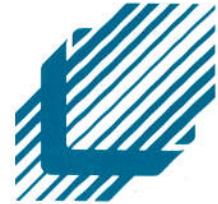


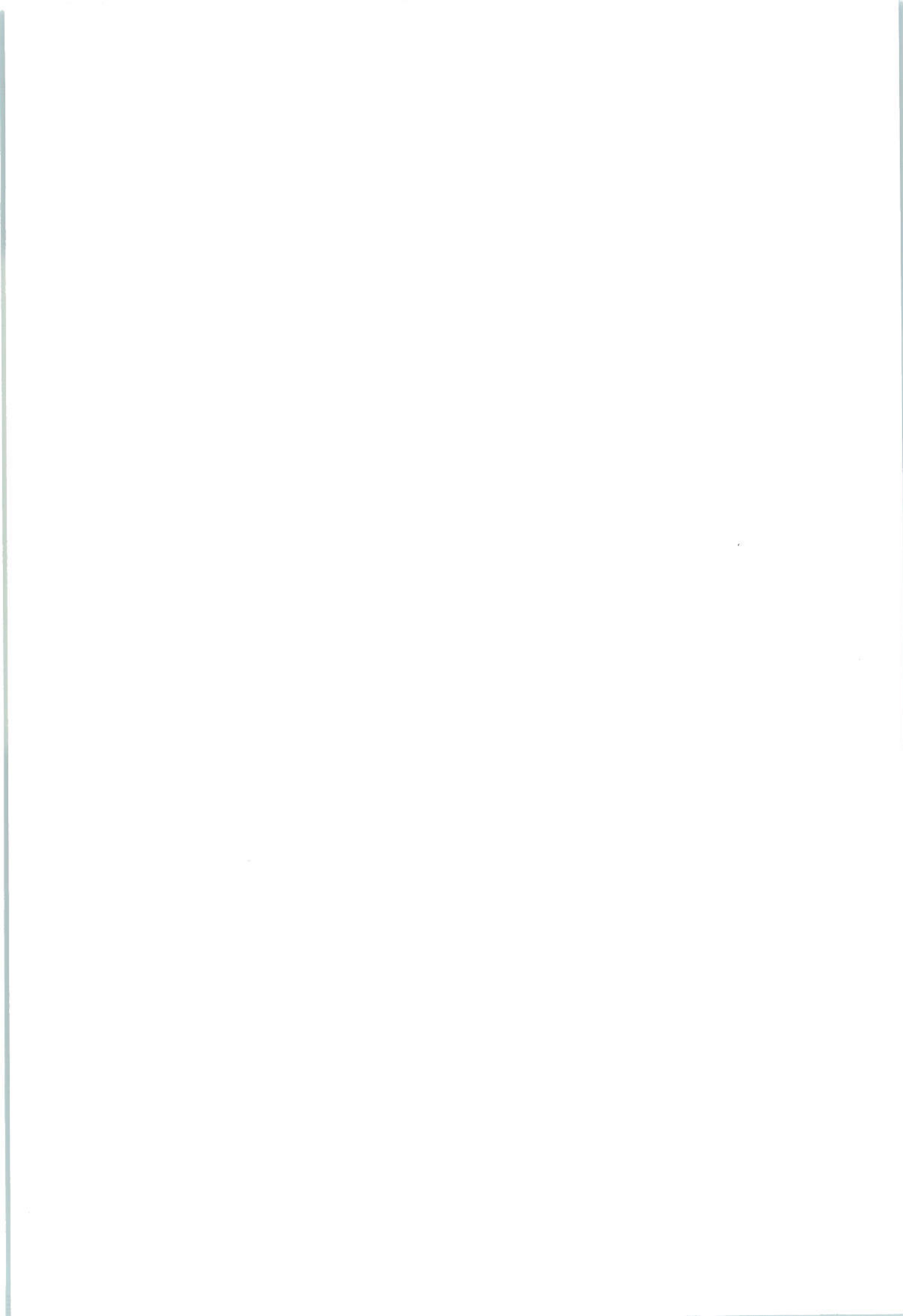
Development Bank
of Southern Africa



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Observations and suggestions

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Preface

DBSA's policy programmes follow an approach centred on human development. Many of the communities served by DBSA fell under the jurisdiction of the weakest links in the local government system, Black Local Authorities. Our Urban policy programme therefore has a direct interest in the creation of viable local structures which are able to address the dire needs of the poor and contribute to the reconstruction of South African society and the South African economy.

