. Each province has a variety of urban and rural local government bodies which have different names and vary greatly as regards size of population, area of jurisdiction, constitution and the nature of powers and duties.
4. These have been created in terms of the Promotion of Black Self-Government Act, 1959 (Act 46 of 1959).
5. Political separation has been realized through the following Acts:
 - (i) Status of Transkei Act, 1976 (Act 100 of 1976);
 - (ii) Status of Bophuthatswana Act, 1977 (Act 89 of 1977);
 - (iii) Status of Venda Act, 1979 (Act 107 of 1979); and
 - (iv) Status of Ciskei Act, 1981 (Act 110 of 1981).

6. The United Nations has passed several resolutions condemning race legislation in South Africa. Homelands are viewed by the United Nations as a product of this abhorrent policy.
7. The National States Constitution Act, 1971 (Act 21 of 1971).
8. Adlem, W.L.J. & Fourie, D.F.S. (compilers): UNISA Study Guide, Public Administration 1 University of South Africa, Pretoria 1976-8, p. 45.
9. Cloete, J.J.N.: Central, Provincial and Municipal Institutions of South Africa, J.L. van Schaik, Pretoria, 1982 pp. 302-3.
10. Proclamation No. R293 of 1962 as amended by Proclamation No. R153 of 1983.
11. Regulation 1 of Chapter 8 of Proclamation No. R293 of 1962.
12. Kahn, E.: "Part One, Reformation of Native Urban Area Laws" Suzman, H. and Kahn, E.: New Lines in Native Policy, South African Institute of Race Relations, Johannesburg, 1947, pp. 16-17.

14. A Cabinet committee has been appointed in 1984 to investigate, inter alia, this question.
15. South Africa Act, 1909 (9 Edward VII Chapter 9)
16. Section 44.
17. Venter, F.: "South African Constitutional Law in flux," van Vuuren, D.J., et al.: Change in South Africa, Butterworths, Durban-Pretoria, 1983, p. 2.
18. Section 147.
19. Section 111, Republic of South Africa Constitution Act, 1961 (Act 32 of 1961).
20. Cloete, op. cit., p. 282.
21. Ibid.
22. Ibid.
23. Labuschagne, G.S.: "The Question of the Urban Black - An Introduction," Thinkers Forum The Urbanized Black, Daan Retief Publishers, Pretoria, 1981, p. 2.

24. Blacks (Urban Areas) Act, 1923 (Act 21 of 1923).
25. Ibid. This policy was further reflected in the Blacks (Urban Areas) Consolidation Act, 1945 (Act 25 of 1945) which repealed the 1923 Act, and also in the Group Areas Act, 1966 (Act 36 of 1966).
26. Labuschagne, op. cit., p. 2.
27. Cooper, J.R.: "Urban conditions with special reference to the Urban Areas Act and Municipal Administration," Selected Addresses Delivered at the Fifth National European-Bantu Conference, July 5-7, 1933, South African Institute of Race Relations; Johannesburg, p. 89.
28. Sections 2 and 3.
29. Structures established in terms of the 1923 Act were merely advisory committees whose recommendations could be ignored.
30. Section 21 of the Blacks (Urban Areas) Consolidation Act, 1945 (Act 25 of 1945).
31. Cooper, op. cit., p. 91.

32. The councils established in terms of the Act were not materially any different from their predecessors, i.e. the advisory committees and boards.
33. Vosloo, W.B.: "South Africa: Local Government in White Areas," Vosloo, W.B. et al, Local Government in Southern-Africa, Academica, Pretoria, 1974 p. 45.
34. Black Communities Development Act, 1984 (Act 4 of 1984)
35. Section 11 (1) (e).
36. Section 11
37. Van Vuuren, D.J.: "Nature and development of the South African political system," Van Vuuren, D.J. et al, (eds): Change in South Africa, Butterworths, Durban-Pretoria, 1983 p. 34.
38. Section 5 of the Community Councils Act, 1977 provides for more powers, functions and duties than those granted to previous structures.
39. Hansard 1982: 9618 House of Assembly Debates.

40. This position is one of the subjects presently under investigation by the Cabinet Committee (appointed in February 1984).
41. Republic of South Africa-Constitution Act, 1983 (Act 110 of 1983).
42. Representation in Parliament, Electoral College and President's Council is loaded in favour of the Whites, viz. sections 7(1) (b), 41, 42, 43 and 70(1) (a), (b) and (c) of the Republic of South Africa Constitution Act, 1983 (Act 110 of 1983).
43. Promotion of Black Self-Government Act, 1959 (Act 46 of 1959).
44. Section 15 of the Act repeals the Representation of Blacks Act, 1936 (Act 12 of 1936)
45. Section 4 (1) (a)
46. Section 8
47. Sections 2 and 3

48. Vosloo, op. cit., pp. 37 - 38.
49. See preamble to the National States Constitution Act, 1971 (Act 21 of 1971).
50. Sections 1 and 5.
51. Section 2 of the National States Citizenship Act, 1970 (Act 26 of 1970).
52. Venter, op. cit., p. 4.
53. Section 93 of the South Africa Act, 1909 (9 Edward VII, Chapter 9).
54. Section 68.
55. Section 84 (1) (f) (i).
56. Sections 24 and 68.
57. Craythorne, D.L.: Municipal Administration, A Handbook, Juta & Co. Ltd., Cape Town, 1980 p. 6.

58. Section 84 of the Provincial Government Act, 1961 (Act 32 of 1961).
59. Craythorne, op. cit., p. 14
60. The following ordinances are presently in force:
- Cape Province: Municipal Ordinance, 1974 (Ordinance 20 of 1974).
- Natal Province: Local Authorities, 1974 (Ordinance 25 of 1974).
- Transvaal Province: Local Government Ordinance, 1939 (Ordinance 17 of 1939).
- Orange Free State Province:
Local Government Ordinance, 1962 (Ordinance 8 of 1962).
61. Vosloo, op. cit., p. 25.
62. Cloete, op. cit., p. 244.
63. Sections 84 and 89 of the Provincial Government Act, 1961 (Act 32 of 1961).

64. Sections 85 and 90, ibid.
65. Health Act, 1977 (Act 63 of 1977).
66. Blacks (Urban Areas) Consolidation Act, 1945 (Act 25 of 1945).
67. Housing Act, 1966 (Act 4 of 1966).
68. Vosloo, op. cit., pp. 25-6.
69. Section 23.
70. Sections 28 and 29.
71. Cloete, op. cit., p. 312.
72. Ibid.
73. Section 29 of the Group Areas Act, 1966 (Act 36 of 1966).
74. Theron, E. (Chairman):
Report on the Commission of Enquiry into Matters Relating to the
Coloured Population Group, Government Printer, Pretoria RP
38 of 1976, p. 407.

75. Section 29 of the Group Areas Act, 1966 (Act 36 of 1966).
76. Theron, op. cit., p. 427.
77. Cloete, op. cit., p. 313.
78. Ibid.
79. Ibid., p. 317.
80. Venter, op. cit., p. 7.
81. Ibid.
82. Van Vuuren, op.cit., p. 34.
83. The last previous Minister of the then Department of Co-operation and Development from whom Dr Gerrit Viljoen took over in 1984.
84. Hansard 1983: 1366 House of Assembly Debates.
85. Section 23 (1) (o) of the Black Local Authorities Act, 1982 (Act 102 of 1982).

86. Section 84 (1) (f) (i) of the Provincial Government Act, 1961 (Act 32 of 1961).
87. Section 29 of the Group Areas Act, 1966 (Act 36 of 1966), see also Theron, op. cit., p. 407.
88. Section 2 of the Black Local Authorities Act, 1982 (Act 102 of 1982). Until August 1985 local government for the urban Black communities has been the responsibility of the Department of Co-operation and Development which has been restructured and redesignated Education and Development Aid.
89. Riekert, P.J.: "Black Local Government in the Republic of South Africa," Van Vuuren, D.J. et al.,: Change in South Africa, Butterworths, Durban/Pretoria, 1983, p. 150.
90. Section 23 (2) of the Black Local Authorities Act, 1982 (Act 102 of 1982).
91. Section 10 of the Blacks (Urban Areas) Act, 1923 (Act 21 of 1923).
92. Black Laws Amendment Act, 1947 (Act 45 of 1947).

93. Section 11 (1) (e).
94. Vosloo, op. cit., p. 40.
95. Ibid. p. 41.
96. Section 11 of the Black Affairs Administration Act, 1971 (Act 45 of 1971).
97. Section 23 of the Black Local Authorities Act, 1982 (Act 102 of 1982).
98. See preamble to the Act.
99. Section 2.
100. Section 11.
101. Section 11 (1) (e); refer also to sections 29 and 30 of the Black Communities Development Act, 1984 (Act 4 of 1984).
102. Ibid.
103. Riekert, op. cit., p. 150.

104. Ibid.
105. Section 3 of the Black Local Authorities Act, 1982 (Act 102 of 1982) as amended.
106. Section 3 (1)
107. Section 3 (2)
108. Section 3 (2) (a) (b) and (c).

CHAPTER 4

Municipal administration in urban Black local government with special reference to the areas under the jurisdiction of the Natalia Development Board.

4.1 Introduction

This Chapter presents a perspective on the operation of Black local authorities throughout the urban areas of the Republic of South Africa, though special attention shall be paid to the areas falling under the jurisdiction of the Natalia Development Board where a system of community councils and advisory boards still obtains.¹ In the Natalia Development Board area no Black local authorities have been established in terms of the Black Local Authorities Act, 1982 (Act 102 of 1982).² There are four advisory boards; viz. Klaarwater, Shayamoya, Shakaville and Danhauser, and thirteen community councils viz. Ningizimu, Hambanati, Sobantu, Mooiriver, Colenso, Ladysmith, Dundee, Glencoe, Vryheid, Paulpietersburg, Greytown, Kokstad and Matatiele;³ which still operate under the provisions of the Black (Urban Areas) Consolidation Act, 1945 (Act 25 of 1945), the Community Councils Act, 1977 (Act 125 of 1977) and the Black Communities Development Act, 1984 (Act 4 of 1984).

The Natalia Development Board acts as a town council in respect of townships outside local authority areas.⁴ It is, therefore, vested and charged with "all the rights, powers, functions, duties and obligations of a town council in terms of the Black Local Authorities Act, 1982 (Act 102 of 1982)".⁵ Community councils do make decisions in regard to matters where they have been vested with certain powers, but the actual execution of such decisions is the responsibility of the Natalia Development Board.⁶

Black local authorities and community councils are political institutions. They are elected bodies with a capacity for choice within the limits of their powers and the constraints of their environment. The choices made are deeply influenced, not merely by external factors, but also by the political and administrative processes of the local authority itself. The way a local authority is structured, the attitudes and level of professional sophistication of its work force, the financing and work procedures affect not merely the choices made, but also the choices perceived. To understand the impact of a local authority or community council as a service provider and a political institution, its pattern of operation must be understood.

4.2 General characteristics

4.2.1 Policy and policy-making

Richards⁷ states that if the national government did not have ultimate control over local authorities, the latter would tend to become autonomous units. No central authority would tolerate such a basic challenge to its authority unless it was prepared to become a federation of largely independent communities.⁸ At the other extreme, if local government were to have no ambit of policy not dominated by the central authority, then it would cease to be local government at all and become a mere agent of national government. Central-local government relations demand, therefore, a balance of control and independence.⁹

Black local authorities, like all local authorities are constrained within the Central Government system. The National Government sets the boundaries of the system of local government for Blacks.¹⁰ Since the Central Authority in South Africa has a direct responsibility for Black affairs,¹¹ it determines the overall policy and policy-making powers of the Black local authorities and community councils. The State President may, further, from time to time, by proclamation in the Government Gazette determine matters pertaining to local government for Blacks, in respect of which a local authority may be

invested and charged with rights, powers, functions, duties and obligations.¹² Black local authorities, whether designated town councils or village councils, are established by the Minister¹³ under a name mentioned in the Government Gazette, for an area consisting of one or more townships or portion or portions of a township or townships.¹⁴

Black local authorities or community councils may determine policy, but this authority is subject to the limits prescribed¹⁵ by the Minister. A Black local authority may, subject to the Act, make bylaws with the approval of the Minister on any matter within its authority.¹⁶ The bylaws have to do exclusively with local affairs and may be legally enforced only after the Ministerial assent has been obtained.¹⁷ In terms of section 27 (2A)¹⁸ the Minister may make bylaws on any matter on which a local authority may make bylaws, and such bylaws shall apply in the area of each local authority in so far as they are applicable or not excluded by or inconsistent with the bylaws of the local authority. Bylaws shall be published by the Minister in the Government Gazette before they can be legally enforced.¹⁹ Black local authorities lack the authority to make regulations. This authority is vested in the Minister.²⁰

Black local authorities have no final say in local issues although they have the authority to take the initiative, in prescribed matters,

to make proposals. The short history of Black local authorities makes it rather difficult to predict how often the Minister will veto any set of bylaws passed by the local authorities. However, it is expected that the local authorities will ensure beforehand that their proposals do not conflict with the Central Government policy, i.e. the proposals shall be in all respects intra-vires.

As stated in the introduction to this Chapter, there are still certain urban areas where Black local authorities have not yet been established. The position in such areas, e.g. the Natalia Development Board area, is that policy-making is realized through a system of community councils and development boards.²² In terms of the Black Local Authorities Act, 1982 (Act 102 of 1982) this system of community councils has been abolished through the repeal of the Community Councils Act, 1977 (Act 125 of 1977).²³ However, the effect of the abolition of this system will be realized only on a date to be fixed by the State President by proclamation in the Government Gazette.²⁴ Up to the point of submitting this dissertation, the State President has not acted in terms of section 56 A (2) of the Act,²⁵ and the community councils, therefore, still operate in these areas.

The community councils exercise such powers and perform such duties in respect of those matters as may be vested in them and with which they may be charged by the Minister, after consultation with the

development board concerned and such community councils.²⁶ The rights, powers, functions, duties and obligations vested in a community council or with which it may be charged by virtue of the provisions of the Act,²⁷ shall devolve upon such council to the exclusion of the development board or any other urban local authority.²⁸ A community council has, therefore, with regard to any power or duty which immediately before the date on which such power was vested in it, or it was charged with such duty was exercised or performed by a development board, all the rights, powers, functions, duties and obligations of an urban local authority in terms of the laws stipulated in section 11 (1) (e) of the Black Affairs Administration Act, 1971 (Act 45 of 1971).²⁹

The Minister may withdraw, after consultation with the development board and community council concerned, any policy-making power or duty vested in a community council or with which it was charged, and may confer or impose any such power or duty referred to in sub-section (1) (a) so withdrawn upon the development board concerned.³⁰ The Minister or any body or person authorized by him may take such steps as he may deem necessary to ensure the continuation of the functions of a community council.³¹ The powers vested in a community council by subsection (1)³² shall not include a power to make bylaws or regulations.³³ Bylaws or regulations may be made only by the Minister.³⁴

When a local authority is established in terms of the Black Local Authorities Act, 1982 (Act 102 of 1982)³⁵ for an area for which a community council had been established in terms of the Community Councils Act, 1977 (Act 125 of 1977)³⁶ or which includes the area of such a community council, the Minister shall dissolve the community council concerned by notice in the Government Gazette as from the date of the first ordinary meeting of the local authority.³⁷ Black local authorities have been established in the Transvaal, Orange Free State and Cape Province. In Natal we still find the community council system in operation.³⁸

4.2.1.1 The settings of Black Local Government

The many actors who participate in the policy-making process of a local authority operate in various settings: council, committee, department, top administrative team and maybe, even through a party political group where such a grouping exists. Patterns of behaviour vary with the settings. Variation is inevitable. It occurs in part because different actors have access to different settings, in part because in different settings different operations occur, and in part because the rules governing particular settings vary. Certain settings are subject to formal rules, whereas in other settings there may be no formal rules, but conventions may develop and if these become generally accepted, they may govern behaviour.

It is too soon to expect the crystalization of such conventions from the recently constituted Black local authorities. To understand the variety of the settings and the different patterns of behaviour they generate, it may be necessary to identify the actors who perform in these settings, the roles they play and the operations carried out. Within these settings there may be some degree of variation between local authorities but the settings have characteristics that have a general influence on all Black local authorities or community councils where such entities are still in operation, for example, in the Natalia Development Board area.

4.2.1.1.1 The Council

The council is a formal setting, bounded by legislation and regulation. Where local authorities have been established, the council is governed by the provisions of the Black Local Authorities Act, 1982 (Act 102 of 1982). Where community councils have not been dissolved, the council is governed by the terms of the Community Councils Act, 1977 (Act 125 of 1977). The Act determines how the membership of the council is constituted;³⁹ the election of members of a local authority;⁴⁰ qualifications for membership;⁴¹ vacation of office by members and filling of vacancies;⁴² the election of the mayor and the deputy mayor and the chairman presiding at every meeting of the local authority.⁴³ A local authority may, through its council, delegate some of its powers to its executive

committee⁴⁴ or its chief executive officer,⁴⁵ subject to the approval of the Director of Local Government.⁴⁶ The council may not, however, delegate the power to make bylaws, to impose levies or other taxes, to borrow money, to overdraw a banking account or to fix rentals, tariffs or other charges.⁴⁷ Where such delegation occurs the council remains the formal authority on whose behalf the powers are exercised, and no delegation of a power shall prevent the exercise of the relevant power by the council itself.⁴⁸

The council is rule-bound by the standing orders for the conduct of its business. Where standing orders have not been formulated, the council shall operate according to the regulations made by the Minister until such time it has determined its own standing orders.⁴⁹ The council is a meeting to which persons other than councillors may also have access: officers of the local authority, representatives of the press and members of the public.⁵⁰ This right of attendance at council meetings, however, excludes the meetings of any committee thereof or of the council in committee.⁵¹ Only councillors are formally part of the meeting and normally only councillors participate in the policy-making exercise.

As the point of authority exercised in public, the surroundings reflect an air of formality. The council chamber itself, the mayor or chairman often wearing a distinguished gown and chain of authority,

the councillors also decked in splendid gowns, the arrangement of the seating, all reflect an atmosphere of formality of the council meeting.

The nature of the agenda will vary with the degree to which the council has delegated its powers to the committees. In a council where, as is normal in large White local authorities, very substantial powers are delegated to committees, the agenda may contain only those issues which are not delegated or on which committees report. In other local authorities the agenda may contain the minutes of all committees for approval.

In both cases the continuing business of committees makes up the core of the agenda of the council. The council does not normally originate policy issues, it constitutes the final point at which these issues arrive. There may be additions to the core agenda in certain cases; notices of motions leading to special debates, question-time, and the presentation of petitions. They are all set within the formalities of the occasion.

Black local authorities or community councils are expected, like all policy-making forums, to cause minutes of all proceedings at meetings of the council or any committee of the council to be kept, in at least one of the official languages of the Republic of South Africa, in a

minute book.⁵² The custody and control of the minute book is the responsibility of the chief executive officer of the local authority or secretary of the community council.⁵³

Proposals for bylaws passed by the council must be approved by the Minister first before they can become legally enforceable.⁵⁴ Bylaws made by the council shall be published by the Minister in the Government Gazette before they can take legal effect.⁵⁵ A contravention of a municipal bylaw or failure to comply with it provides for a penalty not exceeding a fine of R250 or imprisonment for a maximum period of three months.⁵⁶

Community councils have no authority to pass bylaws or make regulations.⁵⁷ The Minister may, after consultation with the development board and community council which will be affected thereby, make regulations in connection with specific matters.⁵⁸

4.2.1.1.2 The Committee or committees

Even in the smallest local authorities or community councils it is obvious that all the detailed consideration of policy issues cannot be done at meetings of the full council. Accordingly, committees are established by the council. These structures may be viewed as the workshop of local government. The committee is a formal setting

sharing certain features with the council. It is a setting in which the powers to be wielded are defined by council and formal decisions have to be made either under delegated authority⁵⁹ or for submission and authorization by the council itself.

In terms of the Black Local Authorities Act, 1982 (Act 102 of 1982) a town council shall appoint from among its members a committee, to be known as the executive committee for the purpose of dealing with policy issues pertaining to the administration of the council's affairs.⁶⁰ Where community councils are still in operation, for example in the area under the jurisdiction of the Natalia Development Board, the council may appoint from among its members one or more committees and may assign to such a committee some of its authority and duties.⁶¹ The assigning of any powers or duties to a committee by the council does not have the effect of divesting the council of those powers and duties.⁶²

An executive committee of a local authority consists of three to seven members as determined by the council subject to the approval of the Director of Local Government.⁶³ In the case of a community council the same number of members of a committee applies though no specific approval is necessary in this case.⁶⁴ The council designates one of the members of its executive committee as chairman and another as vice-chairman of the committee.⁶⁵ Committees will be attended by the

officers dealing with the business of that committee. Committees are normally concerned either with a service or with central functions applicable to all the services of the council. The committee will have an agenda⁶⁶ containing mainly reports prepared by officers setting out the decisions required from the committee. The committee is bound by its agenda and the necessities of decision-making within that agenda.⁶⁷

Departmental reports for consideration by the executive committee are submitted through the chief executive officer.⁶⁸ Further, the chief executive officer shall submit to the executive committee any report called for by the council or the executive committee or required to be considered by the council under any law.⁶⁹ The chief executive officer may also refer a report by a departmental head back to such departmental head for amendment or qualification and may, in submitting it to the executive committee, make such comments and recommendations as he may deem necessary.⁷⁰

The committee is a setting for decision-making by councillors. Unlike the council, officials normally participate in deliberations, "but their interventions can be resented if they trespass on the councillors' prerogatives".⁷¹ The main part of the agenda is likely to consist of items submitted by the chief officers and backed by reports prepared by these officers. The agenda structures discussion and to the extent to which the form, order and content reflect the

views of the chief officers, discussion is structured by those views. The setting, though a councillor one, is structured by the administrative machinery.

Decisions of the executive committee are submitted to the council in the form of recommendations.⁷² A report submitted by the executive committee in terms of section 20 (4) of the Act⁷³ shall consist of two parts, the first part shall deal with the matters which the council has delegated, with the approval of the Director of Local Government, to the executive committee and shall stipulate any recommendations being made in respect of such matters referred to as the "first part" and the "second part" shall deal with those functions and duties which the council has authorized the executive committee to perform.⁷⁴ Except for issues forwarded to the council for its information only, all items of the first part shall contain a recommendation which may be adopted by council.⁷⁵

4.2.1.1.3 Departments

The department is the main setting for the continuing work of the local authority. It differs from the council or committee which meets only at intervals. It has the strength that flows from continuity, provides a setting for the working lives of its staff, operates the procedures in the day-to-day execution of tasks and serves as a

repository of data. To the councillor a department could appear a powerful machine that is difficult to control, because control necessitates an act of intervention and effective intervention requires understanding.⁷⁶

In terms of the Black Local Authorities act, 1982 (Act 102 of 1982) a local authority may create in its administration two or more departments for the effective execution of activities.⁷⁷ Each department shall be assigned such functions and duties as the local authority may determine.⁷⁸ A local authority shall appoint a person as head for each department created. The head shall be responsible for the general administration of his department and shall perform his functions subject to the control and directions of the chief executive officer of the local authority.⁷⁹

A local authority may delegate any power conferred upon it, with exceptions and subject to the approval of the Director of Local Government, to its chief executive officer, a departmental head or to any person seconded to the local authority to perform any function under the Act.⁸⁰

The department is an officer setting although the chairman of the relevant committee or of a sub-committee can have an impact on that setting. The sheer size of some departments in some large local

authorities, their continuity, established procedures and professionalism may mean that even a powerful and influential chairman is unlikely to make the department any less an officer setting, although he may make it an officer setting in which his policies are carried out.⁸¹

The department is accountable to the chief executive officer,⁸² who is himself accountable to the local authority.⁸³ The long chains of accountability are supported by administrative loyalty. Reports go to the executive committee in the name of the chief executive officer.⁸⁴ The department has formally one view. It would be disloyal for different views to be expressed or for the real diversity of view that may exist within a department to be put before a committee.⁸⁵

Community councils in the Natalia Development Board area have no departments of their own, but their decisions are executed by the departments of the development board.⁸⁶

4.2.2 Organization and organizing

Black local authorities, like all multi-purpose institutions, exercise a certain degree of authority over a defined geographical area.⁸⁷ This defined area usually consists in one or more townships or a portion or portions of a township or townships.⁸⁸ The Black local authorities,

whether they are designated town councils or village councils,⁸⁹ have as their main common feature, similar organizational components which shall be examined below. Any differences that may be discerned may be attributable primarily to differences in the authority vested in the chief components and the relations existing between these bodies.

Unlike in the case of White local authorities where the establishment and control of local authorities is the responsibility of a second tier authority, i.e. a provincial council,⁹⁰ Black local authorities are the direct responsibility of the first tier of government, i.e. through the Minister of Constitutional Development and Planning.⁹¹ There is also provision for a direct intervention by the State President himself, where he may from time to time by proclamation in the Government Gazette determine matters pertaining to Black local government in respect of which a local authority may be invested and charged with rights, powers, functions, duties or obligations.⁹²

The organizational components of a local authority have been identified as the council,⁹³ an executive committee,⁹⁴ special committees,⁹⁵ office of the chief executive officer⁹⁶ and municipal executive institutions, i.e. departments.⁹⁷ These structures shall be examined individually below.

4.2.2.1 The Council

A town council or village council is constituted by such number of members as are determined, from time to time, by the Minister, by notice in the Government Gazette.⁹⁸ The members of a town council or village council are directly elected by those who are competent to vote in an election of members of a local authority.¹⁰⁰ Where community councils still operate, e.g. in the Natalia Development Board area, the council consists of the number of members as determined by the Minister.¹⁰¹ These members are elected in a manner prescribed by the Minister to represent voters on that council on a basis determined by the Minister, from time to time, after consultation with the development board.¹⁰²

If at any time there are no elected members of a local authority, or the number of such members is less than the number determined by the Minister, the Minister may appoint persons who are eligible for election, as members of the town council or village council to serve as such members, until the vacancies are filled by the election of members.¹⁰³ In the case of a community council the same principle would apply, i.e. the Minister would designate so many persons, not exceeding the number of the shortfall in the members, as members of such council for such period as he may in each case determine.¹⁰⁴ Any member who is appointed by the Minister holds office by virtue of the

appointment during the Minister's pleasure, but in no case after the day immediately preceding the election of a member to the vacancy in respect of which the appointment was made.¹⁰⁵ A member of a council shall cease to be a member if he becomes disqualified in terms of the Act.¹⁰⁶

One member of the council shall be elected as mayor¹⁰⁷ and another as deputy mayor¹⁰⁸ of the local authority. The mayor presides at all meetings of the council.¹⁰⁹ In the case of a community council, the chairman and deputy chairman are elected. The chairman presides at all meetings of the council. If, however, both the mayor or chairman and deputy mayor or deputy chairman are absent or unable to perform the functions of chairman, the council may elect any other member to act as chairman during such absence or incapacity.¹¹⁰

4.2.2.2 Executive Committee

A town council shall appoint from among its members a committee, which is designated an executive committee.¹¹¹ The executive committee shall consist of such number of members, which shall not be fewer than three and not more than seven.¹¹² The actual number is subject to the approval of the Director of Local Government.¹¹³ An executive committee shall have a chairman and a vice-chairman.¹¹⁴ These officers are appointed by the council from among the members of the executive committee.¹¹⁵

The executive committee deals with all matters pertaining to the administration of the council's affairs.¹¹⁶ A council may also delegate some of its powers, subject to the approval of the Director of Local Government, to the executive committee.¹¹⁷

An executive committee member loses his membership of the committee if he ceases to be a member of the council; has been absent from three consecutive meetings of the committee without leave of the committee or is removed from office by resolution passed at a council meeting by a majority of all the members of the authority.¹¹⁸

4.2.2.3 Special committees

A local authority may appoint, subject to the approval of the Director of Local Government, from among its members one or more special committees.¹¹⁹ The local authority may charge any such committee with such functions and duties as it may determine.¹²⁰ The local authority may also delegate some of its powers to such a committee to perform any function or duty assigned to the local authority by or under the Act.¹²¹ However, no delegation of a power shall prevent the exercise of the relevant power by the local authority itself.¹²²

A community council may also appoint from among its members one or more committees and may assign to a committee so appointed any of its

powers and duties.¹²³ The assigning of any of its powers and duties to any such committee shall not have the effect of divesting such community council of those powers and duties.¹²⁴

4.2.2.4 Office of the Chief Executive Officer

A local authority shall appoint a person in the case of a town council, as the town clerk of that town council, or in the case of a village council, as the village secretary of that village council.¹²⁵ The town clerk or village secretary is the chief executive officer of the local authority.¹²⁶ The office is responsible for the co-ordination of all municipal departments, the execution of the local authority's resolutions and the general administration of the affairs of the local authority.¹²⁷

The office of the chief executive officer may be seen, in relation to those of the chief officers in charge of departments of a local authority, as higher than that of a mere primus inter pares.¹²⁸

Whenever the chief executive officer of a local authority is absent or is unable to perform his functions, or the office of the chief executive officer is vacant, the functions of the chief executive officer shall be performed by an employee of the local authority or any person seconded to its service by a development board under

section 35 (2) of the Black Local Authorities Act, 1982 and designated as such by the local authority, or if the local authority has failed to do so, designated for the said purpose by the mayor.¹²⁹

Community councils in the Natalia Development Board area are not served by their own staff. These services are provided by the officials of the board.¹³⁰ The Ningizimu and Hambanati Community Councils have, however, appointed their own secretaries. These two Black officials provide only secretarial services.¹³¹

4.2.2.5 Municipal departments

Local authorities create executive units called departments for the division and efficient execution of their tasks or activities. A Black local authority, like all local authorities, may also create one or more departments for the efficient carrying out of its activities. Each such department is charged with such functions and duties as the local authority determines.¹³² Each department will have a clear hierarchy of authority: a chief officer, normally a deputy chief officer, and a number of officers at the third tier, below which the hierarchies usually spread out.¹³³ In terms of the Black Local Authorities Act 1982 (Act 102 of 1982) a local authority shall for each department created appoint a person as head of that department.¹³⁴ The head of department is responsible for the

administration of his department and performs his functions subject to the control and directions of the chief executive officer.¹³⁵

It is common practice among local authorities that the departments report to a committee, whose chairman develops a special relationship with the head of department.¹³⁶ In the case of Black local authorities, however, departmental reports for consideration by the executive committee are submitted through the office of the chief executive officer,¹³⁷ with such comments and recommendations as the town clerk or village secretary may deem necessary.¹³⁸ The heads of departments are answerable to the chief executive officer and not to any committee.¹³⁹ The responsibility for the execution of the decisions of a community council rests with the department of a development board. Community councils in the Natalia Development Board area do not, therefore, have departments of their own.¹⁴⁰

4.2.3 Personnel

Elected members of a local authority or community council have neither the time nor the range of professional expertise necessary to direct all the activities of the local authority or community council. Parliament, therefore, insists that certain categories of officers be appointed.¹⁴¹ Local authorities in general usually appoint a town clerk, a town treasurer, an engineer and a medical officer of health.¹⁴²

These requirements help to create a uniformity in the pattern of local authority departments.¹⁴³ Many of the services provided by local authorities call for specialist skills which have to be inculcated through long processes of training.¹⁴⁴ Many of these services provided by a local authority are, therefore, organized on a professional basis.¹⁴⁵ In each department of a local authority there will be a dominant profession, responsible for the execution of the main task of the department, from which the senior placed staff, i.e. chief officers, will be drawn. In the Natalia Development Board area these categories of officials are attached to the various departments of the board which provides the necessary personnel services to the community councils.¹⁴⁶

4.2.3.1 Chief Executive Officer

All Black local authorities shall appoint a person to serve as a chief executive officer of the local authority.¹⁴⁷ In the case of a local authority which is a town council the chief executive officer shall be designated a town clerk.¹⁴⁸ In a local authority which is a village council he is named a village secretary.¹⁴⁹ The chief executive officer has the overall responsibility, subject to the control and directions of the local authority, for the execution of the resolutions and the general administration of the affairs of the local authority.¹⁵⁰ He is, therefore, in a strong position to exert a great deal of influence.

He is expected to co-ordinate the work of the separate departments and through the top administrative team, i.e. heads of departments, is kept in close touch with all major issues of policy.¹⁵¹ The chief executive officer is the head of the local authority's paid service and he has formal authority over all other officers so far as this is necessary for the efficient operation of the council's functions.¹⁵²

The role of the chief executive officer is new as far as Black local government is concerned. The urban Black local areas have been the direct responsibility of the Central Government through various bodies, such as White local authorities, administration boards and development boards. The post created in terms of the Black Local Authorities Act, 1982 (Act 102 of 1982)¹⁵³ creates a new role.¹⁵⁴ Only one Black at present has been appointed to this post, because, presumably, Blacks lack the requisite experience as they had not been elevated to top administrative posts of the various structures of local administration. The incumbents of this office are, therefore, White seconded officials of the development boards. These White officials have been experienced and also socialized into predecessor positions of the structures named above. Experience seems to be the basic consideration¹⁵⁵ for appointment to this very top position. There is no strong emphasis on academic qualifications as a perusal of advertisements of these positions would reveal.¹⁵⁶ In the large Black local authorities, like the Soweto Town Council, the

remuneration package is impressive.¹⁵⁷

A Black local authority appoints a chief executive officer on such terms and conditions as the authority sees fit, subject to the provisions of the Act.¹⁵⁸ He is protected from arbitrary dismissal. He shall not be removed from office or dismissed from the service of the local authority except under the authority of a resolution adopted by the majority of all members of the local authority at a meeting specially convened for that purpose, and unless the Minister has approved the removal or dismissal.¹⁵⁹ The question of appointing a chief executive officer does not arise in the community councils because no provision has been made for the creation of such an office.¹⁶⁰

4.2.3.2 Chief officers

The role of a chief officer is well-established and understood by actors in local government and it is anticipated that Black local authorities will adapt easily to this role. The chief officer is the head of a local authority department which is responsible for a defined set of activities.¹⁶¹ He is usually identified by the departments he heads and also by the profession on which the department is based, e.g. town treasurer or medical officer of health. He is the head of an administrative and professional hierarchy.

The chief officer shall be responsible for the administration of his department and shall perform such functions, subject to the control and directions of the chief executive officer.¹⁶² The chief officers also enjoy the same kind of protection from arbitrary removal or dismissal as that of the chief executive officer.¹⁶³

Community councils are not empowered to create departments and the question of appointing chief officers would not arise.¹⁶⁴

4.2.3.3. Other categories

A Black local authority may cause its work to be performed by persons employed by it on the prescribed conditions or with whom it has entered into contracts for the performance of any particular work.¹⁶⁵

A community council may also appoint such staff as it may deem necessary for the exercise of its powers and the performance of its duties.¹⁶⁶ In the Natalia Development Board area community councils are served by the staff of the board "mainly because their funds are limited".¹⁶⁷

4.2.3.4 Law enforcement officers

Black local authorities may appoint, subject to the approval of the Minister, persons to serve as law enforcement officers in the area of jurisdiction of the local authority.¹⁶⁸ Their duties entail,

inter alia, the preservation of the safety of the residents of the area under the jurisdiction of the local authority;¹⁶⁹ "the maintenance of law and order therein; the enforcement of bylaws; the performance of the functions of messengers according to customary law among Black persons in respect of the exercising of the judicial power of any person on whom such power has been conferred under a provision of any law".¹⁷⁰

Some Black local authorities, e.g. Soweto Town Council, have already commenced recruitment of candidates to undergo training programmes supervised by the development boards in the areas concerned. In Soweto there has been a passing out parade of the first batch of trainees who have completed their course.¹⁷¹

The appointment of law enforcement officers does not in any way supersede the role of the South African Police, for in terms of the Act,¹⁷² "Nothing in this section¹⁷³ contained shall be construed as derogating from the powers, functions and duties of the South African Police or a peace officer within the meaning of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

The Minister may, after consultation with the Minister of Police and a community council, establish for the area of such council a community guard to provide services stated in section 8 of the Community Councils Act, 1977 (Act 125 of 1977). In the Natalia Development Board area these police or security services are provided by the board.¹⁷⁴

4.2.3.5 Placing of staff at the disposal, or transfer of employees to the service, of Black local authorities.

If the Minister deems it fit, he may approve, subject to the recommendations of the Commission for Administration or with the approval of any other relevant body, the performance of work for or on behalf of a local authority by an officer or employee of the State or such other body, with the consent of the officer or employee concerned.¹⁷⁵

A development board may second any person in the board's service, subject to such conditions as may be mutually agreed upon between the development board and local authority, for full-time service in the local authority's administration.¹⁷⁶

A development board may also transfer a person in its service to the service of a local authority. This occurs with the concurrence of the local authority concerned and the approval of the Minister must be obtained.¹⁷⁷ Any person transferred under these conditions shall be appointed, as from the date of his transfer, to a post established under the local authority on such conditions as may be prescribed for such a post.¹⁷⁸

4.2.4 Financing

Black local authorities, unlike White local authorities, have no clear right to tax.¹⁷⁹ The right to tax is not a local authority's only source of revenue. A local authority can charge for certain of its activities or services. All local authorities have to bear full responsibility for their own expenditure.¹⁸⁰ The existence of the right to tax is critical to the role of a local authority in the system of community government because it increases its capacity for local choice.¹⁸¹ It can make its own judgement of the level of expenditure. The judgement may, however, be influenced by a local authority's external financial constraints,¹⁸² e.g. the Central Government.

4.2.4.1 The limits of the budgetary choice

Each year a local authority is expected to prepare its annual budget, which sets the levels of revenue and expenditure for the local authority during the coming financial year.¹⁸³ This financial plan is drawn up and submitted by the local authority to the Minister for his approval.¹⁸⁴ This plan must at least specify the following aspects:

- "(a) the different revenue sources and the expected revenue from each source; and
- (b) according to such arrangement as may be required by the Minister, the different programmes and sub-programmes and the different projects in such sub-programmes for the purposes of which money is intended to be applied, and the estimated expenditure in respect of each such programme, sub-programme or project".¹⁸⁵

The local choice made by the local authority is, therefore, not a simple choice about expenditure on its own, or about sources of income. This choice is about the balance between sources of income and types of expenditure. The choice is made in and through the budgetary processes. The adoption of the budget by the council is the culmination of processes that are executed in the different settings of the local authority.

The accepted or prescribed routines for the budgetary process in any local authority determine, at least in part, the information that is available, the way it is used and the actors involved. The routines may be conditioned by the constraints set by the Minister, by the nature of the decisions to be made, and often by the unchallenged sets of values, assumptions and beliefs in which the routines are embedded,

but also by conscious choice by key decision-makers.

Within the budgetary process many influences are brought to bear upon the actors. Some of these influences are structured into the budgetary process reflecting values, assumptions and beliefs of the main participants. These can be modified as the values, assumptions and beliefs of the primary participants change, but others are structured by the forces which are not within the capacity of a local authority to change, e.g. "After consideration of a statement referred to in subsection (1) the Minister shall in respect of each amount appropriated in the statement for the purposes of a programme, sub-programme or project-

(a) authorize the local authority to apply that amount; or

(b) after he has consulted the local authority -

(i) authorize the local authority to apply such lower or higher amount as may be fixed by the Minister; or

(ii) refuse to authorize the local authority to apply any amount, for the purposes of that programme, sub-programme or project during the financial year to which the statement relates".¹⁸⁶

A local authority shall not utilize its budgetary allocations otherwise than in accordance with an authority granted by the Minister.¹⁸⁷ However,

"(a) the Minister may at any time

- (i) authorize a local authority to apply an amount for a purpose for which no provision was made in a statement under subsection (1) of the said section or for the purposes of a programme, sub-programme or project for which insufficient provision was made in such a statement;
- (ii) withdraw or suspend for any particular period any authority granted under the said section or under subparagraph (i) of this paragraph for the application of any particular amount in so far as that amount has not yet been applied;
- (iii) authorize a local authority to apply any saving under any particular programme or sub-programme on such a statement for the purposes of any other programme or sub-programme on such statement;

- (b) the local authority may, unless the Minister otherwise directs, apply any saving under any particular project in a programme or sub-programme on such a statement for the purposes of any other project in the same programme or sub-programme".¹⁸⁸

4.2.4.2 The components of the budgetary decision

Generally local authorities have several sources of income: government grant, rates, rentals, fees and charges and a miscellany of other sources.¹⁸⁹ Subject to certain conditions local authorities usually can borrow funds to cover capital expenditure or to meet temporary or unanticipated shortfall of income.¹⁹⁰ The difference between these sources of income structure the choices to be made in the budgetary process.

4.2.4.2.1 Government grant

This source appears not to be available to Black local authorities.¹⁹¹ The government grant which may initially be the largest source of income is mainly outside the direct control of a local authority. The rules by which it is paid and the level of amount are determined by and can only be changed by the Central Government.¹⁹² Some of the income from a grant may be determined by the local authority's own expenditure decisions, in that a grant may increase or decrease

according to the level of expenditure in the local authority, but within limits prescribed by the Central Government.¹⁹³

The main element of a grant is the block grant in support of local authority expenditure. "It is an unhypothecated grant which can be spent by a local authority on any of its activities. The total amount for local government as a whole is determined by the Central Government, having taken a view on the desirable level of local government expenditure that should be met"¹⁹⁴ from the local authority's own resources.

The level of a grant will affect attitudes in central and local government. A grant may be held to justify increased Central Government influence and control upon local government expenditure. A grant must, therefore, be seen as a potentially variable element largely outside the budgetary limits of local choices but which conditions the budgetary process.

4.2.4.2.2 Rates, rental and site service charges

A local authority's choice as to the level at which these charges are set is at the very core of the budgetary process. Many factors influence this choice. The pressures for existing or increased expenditure have to be balanced against the resistance to the payment

of these charges. There are restraints on the council's willingness to increase the level of local taxation. The restraints may be the consequences of public opinion whether expressed in a violent protest or merely feared.¹⁹⁵ These restraints set limits to the extent to which the councillors are willing to increase these charges.

4.2.4.2.3 Capital expenditure

Local authorities may borrow money to meet the cost of capital expenditure, subject to the approval of the Minister.¹⁹⁶ Each loan is guaranteed by the Central Government and must be paid back over a period of time, the length of the period depending on the durability of the asset acquired or the nature of the services rendered to the local authority. Ministerial control over local authority borrowing powers "is to ensure that capital spending is in conformity with the government's overall economic programme, and indeed, is in conformity with the Minister's patterns of priorities".¹⁹⁷

4.2.4.3 Accounting processes

4.2.4.3.1 Accounting officer

The chief executive officer of a local authority is the accounting officer of the local authority and he is charged with the

responsibility of accounting for all the moneys received by the local authority and for all the payments made by the local authority. Whenever the chief executive officer is absent or unable to perform his functions as accounting officer the local authority shall designate any other employee or any person seconded under section 35 (2) to its service to act as accounting officer during such absence or inability.¹⁹⁹

4.2.4.3.2 Accounting records

The accounting officer shall keep, subject to the provisions of this Act, accounting records, in one of the official Languages of the Republic, as are necessary to reflect the transactions and financial state of affairs of the local authority.²⁰⁰

4.2.4.3.3 Financial statements

The accounting officer shall make out financial statements in respect of that financial year and cause such statements to be audited by the auditor appointed under section 43 (1) for the local authority. The auditor's report and copies of the audited financial statements shall be submitted, within 30 days, to a meeting of the local authority and to the Director.²⁰¹ The financial statements comprise a balance sheet dealing with the assets and liabilities of the local authority; a

revenue statement or any similar financial statement dealing with the income and expenditure of the local authority; and any other statements that may be prescribed.²⁰²

4.2.4.3.4 Auditing

A local authority's accounting records and its financial statements shall be audited annually by a qualified and registered auditor²⁰³ appointed by the Director for such purpose.²⁰⁴

4.2.5 Work procedures and methods

Local authorities usually lay down procedures by which many of their activities are carried out, i.e. planned, programmed, controlled and monitored.²⁰⁵ A procedure constitutes an authorized set of actions that have to be carried out in order to realize the object of the action. Procedures can govern the relationship of the local authority with its public, activities within the council,²⁰⁶ committee, department and also processes that co-ordinate the various departments of a local authority.²⁰⁷

Procedures can, therefore, specify the information that is relevant, the form in which that information is arrayed, the processes that have to be carried out on that information, the participants who will use

the data, the decisions that have to be made and the range of choices open to the decision-makers and the institutional settings within which the processes occur.²⁰⁸

Procedures and methods can be more or less routinized for easy application in the general performance of the functions and duties of any institution.²⁰⁹ A procedure may specify elements with considerable precision or it may permit or even encourage considerable variation in the elements. A procedure, however, does not eliminate choice in decision-making, but it specifies the conditions of choice and may set constraints to the element of choice.²¹⁰

Not all activities of a local authority are directly controlled or governed by procedures. Local authorities carry out a variety of basic activities. The extent to which performance of such activities is governed by procedures is bound to vary. Where it can be assumed that such activities will be carried out as required there will be less need or emphasis for procedures. "The stronger the professional element in the activity the more easily that assumption will be made and the less likely it is to be governed by set procedures. Reliance will be placed on professionalism".²¹¹

It is not merely professional training that can be a substitute for procedures. Skills learned by other forms of training or experience can make unnecessary the detailed specification of procedure to control task performance.²¹²

Beyond basic activities the importance of procedures increases. Both within the department and between the departments inside the local authority and between the local authority and the Central Government Department of Constitutional Development and Planning, and other bodies such as the development boards, procedures become critical to the working of the local authority.²¹³ Procedures become necessary as the behaviour of many actors has to be co-ordinated, planned or controlled, especially where shared values, assumptions and beliefs cannot be assumed.²¹⁴ The behaviour of local authorities, since it involves many actors, has to be routinized by procedures to ensure the necessary uniformities for the efficient operation of the institution.²¹⁵

Local authorities have important central procedures applying to many actors in the various settings. There are procedures applicable in the election of mayor and deputy mayor;²¹⁶ removal of persons from the council chamber;²¹⁷ attendance register for council meetings;²¹⁸ adjournment in the event of no quorum;²¹⁹ count out of members;²²⁰ adjournment of meetings;²²¹ notice of time for continuation of adjourned meeting;²²² order of business of meeting;²²³ business to be transacted at meeting of council;²²⁴ minutes of meeting;²²⁵ questions by members;²²⁶ election of executive committee;²²⁷ election of chairman and deputy chairman of an executive committee;²²⁸ reporting to an executive committee by a head of department;²²⁹ composition of a

report of an executive committee;²³⁰ submission of a report by the executive committee;²³¹ deputations to the council;²³² manner of giving a notice of a motion;²³³ provisions relating to the consideration of a budget;²³⁴ mayor to have precedence;²³⁵ length of speeches;²³⁶ manner of voting;²³⁷ suspension of debate;²³⁸ interpretation of standing orders;²³⁹ absence of councillors from meetings;²⁴⁰ conduct of members during meetings;²⁴¹ and a miscellany of others.

4.2.6 Control measures

A local authority is constituted for local choice. Its capacity for local choice provides the special contribution of local authorities to self-government by communities. The capacity for local choice is, however, not a capacity for unlimited choice. Local authorities are set in a national framework and are, therefore, an integral part of the national world. They are subject to Central Government constraints and national influences, which limit the capacity for local choice.

4.2.6.1 Control over policy-making

Black local authorities are creatures of statute.²⁴² Their establishment,²⁴³ constitution²⁴⁴ and powers in the policy-making process²⁴⁵ are determined by statute and subject to strict

Ministerial control. Black local authorities may make bylaws on any matter falling within their powers.²⁴⁶ The exercise of this power is also subject to Ministerial approval.²⁴⁷ Further the Minister may make bylaws on any matter on which a local authority may make bylaws and such bylaws shall apply in the area of jurisdiction of each local authority in so far as they are applicable or not excluded by or inconsistent with the bylaws of the local authority of an area concerned.²⁴⁸ Bylaws passed by the local authority can take effect only after they have been approved and published by the Minister in the Government Gazette.²⁴⁹

If the Minister is of the opinion that any object of the Black Local Authorities Act, 1982 (Act 102 of 1982) is frustrated by a local authority's failure to exercise or perform a power, function or duty assigned to it by or under this Act, or that a local authority committed an act or omission which is unlawful or which may result in maladministration, he may direct such local authority, after he has given the local authority an opportunity to submit representations to him, to take such resolutions or to make such bylaws or to take such action within such period as the Minister may consider necessary.²⁵⁰

Regulations governing the operation of a local authority are made by the Minister.²⁵¹

4.2.6.2 Control over finances

The Act provides for a variety of aspects relating to financial policy. It prescribes who shall be the accounting officer of a local authority;²⁵² what accounting records shall be kept;²⁵³ the Minister may determine the book-keeping system;²⁵⁴ the accounting officer shall prepare and submit financial statements in the prescribed manner.²⁵⁵ The financial year is prescribed by the Minister.²⁵⁶ The local authority's accounting records and its financial statement shall be audited annually by an auditor appointed by the Director of Local Government.²⁵⁷

A local authority prepares estimates of revenue and expenditure, in the prescribed manner, for consideration by the Minister.²⁵⁸ After consideration, the Minister may

- (i) authorize the application of the amount;
- (ii) after he has consulted the local authority -
 - (a) authorize the local authority to apply such lower or higher amount as may be fixed by the Minister; or
 - (b) refuse to authorize the local authority to apply any amount.²⁵⁹

A local authority shall apply its resources as approved by the Minister, unless a deviation has been specifically authorized by the Minister.²⁶⁰ Local authorities may, subject to Ministerial approval, borrow money or overdraw a banking account.²⁶¹

4.2.6.3 Control over specific personnel groups

A chief executive officer, whether a town clerk or village secretary, shall be appointed by the local authority.²⁶² The chief executive officer shall not be removed from office or dismissed from the service of the local authority, and his remuneration package shall not be reduced, except under the authority of a resolution adopted by the majority of all the members of the local authority at a meeting specially convened for that purpose, and unless the Minister has approved the removal, dismissal or reduction.²⁶³ These provisions also apply in the case of heads of municipal departments.²⁶⁴ In the Natalia Development Board the personnel requirements of the community councils are determined by the board.²⁶⁵

4.2.6.4 Control over procedures

The Minister determines the operating procedures of a local authority over a variety of aspects, e.g. policy-making activities²⁶⁶ i.e. the operation of the various policy-making bodies e.g. council, executive

committee and chief executive officer. Procedures have been designed
also for financial administration and personnel provision and removal.²⁶⁷²⁶⁸

4.3 Summary

In this Chapter an examination of the shared characteristics of local authorities and community councils has been undertaken. Each local authority or community council may be unique, but it belongs to a world that has common attributes determined by the statute and also subject to close Ministerial control in a variety of aspects. A common legal framework and operational procedures emphasize uniformity among these institutions. The Chapter describes the reality of constraints on the operation of Black local government and the capacity for choice about that operation.

4.4 References and footnotes

1. The dissolution of these community councils will occur when the repeal of the Community Councils Act, 1977 (Act 125 of 1977) takes effect on a date to be fixed by the State President by proclamation in the Government Gazette. Refer to section 56 A of the Black Local Authorities Act, 1982 (Act 102 of 1982). See also section 69 of, and the schedule to the Black Communities Development Act, 1984 (Act 4 of 1984). Advisory boards were established in terms of section 21 of the Blacks (Urban Areas) Consolidation Act, 1945 (Act 25 of 1945).

2. Ibid.

See also Nieuwoudt, G.S.: "Financing of Local Authorities in Natal; Existing and New Sources of Revenue: Black Authorities" appearing in Coetzee, W.A.J. (ed): Pertinent Issues of Local Government and Administration in Natal (Proceedings of a symposium held at the University of Durban-Westville on 28 - 29 November 1983) p. 67.

Mr Pascoe, of the Natalia Development Board, stationed in Pietermaritzburg, has confirmed that no Black local authorities have been established up to 1985 in the areas falling under the jurisdiction of this board.

3. Coetzee, W.A.J.: (ed)
Pertinent Issues of Local Government and Administration in Natal
(Proceedings of a symposium held at the University of Durban-
Westville on 28 - 29 November 1983). p. 98.
4. Section 31, Black Communities Development Act, 1984 (Act 4 of
1984).
5. Ibid.
6. Du Plessis, H.A.: "Administrative Requirements for the
Development of Towns and Cities for Blacks in Natal," appearing
in Coetzee, W.A.J.: (ed)
The Administrative Future of the Natal Region, (Proceedings of
a symposium held at the University of Durban-Westville on 7 - 9
July 1982) p. 197.
7. Richards, P.G.: The Reformed Local Government System, George
Allen & Unwin, London, 1980 p. 75.
8. Ibid.
9. Ibid.

10. See Black Local Authorities Act, 1982 (Act 102 of 1982), Community Councils Act, 1977 (Act 125 of 1977) and the Black Communities Development Act, 1984 (Act 4 of 1984).
11. Section 93 of the Republic of South Africa Constitution Act, 1983 (Act 110 of 1983).
12. Section 24 of the Black Local Authorities Act, 1982 (Act 102 of 1982).
13. Minister of Constitutional Development and Planning.
14. Section 2 (1) of the Black Local Authorities Act, 1982 (Act 102 of 1982). See also section 2 of the Community Councils Act, 1977 (Act 125 of 1977).
15. Prescribed by regulation, see Government Notices No. R2211 and No. R2212 dated 7 October 1983 and section 11 of the Community Councils Act, 1977 (Act 125 of 1977).
16. Section 27 of the Black Local Authorities Act, 1982 (Act 102 of 1982). Community Councils have no authority to pass bylaws or make regulations. Refer to section 5 (6) of the Community Councils Act, 1977 (Act 125 of 1977).

17. Ibid.
18. Black Local Authorities Act, 1982 (Act 102 of 1982).
19. Section 27 (4), Black Local Authorities Act, 1982 (Act 102 of 1982).
20. Section 56, Black Local Authorities Act, 1982 (Act 102 of 1982) and section 11, Community Councils Act, 1977 (Act 125 of 1977).
21. Du Plessis, op. cit., p. 202. See also section 5, Community Councils Act, 1977 (Act 125 of 1977).
22. The applicable statutes are the Community Councils Act, 1977 (Act 125 of 1977) and the Black Communities Development Act, 1984 (Act 4 of 1984).
23. Refer to footnote No. 1 supra.
24. Ibid.
25. Black Local Authorities Act, 1982 (Act 102 of 1982). See also Nieuwoudt and Pascoe supra.

26. Section 5 of the Community Councils Act, 1977 (Act 125 of 1977).
27. Section 5 (1) (m).
28. Ibid.
29. Ibid.
30. Section 5 (4)
31. Section 5 (5)
32. Section 5 (1)
33. Section 5 (6)
34. Section 11
35. Section 2
36. Ibid.

37. Section 4 of the Black Local Authorities Act, 1982 (Act 102 of 1982).
38. Pascoe, op. cit.
39. Section 3, Community Councils Act, 1977 (Act 125 of 1977) and section 6 of the Black Local Authorities Act, 1982 (Act 102 of 1982).
40. Section 7, Black Local Authorities Act, 1982 (Act 102 of 1982) and section 3, Community Councils Act, 1977.
41. Section 8, Black Local Authorities Act, 1982 (Act 102 of 1982) and section 3, Community Councils Act, 1977.
42. Section 9, Black Local Authorities Act, 1982 (Act 102 of 1982).
43. Section 10 and 12, Black Local Authorities Act, 1982 (Act 102 of 1982).
44. Section 20 (4), Black Local Authorities Act, 1982 (Act 102 of 1982).

45. Section 32 (1), Black Local Authorities Act, 1982 (Act 102 of 1982).
46. Section 20 (4) and 32 (1), Black Local Authorities Act, 1982 (Act 102 of 1982).
47. Ibid.
48. Section 20 (5) and 32 (2), Black Local Authorities Act, 1982 (Act 102 of 1982).
49. Government Notices Nos. R2211 and R2212 dated 7 October 1983.
50. Section 14 (5), Black Local Authorities Act, 1982 (Act 102 of 1982).
51. Ibid.
52. Section 18, Black Local Authorities Act, 1982 (Act 102 of 1982). See also regulation 118, Government Notice No. R2151 dated October 1977.
53. Ibid.

54. Section 27 (1), Black Local Authorities Act, 1982 (Act 102 of 1982).
55. Ibid.
56. Ibid. See also section 11 (5), Community Councils Act (Act 125 of 1977).
57. Section 5 (6), Community Councils Act, 1977 (Act 125 of 1977).
58. Section 11 (i) Community Councils Act, 1977 (Act 125 of 1977)
59. Section 20 (4), Black Local Authorities Act, 1982 (Act 102 of 1982), see also regulation 110 of Government Notice No. 2151 dated 21 October 1977.
60. Section 20 (1), Black Local Authorities Act, 1982 (Act 102 of 1982).
61. Section 5 (1) (k) of the Community Councils Act 1977 (Act 125 of 1977) and regulation 110 of Government Notice No. R2151 dated 21 October 1977.
62. Ibid., see also section 20 (5), Black Local Authorities Act, 1982 (Act 102 of 1982).

63. Section 20 (2) of the Black Local Authorities Act, 1982 (Act 102 of 1982).
64. Regulation 111 of Government Notice No. R2151 dated 21 October 1977.
65. Section 20 (3), Black Local Authorities Act, 1982 (Act 102 of 1982).
66. Government Notice No.R.2211 dated 7 October 1983, regulation 19.
67. Ibid.
68. Regulation 20 (1).
69. Ibid.
70. Regulation 20 (2).
71. Stewart, J.: Local Government: The Conditions of Local Choice, George Allen & Unwin, London 1983, p. 89.

72. Regulation 21 (1) of Government Notice No. R2211 dated 7 October 1983.
73. Black Local Authorities Act, 1982 (Act 102 of 1982).
74. Regulation 21 (1), Government Notice No. R2211 dated 7 October 1983.
75. Regulation 21 (2).
76. Stewart, op. cit., p. 92
77. Section 31.
78. Ibid.
79. Ibid.
80. Section 32, Black Local Authorities Act, 1982 (Act 102 of 1982).
81. Stewart, op. cit., p. 93.
82. Section 31 (3) of the Black Local Authorities Act, 1982 (Act 102 of 1982)

83. Section 30.
84. Section 31.
85. Stewart, op. cit., p. 92.
86. Du Plessis, op. cit., p. 198.
87. Section 2, Black Local Authorities Act, 1982 (Act 102 of 1982) and section 5 of the Community Councils Act, 1977 (Act 125 of 1977).
88. Section 2 (1), Black Local Authorities Act, 1982 (Act 102 of 1982) and section 2, Community Councils Act, 1977 (Act 125 of 1977).
89. Section 2, Black Local Authorities Act, 1982 (Act 102 of 1982).
90. Section 84, Provincial Government Act, 1961 (Act 32 of 1961).
91. Section 1, Black Local Authorities Act, 1982 (Act 102 of 1982) as amended and the Community Councils Act, 1977 (Act 125 of 1977).

92. Section 24 (1) Black Local Authorities Act, 1982 (Act 102 of 1982).
93. Section 6.
94. Section 20.
95. Section 21
96. Section 30.
97. Section 31.
98. Section 6 (1) of the Black Local Authorities Act, 1982 and section 3 of the Community Councils Act, 1977.
99. Section 8 of the Black Local Authorities Act, 1982 (Act 102 of 1982).
100. Section 6 (2).
101. Section 3 (1), Community Councils Act, 1977 (Act 125 of 1977).
102. Ibid.

103. Section 6 (3), Black Local Authorities Act, 1982 (Act 102 of 1982).
104. Section 3 (2), Community Councils Act, 1977 (Act 125 of 1977).
105. Section 6 (3) (c), Black Local Authorities Act, 1982 (Act 102 of 1982).
106. Section 9, Black Local Authorities Act, 1982 (Act 102 of 1982).
107. Section 10, Black Local Authorities Act, 1982 (Act 102 of 1982).
108. Section 11, Black Local Authorities Act, 1982 (Act 102 of 1982).
109. Section 12 (i), Black Local Authorities Act, 1982 (Act 102 of 1982).
110. Section 12 (2), Black Local Authorities Act, 1982 and regulation 74 of Government Notice No. R2151 dated 21 October 1977.
111. Section 20 (1), Black Local Authorities Act, 1982. There is no provision for the constitution of an executive committee in the case of community councils, see section 5 (1) of the Community Councils Act, 1977 (Act 125 of 1977).

112. Section 20 (2), Black Local Authorities Act, 1982 (Act 102 of 1982).
113. Ibid.
114. Section 20 (3).
115. Ibid.
116. Section 20 (1).
117. Section 20 (4).
118. Section 20 (6) and (7).
119. Section 21 (1).
120. Ibid.
121. Ibid.
122. Section 21 (2).
123. Section 5 (1), Community Councils Act, 1977 (Act 125 of 1977).

124. Ibid.
125. Section 30 (1), Black Local Authorities Act, 1982 (Act 102 of 1982).
126. Section 30 (2)
127. Section 30 (3).
128. Ibid.
129. Section 30 (5).
130. Du Plessis, op. cit., p. 199 - 200.
131. Information obtained from Mr Ian Mkize, former Chairman of the Hambanati Community Council.
132. Section 31.
133. Stewart, op. cit., p. 185.
134. Section 31 (2), Black Local Authorities Act, 1982 (Act 102 of 1982).

135. Section 31 (3)
136. This is usually the case where a local authority operates on a multiple committee system.
137. Regulation 20 (1) of Government Notice No. R2211 dated 7 October 1983.
138. Regulation 20 (2).
139. Section 31 (3) Black Local Authorities Act, 1982 (Act 102 of 1982).
140. Du Plessis, op. cit., pp. 199 - 200.
141. These categories appear in sections 30 and 31, Black Local Authorities Act, 1982; section 5 (1) (i) and 6, Community Councils Act, 1977; and section 22, Blacks (Urban Areas) Consolidation Act, 1945.
142. Cloete, J.J.N.:
Central, Provincial and Municipal Institutions of South Africa,
J.L. Van Schaik, Pretoria, 1982 p. 261.

143. Richards, op. cit., p. 123.
144. Ibid.
145. Cloete, op. cit.
146. Du Plessis, op. cit.
147. Section 30, Black Local Authorities Act, 1982 (Act 102 of 1982).
148. Ibid.
149. Ibid.
150. Ibid.
151. Section 31 (3), Black Local Authorities Act, 1982 (Act 102 of 1982); section 5 (1) (i) Community Councils Act, 1977; and section 22, Blacks (Urban Areas) Consolidation Act, 1945 (Act 25 of 1945).
152. Section 31, Black Local Authorities Act. 1982 (Act 102 of 1982).

153. Section 30.
154. Mr R.J. Ngake of the Thabong Town Council near Welkom.
155. According to the advertisements in the South African press e.g. Sunday Times, 14 July 1985 p. 10 there is a minimum period of relevant experience of ten (10) years.
156. A junior degree or a diploma seems to be adequate; see advertisement in the newspaper mentioned in footnote No. 155 supra.
157. R39 000 in the Soweto Town Council and R31 569 in the Katlehong Town Council; see Business Times a supplement to the Sunday Times, 10 July 1985. p. 10.
158. Section 30, Black Local Authorities Act, 1982 (Act 102 of 1982).
159. Ibid.
160. See Community Councils Act, 1977 (Act 125 of 1977).
161. Section 31 (1), Black Local Authorities Act, 1982 (Act 102 of 1982).

162. Section 31 (3).
163. Section 31 (4).
164. See Community Councils Act, 1977 (Act 125 of 1977).
165. Section 23 (1) (a), Black Local Authorities Act, 1982 (Act 102 of 1982).
166. Section 5 (1) (i), Community Councils Act, 1977 (Act 125 of 1977).
167. Du Plessis, op. cit., p. 199.
168. Section 34, Black Local Authorities Act, 1982 (Act 102 of 1982).
169. Section 34 (1) (a).
170. Ibid.
171. The passing out parades have been held both in Soweto and Ibhayi in 1985.

172. Section 34 (3), Black Local Authorities Act, 1982 (Act 102 of 1982).
173. Ibid.
174. Coetzee, op. cit., p. 99.
175. Section 35 (1), Black Local Authorities Act, 1982 (Act 102 of 1982).
176. Section 35 (2).
177. Section 36 (1).
178. Section 36 (2).
179. There is no clarity from the Act of the existence of a right to tax, see section 23 of the Black Local Authorities Act, 1982 (Act 102 of 1982). Black local authorities do not have the rating base available to White local authorities, refer to Bekker, S. and Humphries, R.: From Control to Confusion: The Changing role of Administration Boards in South Africa, 1971-1983, Shuter and Shooter, Pietermaritzburg, 1985 p. 161.

180. Bekker and Humphries, op. cit., pp. 130 - 161.
181. Stewart, op. cit., p. 15
182. Sections 44 and 45, Black Local Authorities Act, 1982 (Act 102 of 1982).
183. Section 44 (1)
184. Ibid.
185. Section 44 (2).
186. Section 44 (3).
187. Section 45.
188. Ibid.
189. Stewart, op. cit., p. 201.
190. Ibid.

191. Refer to the Black Local Authorities Act, 1982 (Act 102 of 1982) and see also Bekker and Humphries, op. cit., pp. 130 - 161.
192. Stewart, op. cit., p. 201.
193. Ibid.
194. Ibid. p. 20.
195. Such a strong protest was demonstrated by residents of the Ningizimu Community Council controlled townships, e.g. Lamontville and Chesterville and the Hambanati Community Council, through the Joint Rent Action Committee. The operating slogan during these protests against proposed increases in rental, was "ASINAMALI" meaning "We have no money".
196. Section 23 (1) (h), Black Local Authorities Act, 1982 (Act 102 of 1982).
197. Richards, op. cit., p. 98.
198. Section 39 (1), Black Local Authorities Act, 1982 (Act 102 of 1982).

199. Section 39 (2)
200. Section 40.
201. Section 41.
202. Ibid. See also section 9 of the Community Councils Act, 1977 (Act 125 of 1977) and Du Plessis, op. cit., p. 199.
203. The auditor must be a qualified person and registered in terms of the Public Accountants and Auditors' Act, 1951 (Act 51 of 1951).
204. Section 43, Black Local Authorities Act, 1982 (Act 102 of 1982).
205. Besides the statutory provisions, these procedures are stipulated in the standing orders, e.g. Government Notice No. R2211 dated 7 October 1983.
206. Ibid.
207. Section 31 (3), Black Local Authorities Act, 1982 (Act 102 of 1982).

208. Regulation 20, Government Notice No. R2211 dated 7 October 1983.
209. The standing orders serve this purpose.
210. Ibid.
211. Stewart, op. cit., p. 111.
212. Ibid.
213. See Black Local Authorities Act, 1982 (Act 102 of 1982); the Black Communities Development Act, 1984 (Act 4 of 1984), Government Notice No. R2211 of 7 October 1983 and Du Plessis, op. cit., p. 200.
214. Stewart, op. cit., p. 112.
215. These uniformities are achieved through the application of the statutory provisions, standing orders and regular reporting procedures, see Du Plessis, op. cit.
216. Regulations 2 and 3, Government Notice No. R2211 dated 7 October 1983.

217. Regulation 4

218. Regulation 5

219. Regulation 6

220. Regulation 7

221. Regulation 8

222. Regulation 9

223. Regulation 11

224. Regulation 12

225. Regulation 13

226. Regulation 14

227. Regulation 15

228. Regulation 16

229. Regulation 20

230. Regulation 21

231. Regulation 23

232. Regulation 27

233. Regulation 29

234. Regulation 36

235. Regulation 43

236. Regulation 44

237. Regulation 51

238. Regulation 56

239. Regulation 61

240. Regulation 68

- 241. Regulation 83
- 242. Section 2, Black Local Authorities Act, 1982 (Act 102 of 1982).
- 243. Ibid.
- 244. Section 6.
- 245. Sections 23 and 24.
- 246. Ibid.
- 247. Ibid.
- 248. Ibid.
- 249. Ibid.
- 250. Section 29.
- 251. Section 56, see also Government Notices Nos. R2211 and R2212 dated 7 October 1983.
- 252. Section 39.

253. Section 40.

254. Ibid.

255. Section 41

256. Section 42:

257. Section 43 (1) (a)

258. Section 44 (1)

259. Section 44 (2)

260. Section 45.

261. Section 23 (1) (h)

262. Section 30 (1).

263. Section 30 (4).

264. Section (31 (4)).

265. Du Plessis, op. cit., p. 200 and Coetzee, op. cit., pp. 97 - 99.
266. Government Notice No R2211 dated 7 October 1983.
267. Ibid.
268. Sections 30 and 31 of the Black Local Authorities Act, 1982 (Act 102 of 1982).

CHAPTER 5

Attitudes and reactions of the urban Blacks toward local government and administration.

5.1 Introduction

The local authority acts upon and is acted upon by its residents. The attitude and reactions of the urban Black are shaped partly by the structure and procedures of the local authority; partly by his perceptions of the actors within the authority and also by the values, assumptions, beliefs and expectations that he develops¹.

The structure of a local authority and the settings in which that structure is expressed can provide a forum for the resolution of some problems, but this forum can also be closed to other problems. The local authority governs, but it is elected and influenced by its residents. The nature and consequences of the electoral relationship that exists between the local authority and the residents constituting the local public are explored below. The reason for the emergence of organized movements, i.e. interest groups, and political parties and the role they play in Black local government and administration will also be explained.

5. Public participation

Public participation in the sense of direct involvement of the residents in the policy-making process does not occur. Public participation may be more often restricted to a periodic election of representatives to the municipal council or a public response to identified issues. The local authority has its own pattern of operation. This is represented by its procedures, settings and roles, and it gives expression to the values, assumptions and beliefs as prescribed in the Statute. Those interests will normally not wish for disturbance of that pattern of working by any direct public involvement which may be difficult to control.

Public participation is, therefore, on the conditions set by the local authority operating within the guidelines imposed by the Statute. The electoral relationship defines the residents of the local authority as the electorate. The electorate is the electorate as prescribed for general municipal elections for those Blacks who are lawfully resident within the prescribed area concerned. The municipal elections represent the formal limits to the electorate's role. There are no provisions for municipal referenda on specific issues. For all practical purposes, therefore, the formal electoral relationship is contained in the right to vote in local elections. The impact extends, however, beyond the formal relationship. The

impact of the right to vote is important in legitimating the Council's right to independent action and in providing the basis for local accountability. The doctrine of the mandate obtained from the residents has, therefore, emerged in Black local authorities⁹.

"The electoral relationship has a practical impact on the individual councillor. The councillor accepts, to a greater or lesser extent, that elections past and the possibility of elections to come create a continuing relationship between himself and his electors"¹⁰. He would normally accept the obligation to listen to their views or more often problems and within certain constraints pursue them¹¹. To that extent the relationship between a councillor and at least some of the electorate can extend beyond the election¹².

The full potential of the formal electoral relationship is not realized in practice in Black local authorities. The percentage of the registered voters who participate in municipal elections has been exceedingly low¹³. It has been argued also that a significant portion of the electorate has, almost in all municipal elections held in 1983 in terms of the Black Local Authorities Act, 1982 (Act 102 of 1982), been omitted from the voters' lists¹⁴.

There are several significant factors shaping the urban residents' attitudes and reactions towards any form of participation in local government and administration. Urban leaders express the view that

local authorities have been tossed to Blacks as the crumbs from the "master's table" instead of full participation, in the national institutions, in the public policy-making process¹⁵. They argue that these local authorities are not and cannot be viable because no adequate provision has been made for a proper financial base¹⁶. They submit that these structures are "apartheid" institutions conceived, created and imposed by the Central Government upon the urban Black¹⁷.

This criticism cannot be dismissed easily. It is a valid point that no constitutional arrangement acceptable to the majority of South Africans has been worked out¹⁸. Despite the inclusion of Coloureds and Indians in the national political system, the political power rests virtually in the hands of the White race¹⁹. This constitutional arrangement is loaded in favour of the White race and works against the interests of the majority of Coloureds and Indians²⁰. The total exclusion of Blacks from free political participation in a common national political system is the cause for the political instability experienced in South Africa²¹. The national policy²² pursued in regard to Blacks constitutes an integral part of the problems of our society. "Homelands"²³ are viewed as irrefutable pillars of the policy of discrimination on the basis of race²⁴. Views have repeatedly been expressed that our social ills can be permanently cured by the total and immediate eradication of the single cause, i.e. "apartheid"²⁵.

It is also true that these local institutions cannot be viable unless they have a sound financial foundation. It is a fact that virtually all urban Black areas require enormous capital funds for the establishment and development of infrastructure and housing . The Black Local Authorities Act, 1982 makes no clear provision for the solution of the financial predicament of the Black local authorities. The "principle of financial self-sufficiency will be maintained for the Black local authorities, albeit within proposals for a system of metropolitan financing of hard services" through the regional services councils . The local authorities established for the urban Black communities are expected to operate without State grants or even the rating base available to the White local authorities . It stands to reason, therefore, that the financial question alone could become the Achilles heel of the local authorities for the urban Blacks .

The reactions of the urban residents, inter alia, in the form of sustained campaigns against elections resulting in low percentage polls or in candidates being elected unopposed because of the boycott factor have caused the Central Government considerable embarrassment in its pursuit of an urban policy regarded as patently objectionable .

The rejection has called in question the legitimacy of these municipal
structures³⁶ . Councillors are branded as collaborators participating
in the structures which are bent on the implementation of an
atrocious and inhuman system³⁷ . A number of councillors serving in
the recently constituted local authorities and also in community
councils, where they are still in operation, have yielded to the
public pressure and other manifestations of the wrath of the people
by resigning their seats³⁸ . Councillors have resigned either out of
fear for their lives, out of concern for the safety of the members of
their families or out of disillusionment with the municipal
institutions.³⁹

Some of the councillors who "persist" to participate in these
structures have been the victims of assaults and even violent death⁴⁰ .
Others have had their homes and property burnt, especially during the
wave of unrest that has engulfed almost all the urban townships in
South Africa during the years 1984/85⁴¹ .

Outrage or support has been expressed at the use of the members of the
South African Defence Force to "support" police operations in
suppressing the wave of unrest, firstly in the Vaal Triangle townships
and later in all townships hit by the riots⁴² . It is felt that
soldiers are being deployed to suppress unrest which is sparked off by
the rejection of laws which are the direct application of a political
party's ideological programme⁴³ . Government spokesmen, submit that

the "reforms" can only occur in an atmosphere of "calm". The stalemate continues.

This intervention by the South African Defence Force in townships raises questions about its professed and usually assumed non-⁴⁴ interference or neutrality in political issues . It is argued that the army's enemy in townships is not an external invading force, but fellow South Africans and these acts of intervention have "increasingly politicised the role of the South African Defence Force (or increasingly exposed the political role of the SADF)."⁴⁵ Owen has observed that "far from being seen as protectors of the people or upholders of law and order, the police and the army are now widely suspected and accused of committing acts of random brutality,"⁴⁶ upon the urban Black residents.

Measured against this degree of conflict and the deep rumble of discontent which frequently explodes into intense violence, it may be concluded that the present system of local government enjoys very little, if any, support from the urban Black residents.

5.3 Organized movements

A local authority does not always act on its own initiative. It may be subject to influence, demand, pressure and even protest by organized movements within the local authority area.⁴⁷ A relationship

of some kind emerges and develops between the local authority and the interest group or groups. The influence exerted by an interest group upon a local authority can take a variety of forms. It could manifest itself in a subdued statement, a protest, a campaign or a violent outburst .

This desire to exercise influence or exert pressure upon a local authority stems from the authority wielded by the local authority to make decisions which can critically affect the positions or fortunes of individuals, groups of persons or institutions . Failure to act or a decision to act can create or deny opportunities which may be perceived as vital by the affected party. Interest groups, as custodians of their members' interests, have every reason, if not an obligation, to endeavour to influence decisions leading to both action and inaction .

When significant change is required by the residents or significant change is imposed by the local authority, influence that is part of the routine of maintenance can be replaced by demand or pressure upon councillors . A distinction can be drawn between pressure exerted within the processes of consultation or negotiation through meetings that the local authority provides and public pressure or protest that goes beyond that framework . Pressure can become strong protest and involve large publics or whole communities. Public protests arranged

by interest groups can be very visible, i.e. marches may be organized, public meetings convened and petitions may be drawn and presented to the institutions concerned ⁵³. Black councils excluded, this conflict is, however, generally perceived as the exception rather than the rule in the usual relationship that exists between interest groups and local authorities ⁵⁴. It represents a break from the more restricted modes of pressure which operate within the procedures and formal settings determined by the local authority.

In South Africa the position is such that this continued conflict now constitutes a fixed pattern reflecting the state of the relationship that has evolved between urban Black local authorities and interest groups. There has developed a strong tendency among the organized movements, variously designated as civic associations, residents' associations, residents' organizations, or action committees, to go beyond the political settings and procedures governing a local authority ⁵⁵. They challenge and, in fact, vehemently criticize the Central Government's urban policy as it affects the Blacks. Through this concerted effort the Central Government has, in the last few years, revised its policy of regarding all Blacks in urban areas as temporary sojourners only ⁵⁶. The Central Government has, however, designed measures which are directed at the limitation of permanent urban residence to a select group ⁵⁷.

The revised policy has focused attention more sharply on the political aspirations of the urban Blacks. The Government's response has been to offer such Africans upgraded local government structures while adhering to its policy that their national political aspirations should be realized exclusively through Homelands . This official position was confirmed in 1983 with the passing of the Republic of South Africa Constitution Act, 1983 (Act 110 of 1983). This Act provides for the parliamentary representation of the Whites, Coloureds and Indians but Blacks are excluded . Outlining the Government's policy, Koornhof said that the political development of Blacks would come about differently according to the principle of self-determination. The creation of a fourth parliamentary chamber for Blacks was viewed as undesirable as it would adversely affect the whole process of self-government for the Homelands .

At the same time the Government recognized that the meaningful fulfilment of Black political aspirations beyond the level of local government constituted the most significant constitutional challenge facing it. In February 1984 the Government announced the appointment of a Special Cabinet Committee to investigate the political future of the urban Blacks . Strong misgivings have been expressed about the possible success of such an exercise, considering the composition of this committee and also the statement that it would consult urban

leaders elected in the exceedingly low municipal election polls and
Homeland leaders who operate outside the urban centres .⁶³

Besides engaging in issues directed at the Central Government, interest groups also react to specific issues pertaining to local government and administration. Specific issues would relate to particular aspects such as the absence or inadequate provision of certain facilities or services within the whole area under the jurisdiction of the local authority or portion thereof. Specific issues could also relate to sensitive aspects such as the level of service charges, house and site rentals .⁶⁴ Interest groups pursue, therefore, both general and particular issues.

Organized movements have mushroomed in almost all local authorities or community councils, e.g. the Soweto Civic Association, Alexandra Residents Association, Kagiso Residents Organization and the Katlehong Action Committee. The area of jurisdiction of these interest groups coincides with that of the local authority or community council concerned. Some interest groups have been created on a region-wide basis to co-ordinate activity directed at the pursuit of a common objective, e.g. Joint Rent Action Committee (JORAC) and Orange Vaal Regional Action Committee (OVRAC). JORAC's activities span several townships such as Lamontville, Chesterville, Hambanati, Shakaville, Shayamoya and Klaarwater, i.e. the whole area falling

under the jurisdiction of the former Port Natal Administration
Board .⁶⁵

JORAC protested strongly against proposed increases in house rentals ranging from 40% to 80% affecting Lamontville, Chesterville, Shakaville, Hambanati and Shayamoya. After these proposed increases rentals varied from R42.60 per month in Lamontville, and averaged R36.50 per month in Chesterville .⁶⁶ JORAC, spearheading the residents' protest, argued that residents could not afford the proposed increases. They submitted also that their houses had not been maintained at all. According to the Institute of Race Relations the board acknowledged that the barest minimum in maintenance work had been undertaken, but argued that it had no funds for maintenance as its annual deficit had risen to R7 million. It submitted that the proposed increases which it had intended to introduce two years earlier were necessary to meet the escalating costs of services such as water, electricity, sewerage disposal and garbage collection .⁶⁷

According to the Institute of Race Relations the board also said that it had explained its financial difficulties to the community councils and the advisory boards concerned, and had also circularized the residents .⁶⁸ The atmosphere in the affected townships became very tense. When a very popular community leader, Mr Harrison Dube, was assassinated, a violent outburst in the townships ensued. Mr Dube had invented and popularized the slogan "ASINAMALI" which could be

translated into "WE HAVE NO MONEY".⁶⁹ The proposed increases were postponed to August 1, 1983 after a meeting held in May between Dr Koornhof, the Community Councils, JORAC and the then mayor of Durban, Mrs Sybil Hotz.⁷⁰ The chairman of the Hambanati Community Council, Mr Ian Mkize, now a member of JORAC, resigned his chairmanship of the community council. He stated that the Government had consistently ignored the views of Black leaders especially on the issue of rental increases. Repeated representations to the Government that the rent increases would lead to unrest had not been heeded. It was only when the White mayor of Durban had intervened that the Government had arranged for meetings with the councillors and JORAC.⁷¹

JORAC had also drummed up support amongst the residents of Lamontville and Hambanati to oppose the proposed incorporation of the two townships into the KwaZulu Government.⁷² This announcement by the Government exacerbated the unrest that already reigned in these townships.⁷³ At a meeting convened by Inkatha to discuss the proposed incorporation a violent confrontation broke out between Inkatha and township residents.⁷⁴ Up to this point, the question of incorporation has not been resolved. The Government appears to have either shelved the proposal for the time being or abandoned it completely.

The Orange Vaal Regional Action Committee represents various townships such as Tumahole, Zamdela, Bophelong, Mokaullo, Sharpeville,

Evaton, Sebokeng, Maokeng, Thabong and Mangaung.⁷⁵ This regional committee was established to resist high rentals imposed by the local authorities. It was created also to "organize, mobilize and consolidate" residents from all these townships into a united body to fight "tooth and nail for a free, non-racial democratic⁷⁶ South Africa".⁷⁷

This Action Committee has also called upon the State President to engage in negotiations with the jailed leaders of the⁷⁸ African National Congress and other legitimate Black leadership⁷⁹ in regard to a constitutional arrangement for the whole of South Africa.⁸⁰

Prior to the municipal elections held, in terms of the Black Local Authorities Act, 1982 (Act 102 of 1982), an⁸¹ Anti Community Councils' Election Committee was established. This committee held various meetings and rallies denouncing the impending elections in the various urban areas. The campaign for the boycott of the elections culminated with the holding of a rally at Regina Mundi⁸² Church in Soweto in November 1983. Mr Oscar Mpetha, one of the⁸³ presidents of the United Democratic Front (UDF), addressing the rally, pointed out that the residents who intended voting should remember that their children had layed down their lives in 1976 because they had wanted to do away with institutions of oppression⁸⁴ such as community councils and the new local authorities. The

Inkatha which had earlier said that its participation in the elections would be conditional upon a satisfactory financial base for the new councils, stated that it would not participate unless the Government withdrew a leaflet issued by the then Department of Foreign Affairs and Information claiming that the municipal councils were a substitute⁸⁵ for parliamentary representation for Blacks.

The large majority of interest groups operating in the local government arena exists on a continuing basis. Interest groups are concerned not with a single issue but with a series of issues or continuing policies.⁸⁶ They are created to achieve change or to resist change. There has been a marked increase in the growth of interest groups, often originally centred on a particular issue or promoting a particular activity, but building up to include a wider concern for the problems of their area or even extending their concern⁸⁷ to national policy issues.

5.4 Political parties

A political party is a setting which falls outside the formal structure of a local authority because no reference is made to political parties in the legislation that governs local authorities and no mention is made also in the standing orders or regulations of the local authorities.⁸⁸ The political party will not, therefore, be

referred to in the formal procedures of the local authority or in any official description of the structure of the authority. The party group, where it operates, constitutes a distinctive body both⁸⁹ belonging to the world of local government and yet separate from it.

A political party can be of critical importance to the operation of a municipal council. It may be a setting for political decision-making in a local authority. The party could take decisions on the line to be adopted by its members on policy issues to be considered by the council or by its committee or committees.⁹⁰

A political party in Black local government remains a largely unknown phenomenon. There has been no significant development in this area probably because of the low level of advancement of Black local government. In the Natalia Development Board area no political parties have emerged. Where political parties have emerged, e.g. in Soweto where the following parties:

- (i) All Nations Party;
- (ii) Sofasonke Party;
- (iii) Soweto Makgotla;
- (iv) Masinga Party;
- (v) Federal Party; and
- (vi) Chiawelo Residents' Protection Party;

contested the municipal elections held in 1983; there has been very
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little, if any, analysis of how these bodies conduct their business.

In a public setting the party would probably develop conventions that
would normally limit intra-party debate - the party unity and party
loyalty would be promoted and maintained. In the privacy of the party
group, divergent opinions could be expressed and deliberations could
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occur without the constraints of the press and publicity.

5.5 Summary

It is important to visualize the system of local government for Blacks
in urban areas in the context of the sum total of its social
relationships. This Chapter set out to explore how the Black local
authorities fit in with the urban residents in an electoral
relationship; with interest groups and political parties. It has
indicated the flow of pressure and experience between these parts of
the local social system - the channels through which influence and
pressure are made upon a municipal council, how a council's services
may arouse public reaction and the attitudes and reactions of the
urban Black residents toward the Central Government's urban policy.

5.6 References and footnotes

1. Stewart, J.:
Local Government: The Conditions of Local Choice, George
Allen and Unwin, London, 1983, p. 120.
2. Elections, and the intervals at which they occur, are
governed by the provisions of section 7 of the
Black Local Authorities Act, 1982 (Act 102 of
1982) and section 3 of the Community Councils Act, 1977 (Act
125 of 1977).
3. This pattern is set in the provisions of the Black Local
Authorities Act, 1982 (Act 102 of 1982) and where community
councils still operate, the Community Councils Act, 1977 (Act
125 of 1977) applies.
4. Ibid.
5. Eligibility to vote or qualifications to stand as a candidate
in an election are prescribed in section 8 of the Black Local
Authorities Act, 1982 (Act 102 of 1982) and section 3 of the
Community Councils Act, 1977 (Act 125 of 1977) for areas
still operating community councils.

6. Ibid.

7. Residents may attend the open meetings convened by the Council but they have no right of participation. See also Stewart, op.cit., p.121.

8. The instrument of a referendum or recall is not provided for.

9. Some councillors e.g. Mrs Ella Nxasana of the Ningizimu Community Council, Mr Kgame of the Dobsonville Town Council and Mr Kunene of the Soweto Town Council have resisted the public pressure to resign their seats from the municipal councils. They have advanced the argument that they obtained a mandate from their electors and unless called upon by these voters to step down, they will continue in office.

10. Stewart, op.cit., p.122.

11. The constraints will depend on, inter alia, the statutory provisions, financial base and level of sophistication of the councillors and municipal officials.

12. Stewart, op.cit., p.122.
13. In Soweto, the largest Black local authority, the highest percentage poll recorded in 1983 was a mere 10.7%, see Survey of Race Relations in South Africa 1983, South African Institute of Race Relations, Johannesburg, Vol.37 p.258.
14. Voters' rolls are said to have been significantly smaller than the members actually eligible to vote. These allegations were expressed by the leaders of the Soweto Civic Association, e.g. Dr Nthato Motlana, and the Anti Community Councils Election Committee, at the time of the elections. See also Survey of Race Relations in South Africa 1983, op.cit., p.260.
15. The Daily News, Tuesday 8 November 1983, p.5. The current policy of the Central Government is that all Blacks must express their political rights beyond the local level through the political structures of the Homelands. A realization of the shortcomings of this policy has resulted in an investigation, by the Central Government, of the possibility of developing structures at national level where the Black

urban communities can "decide on their own affairs up to the highest level". See Cooperative Co-Existence: The Road to.. Peace , Safety, Development, issued by the then Ministry of Cooperation, Development and Education, January 1985. See also The New Parliament, issued by the Department of Foreign Affairs, Pretoria, Perskor , 1984, p.3.

16. The Daily News, Tuesday 8 November 1983, p.5. See also the discussion in the Joint Report of the Committee for Economic Affairs and the Constitutional Committee of the Presidents Council on Local and Regional Management Systems in the Republic of South Africa, Pretoria, Government Printer, P.C. 1/1982, pp.55-63.

Refer also to Bekker, S. and Humphries, R.: From Control to Confusion: The Changing role of Administration Boards in South Africa, 1971-1983. Shuter & Shooter, Pietermaritzburg, 1985, pp.158-161.

17. The Daily News, Tuesday 8 November, 1983, see also footnote No.18 infra.
18. The Republic of South Africa Constitution Act 1983 (Act 110 of 1983) provides for the parliamentary representation of

only three races, i.e. Whites, Coloureds and Indians. Blacks have been excluded from this constitutional framework. A Special Cabinet Committee has, however, been appointed to investigate the nature of political structures to be designed where Blacks can "decide on their own affairs up to the highest level", refer to Cooperative Coexistence: The Road to Peace, Safety and Development, op.cit., p.9.

19. See provisions of the Republic of South Africa Constitution Act, 1983 (Act 110 of 1983) i.e. sections 7, 30 and 70, and the present composition of the Cabinet indicate clearly which racial group wields effective power.
20. Ibid.
21. The exclusion of Blacks by Whites, through the South Africa Act, 1909 and later legislation, from participation in a common, non-racial national political system is a source of conflict since 1910. This conflict led to the formation of the African National Congress in 1912 which had as its objective, and still strives for, a non-racial political system. This conflict has been raging in varying degrees up to the present time. It has now reached serious dimensions as evidenced by the sophisticated level of

operation by the African National Congress, the level of determination by Blacks and other opposition groups inside South Africa to achieve their objectives and the current turbulence pervading the urban townships.

22. "Apartheid" later variously labelled "separate development", "multi-national development" or "plural democracy". These concepts are used by Schrire, R.: "The Homelands: Political Perspectives" appearing in Schrire, R. (ed): South Africa: Public Policy Perspectives, Juta and Company Limited, Cape Town, 1982, p.113. See also Cooperative Coexistence: The Road to Peace, Safety and Development, op.cit..
23. This concept is defined in Chapter I under sub-heading 1.4 supra.
24. Urban Blacks view Homelands "with their traditional tribal social systems and low socio-economic development, with disdain and (desire) political rights in a common South Africa". Refer to Schrire op.cit., p.113.
25. The incessant Black pressure, accompanied by the international outrage has yielded an acknowledgement from the members of the White government, that the "apartheid" policy is indefensible and inhuman.

26. This view has been repeatedly expressed by all urban leaders, irrespective of whether they support or reject the present structures of Black local government. See also The Daily News, Tuesday 8 November 1983, p.5.
27. See section 23.
28. Bekker, S. & Humphries, R.: From Control to Confusion: The Changing role of Administration Boards in South Africa, 1971-1983, Shuter and Shooter, Pietermaritzburg, 1985, p.158.
29. The regional services councils are structures to be created in metropolitan areas with effect from 1986 in terms of the recently enacted Regional Services Councils Act, 1985 (Act 109 of 1985).
30. Bekker & Humphries, op.cit., p.161.
31. Sunday Tribune, 15 April 1984, p.10.
32. These campaigns were organized by the Anti Community Councils Election Committee. See Survey of Race Relations in South Africa 1983, op.cit., p.257.

33. Soweto, the largest Black local authority recorded a percentage poll of only 10.7%. See Survey of Race Relations in South Africa 1983, op.cit., p.259.
34. In Alexandra, Mhluzi, KwaNobuhle and Lingelihle no elections were held and all candidates were declared elected without any contest. See Survey of Race Relations in South Africa 1983, op.cit., pp.258-9.
35. Sunday Times, 6 June 1982, p.3.
36. Mr Edward Kunene, Mayor of the Soweto Town Council, has expressed the view that councillors are operating under difficult conditions because Black local authorities or community councils are not supported, and in fact are viewed with hostility, by the urban residents. He stated that he was in perpetual fear for his life because of the threats and acts of violence directed at councillors. These views were expressed during a T.V.2 News Bulletin of the South African Broadcasting Corporation at 20h30 on 12 October 1985.

Mr Ian Mkhize, a former chairman of the Hambanati Community Council, and now executive member of the Joint Rent Action Committee, an affiliate of the United Democratic Front, has

labelled community councils and Black local authorities as illegitimate structures.

37. Ibid.

See also the Sunday Times, 4 July 1985, p.22.

38. The unrest which broke out in the urban townships in 1984-85 has resulted in the resignation of several councillors in the riot-torn areas. In the Natalia Development Board area several vacancies exist in the Ningizimu Community Council, the Hambanati Community Council and all members of the Sobantu Community Council in Pietermaritzburg resigned their seats and the vacant seats have not been filled.

39. Mr Mashau resigned his position as mayor of the Atteridgeville/Saulsville council and also left the council out of concern for the safety of his family and also out of fear for his life. Mr Mkhize resigned as chairman and councillor of the Hambanati Community Council because he claimed that he was disillusioned with the community council system. He is now an executive committee member of the Joint Rent Action Committee and also an executive committee member of the United Democratic Front for the Natal region.

40. Some councillors have been victims of violent death, viz. Mr Kinikini of the New Brighton council, Messrs James Mofokeng and Caesar Motjeane of the Lekoa Town Council: See Rantete, J.: The Third Day of September, an eye-witness account of Sebokeng Rebellion of 1984, Story Teller Series No.1, Ravan Press, Johannesburg, 1984, p.8.
41. Councillors are definite targets of these acts of violence. The following have had their homes and/or business premises gutted by fire: Mr Steven Kgame, President of the Urban Councils Association of South Africa (UCASA); Mr Edward Kunene, mayor of the Soweto Town Council; Mr Mahuhushe, Mayor of the Diepmeadow Town Council; Mr Tamsanqa Linda, mayor of Ibhayi Town Council; Mr Mahlatsi, mayor of the Lekoa Town Council; and Mrs Ella Nxasana, Chairman of the Ningizimu Community Council had her home attacked.
42. The Joint Rent Action Committee, the South African Council of Churches, the Progressive Federal Party and the United Democratic Front have strongly condemned the use of the South African Defence Force in combating township unrest. They have called upon the Government to remove the army and the police from the townships. They have submitted that the presence of the army and police exacerbates the wave of unrest.

Some councillors have, however, come out in favour of the army and police presence in the riot-torn areas. Mrs Ella Nxasana, chairman of the Ningizimu Community Council, has stated publicly that she welcomes the presence of the police in Lamontville near Durban. Mr Tom Boya, mayor of Daveyton and vice-president of UCASA; Mr Steven Kgame, president of UCASA; Mr Linda, mayor of the Ibhayi Town Council and Mr Mahlatsi, mayor of the Lekoa Town Council have all supported the presence of the army and the police in townships. Mr Edward Kunene, mayor of the Soweto Town Council, who initially supported the presence of the army and police in Soweto, now advocates their immediate withdrawal because, he claims, the army and the police have failed to achieve their objective, "the restoration of law and order", in the light of the unrest that continues.

43. The Natal Mercury, Wednesday, 8 May 1985, p.10.

44. Ibid.

45. Ibid.

46. The church delegation led by Archbishop Russell presented affidavits to the State President about alleged cases of army

and police brutality in townships. The State President stated that these statements will be referred to the Attorneys-General of the respective areas for investigation. Complaints offices, manned by the army and police have been established to receive complaints from the urban residents. See Sunday Times, 14 July 1985, p.22 and The Natal Mercury, Thursday 22 August 1985, p.2.

47. Stewart, op.cit., p.129.
48. Ibid.
49. Richards, op.cit., p.152.
50. Ibid., p.171.
51. Stewart, op.cit., p.129.
52. Ibid.
53. The Anti-Community Councils Election Committee arranged meetings and rallies to protest against the elections held in 1983. The Joint Rent Action Committee also held protest meetings directed at the proposed increase of rental in the Port Natal area. See Survey of Race Relations in 1983, op.cit., p.252.

54. Interest groups in the urban Black areas usually aim their attacks at the very foundation of the local authority structure, i.e. the Central Government's policy.
55. Ibid.
56. Section 6A of the Blacks (Urban Areas) Consolidation Act, 1945 (Act 25 of 1945). See also Welsh, D.: "The Policies of Control: Blacks in the Common Areas", appearing in Schrire, op.cit., pp.88-89. Refer also to Cooperative Coexistence, The Road to Peace, Safety, Development, op.cit., p.9 and Survey of Race Relations in South Africa in 1983, op. cit., p.252.
57. See Survey of Race Relations in South Africa in 1983, op.cit., p.252.
58. Welsh, op. cit., p.89. This view should be compared with the proposed shift in policy as reflected in the policy statements of the State President in regard to "Black Communities Outside National States" appearing in Cooperative Coexistence, The Road to Peace, Safety, Development, op.cit., p.9.

59. See section 37 in regard to the constitution of Parliament and sections 41, 42 and 43 in regard to the constitution of the Houses of Parliament. Refer, in particular, to section 52 dealing with the question of Franchise in South Africa.
60. Dr Piet Koornhof was at the time Minister of the former Department of Cooperation and Development.
61. Survey of Race Relations in South Africa in 1983, op.cit., p.252.
62. See Cooperative Coexistence, The Road to Peace, Safety, Development, op.cit., p.9.
63. See Survey of Race Relations in South Africa in 1983, op.cit., pp.252-3.
64. The Joint Rent Action Committee reacted strongly to the proposed increase of rental in townships under the Ningizimu Community Council and the Hambanati Community Council. See footnote No.53 supra.
65. Messrs Ian Mkize, secretary of JORAC, and Jabulani Sithole, executive committee member of JORAC provided information about JORAC's activities.

66. Ibid.
67. Survey of Race Relations in South Africa in 1983, op.cit.,
p.254.
68. Ibid.
69. Sithole, J. op.cit..
70. Mkize and Sithole, op.cit..
71. Ibid.
72. Ibid.
73. INKATHA: the primary objective of this body is the recognition of the instrument of culture as the factor that promotes spiritual, economic, and educational and political development, refer to the Constitution.
74. Mkize and Sithole, op.cit..
75. City Press, 23 June 1985, p.5.

76. The expression "a free, non-racial democratic" form of political system would refer to a political system which is based on a universal franchise and would inevitably and necessarily reject irrelevant considerations such as race, colour, sex, religion or creed as criteria for participation.
77. City Press, 23 June 1985, p.5.
78. The imprisoned leaders of the African National Congress are, inter alia, Mr Nelson Mandela (National President), Mr Walter Sisulu and Mr Govan Mbeki. This does not, however, exclude the full participation of the African National Congress-in-exile under the leadership of, inter alia, Mr Oliver Tambo (President), Mr Alfred Nzo (Secretary-General), Mr Chris Hani (Chief Political Commissar of Umkhonto WeSizwe), Mr Thabo Mbeki (Information Officer), Messrs Godfrey Motsere and David Ndaba of the United Nations Observer Delegation, Mr Joe Slovo, Mr Mac Maharaj, Mr Pallo Jordan, Mr James Stuart and Mr Moses Mabida.
79. The question of legitimacy of leadership is, indeed, a controversial one. Those who raise the issue aver that participants in political structures established by the

present regime, such as "Homeland Government", Black local authority structures, House of Representatives, House of Delegates and similar institutions, are not genuine leaders of the oppressed masses of South Africa. These leaders, according to this view, are mere instruments in the hands of the Government and because of their inherent impotence, are incapable of realizing a free and non-racial democratic political system. Legitimacy is accorded to political movements opposed to the policy of "apartheid" and also operating outside the Government created political structures. These bodies are, inter alia, the African National Congress, Pan-Africanist Congress, United Democratic Front and church groupings such as the South African Council of Churches.

80. City Press, op.cit..

81. The reason for the emergence of this Committee was to oppose the Central Government's urban policy as reflected in the Black Local Authorities Act, 1982 (Act 102 of 1982). This information was obtained from Dr Ntatho Motlana, Chairman of the Soweto Civic Association which is a member of the Anti-Community Councils' Election Committee.

82. Ibid.
See also Survey of Race Relations in South Africa in 1983,
op.cit., p.257.
83. The United Democratic Front was established to consolidate
opposition to the Republic of South Africa Constitution Act,
1983 (Act 110 of 1983).
84. See Survey of Race Relations in South Africa in 1983, op
.cit., p.258.
85. Ibid.
86. Stewart, op.cit., p.130.
87. Ibid.
88. See Black Local Authorities Act, 1982 (Act 102 of 1982) and
Government Notices, Nos. R2211 and R2212 dated 7 October
1983.
89. Stewart, op.cit., p.90.
90. Ibid., p.89.

91. Survey of Race Relations in South Africa in 1983, op. cit.,
p.258.
92. Stewart, op.cit.

CHAPTER 6

Conclusion and recommendations

6.1 Conclusion

The origin of local government and administration in respect of Blacks in urban areas has been traced as far back as the period prior to 1923. The form of urban administration introduced in the budding South African towns and cities was a consequence of an interaction between Blacks and Whites caused, in a large measure, by the rapid industrial and commercial development. The nature of urban administration designed for the Black residents indicated clearly the emergence of a very strong ideological belief by the White Government that the urban Black residents were temporary sojourners in these developing industrial and commercial centres.

Official justification for the presence of Blacks in towns and cities was, therefore, in terms of a need for their labour only. In time these urban residents were expected to leave the "White" towns and cities and return to what was perceived as their places of origin, i.e. the reserves or locations. The origin of Black local government and administration is to be found, therefore, in an attempt by the White Government to design a strategy to realize a policy of separate existence of the Black and White communities. Urban influx regulation

of Blacks was and still is the major instrument utilized by the Government.

The White local authorities became increasingly involved in the administration of the urban Black residents. Urban Black affairs constituted an integral part of the existing White local authorities. These established White municipal institutions shared a political commitment to the ideology of the White Government. In the various phases of the development of local government and administration for the urban Black the Government created several structures in which the urban Black was expected to participate. The nature, merits and demerits of these varied structures have been examined. The overwhelming impression gained is that these structures have not been well-received by the Black urban communities.

In the late 1970's there was a fundamental shift in the Government's urban policy in regard to Blacks. The primary feature of this shift in policy manifested itself in the recognition by the Government of the permanency of a group of urban Black residents. The introduction and later the extension of the leasehold system, and most probably, the freehold system will follow very soon, is evidence of this revision of policy. The political dilemmas inherent in this shift are most clearly visible in the field of local government and administration of the Black urban residents. Recognition of the existence of these political dilemmas has led to the appointment by the Government of a

Cabinet Committee to investigate the nature of the role that can be played by the urban Blacks in the political institutions operating at the first and second tiers of government. The absence of a constitutional provision for the effective participation by Blacks in the first and second levels of government has always been, and still is, a real burning issue.

An examination of issues covering both the political structures and administrative processes of Black local authorities has also been made. This aspect was preceded by a discussion of the structures and processes which characterized the various institutions which evolved over many decades for the administration of the Black urban communities. The focus of this study has, therefore, embraced the institutional transformations effected by the Central Government on the basis of what it perceived to be suited for the Black urban residents. Effective choice of local government institutions requires, however, that institutional variations should be within the perceived limits of all the parties affected, can be placed on the agenda for negotiation, can gain majority support within the communities or groups involved and will find sufficient support to be introduced, operated, maintained and monitored.

Institutional changes have, indeed, occurred but these have been very limited in scope and have been devised and operated with very little, if any, regard for the views of the people for whom they were

designed. The scope for local choice on many issues remains set within narrow limits. Proposals for changes that significantly challenge the Central Government's policy or are likely to alter significantly the pattern of operation of local government structures are excluded according to the Government's perceived limits of the Black urban residents' local choice. This attitude is not peculiar only to local government issues, but in fact, extends to all facets of the South African way of life. For several decades the Government has gone too far with legislative measures designed to fragment and compartmentalize the various racial and even ethnic groups in South Africa.

The Black local authorities established in 1983 indicate, however, that the limits of the Government's perceived policy choices have begun to be somewhat extended and that within the scope of these new limits new local government institutions, with relatively increased powers, can be created. These changes have been effected not without some considerable and sustained pressure and protests exerted by the Black urban communities. The role also played by some White opposition groups and the outrage and abhorrence expressed by the international community against "apartheid" cannot be underestimated.

These newly established institutions, though relatively much more improved if compared with their predecessors, still suffer from certain defects. They are viewed by the Black community as

manifestations of the "apartheid" policy. They are viewed, therefore, as illegitimate. Their financial base is very doubtful. With these defects in mind, the Black urban resident realizes that it is the national political process which determines the perceived limits of local choice. Consequently, he advocates and, indeed, agitates for effective participation in this national political process which is, virtually, still the exclusive power-base of the White race. Effective participation in this political process by Blacks will certainly have its own dynamic that can bring to political roles actors who will not be willing to accept the existing institutional constraints on local choice. It is through these political actors that the desired changes will be realized. Significant changes to be sustained will also require administrative support by a new balance of personnel interests.

6.2 Recommendations

6.2.1 Policy aspects

6.2.1.1 Political policy

6.2.1.1.1 The question of legitimacy of local government institutions for urban Blacks.

Blacks recognize the need for local government. They realize that participation in the process of government is a valuable educational exercise in public affairs and helps to produce a sense of identity and responsibility in the community and also stimulates the emergence

of local leadership. Their opposition to local government structures may not be primarily because of dissatisfaction with the quality of its administration (though the level of services provided in these areas is exceedingly low, but this is an aggravating factor) but because of their reactions to the national policies of the Central Government. The growth of local government must be linked with the dominant trends in political thought in any community. How Blacks react to social problems depends on what they perceive to be morally right.

The moral drive behind political institutions at all levels of government is one aspect that has been deliberately overlooked by the Central Government. The necessity felt for and status of local government has been eroded in this country by the racially discriminatory nature of the national policies pursued, for decades, by the Central Government.

Continual frustration by the Government of the political aspirations of the Blacks has resulted in the present level of agitation as well as the strong rejection of all political institutions which are dismissed as illegitimate. A situation has emerged whereby Blacks have become increasingly alienated from the Government of this country.

To achieve normality in South Africa's abnormal society a new political order based on non-racialism will have to be established

without any further delay. The element of race must cease to be a consideration in the pursuit of political, or for that matter any social objectives. Local government, to be legitimate, must, therefore, be visualised in the context of the sum total of these new social relationships.

6.2.1.2 Administrative policy

6.2.1.2.1 Personnel practices

According to present recruiting practices of the recently established town and village councils, the positions of town clerk or village secretary and heads of municipal departments seem to be accessible only to White officials who serve in the development boards and those who are attached to the White local authorities. The stipulation of a minimum period of ten (10) years suitable administrative experience cannot be met by Blacks. They may meet the requirements for academic qualifications, i.e. a junior degree with suitable majors such as inter alia, Public Administration, but if suitable administrative experience means experience acquired in an equivalent position in a local authority, obviously Blacks will be disqualified.

These local authorities must, if they continue to operate in the present national framework, design personnel policies aimed at developing Black officials to be placed at the top echelons. Black officials with appropriate academic qualifications can be placed in

senior administrative positions subject to proper guidance by seconded officials of the development boards.

6.2.1.2.2 Finance

One of the major defects of the Black local authorities has been identified as their doubtful financial base. These authorities cannot charge rates, a primary source of revenue for the White local authorities, because no freehold system obtains yet in urban Black areas. Municipal levies or charges are not adequate to cover the revenue needed to provide for the development of the usual municipal infra-structure if this is viewed against the background of low wages and the concomitant inability of residents to pay rentals linked to the costs of housing and levies that relate to the level of services provided.

The privatization of the liquor outlets by the Government against a background of commitment to the principles of free enterprise has come under sharp criticism by the Black local authorities. They submit that profits derived by the development boards from sorghum and liquor sales had amounted to huge surpluses and had been utilized to offset losses that continually occurred on the housing account and also to fund welfare and recreation facilities. The loss of this substantial source of revenue will have a devastating effect on the struggle toward financial viability by the Black local authorities.

The Government must establish a reliable financial base for these entities if they are to survive.

It is realized that these recommendations cannot by any measure be a basis for the resolution of all the problems facing a community council or local authority, but it is hoped that they can contribute significantly in the elimination of hurdles currently encountered by the local government institutions for Blacks.

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Synopsis

Local government institutions for Blacks in the urban areas of the Republic of South Africa merit study both because of the political significance of their capacity for local choice and because of the impact of the choices that they make upon the urban Black communities. The local choices made are deeply influenced by the external constraints imposed by the Central Government and these external factors determine the limits of the administrative operation of these local authorities.

This study sets out the phases in the development of local government and administration in the urban areas. It provides the historical background and the legal context in which the various structures were designed and operated.

Local government operates within a defined and recently re-constituted framework of areas and functions. It is influenced by relations with the Central Government as well as certain administrative structures. The position accorded urban local government for Black communities in the hierarchy of authorities is, therefore, explored. This is achieved through the examination of the historical perspective and by comparison of the position as it obtains in regard to the urban Blacks and other racial groups. The position of administrative bodies such as the Department of Constitutional Development and Planning and development boards is also explained.

The political and administrative processes involved in the operation of local government institutions are important in the understanding of these structures. The various policy settings in which councillors and municipal officials play their respective roles are identified and explained. The constraints imposed upon the organizational pattern and processes of the local authorities mark out the pattern of their operation.

A local authority cannot be analysed merely through the elements that make up its internal operation. It has boundary relations with its many publics which are conditioned by the elements in its internal operation and those that transcend the limits of its jurisdiction. Processes of socialization condition and sustain behaviour in roles, in settings and in boundary relations thus inculcating values, assumptions and beliefs. Political change and a change in the balance of organizational interests can bring about change in the activities of an authority and in the pattern of working. It is, therefore, important to examine the attitudes and reactions of the urban Black toward local government and administration. Black local authorities have experienced a massive emergence of groups that bring pressure to bear upon the present local government institutions. These groups also direct their activities at the policies of the Central Government. They voice strong objection to the present constitutional arrangements because these are based on considerations

of race. Legitimation of the political institutions can, according to this view, be realized only through the creation of a new political system based on non-racialism and democratic values.