Local government and its concerns focus attention on the problem of institutional capacity, arguably the foremost development problem in contemporary South Africa. The need for greater institutional capacity is very evident at local government level, where many issues require immediate attention. They include policy and planning, regulatory frameworks, the utilisation of existing assets and capacities and the identification and involvement of key role players. By dealing with these issues, DBSA aims to contribute to the process of restructuring local government to form an integral part of a more effective development delivery system in society as a whole.

Furthermore, capacity building is now regarded as an essential element of DBSA's institutional function, particularly as it affects our own programmes and projects, technical assistance, policy and information services.

The present interim period offers particular opportunities for DBSA to contribute, through technical assistance and policy dialogue, to shaping a more viable system for local level management. The Local Government Transition Act refers specifically to DBSA as an example of the type of organisation which could obtain observer status on local forums. DBSA has in the past had varying degrees of relationships with many institutions across the spectrum at local level. Now, at the time of transition, there is an urgent need for contributions which will clarify immediate issues related to the transitional legislation and which will set development-focused agendas for local discussion and action.

This paper was prepared by Chris Heymans as a contribution to an informed policy dialogue and to satisfy clearly observable needs experienced by many participants in local government. The advisory panel of the Urban policy programme in DBSA regards this document as a useful contribution to both transitional and long term processes. The panel's discussions highlighted the close links between institutional issues and the broader question of urban reconstruction.

The intention is to offer neither detailed analysis nor firm policy prescription, but rather to add clarity to the debates at local level and to stimulate thinking about some of the key issues facing those involved in various capacities in restructuring local government.

GJ Richter
General Manager

Johan Kruger
Programme Manager

Local government transition and beyond: Observations and suggestions

1. Introduction

The transitional process at local government level confronts stakeholders at this level with a range of issues to address and choices to make. It would be unwise to make firm proposals about these matters from a broad national perspective. Local decisions obviously need to take cognisance of local conditions. However, a number of broad issues are at stake and a few general considerations could assist local stakeholders in their deliberations. This document suggests some such considerations.

2. The transitional process: a background

In terms of the Local Government Transition Act, the transition at local level will take place in two phases:

- the pre-interim phase commences with the promulgation of the Local Government Transition Act, and ends with the first municipal elections;
- the interim phase follows immediately after the first municipal elections and runs for three to five years.

Three documents outline the processes of transition: the Local Government Transition Act, Chapter 10 of the Interim Constitution and the Agreement on Finances, Services and Service Rendering.

2.1 Why does local government have to change?

Local government is obviously affected by the broader issues of governance, transition and development. In fact, events at local level in many ways contributed to the changes in South Africa over recent years.

For example, it was at this level that the shortcomings of the old order became

particularly evident. Many local authorities simply never had the financial basis, political legitimacy or administrative ability to govern their areas. This also meant that they were not in a position to address development challenges. Although additional structures, like Regional Services Councils (RSCs) and Joint Services Boards (JSBs), were introduced to effect transfers between more and less affluent areas and to provide channels for development support, they also operated under the cloud of apartheid. Furthermore, many protest actions took place at the local level, targeting racially-based local government structures as symbols of the greater apartheid order. These actions included rent and service charges boycotts which added to the problems experienced by an already financially vulnerable local government system.

Against this background, many local governments and other roleplayers like civic associations and business groups started talks at local level during the 1980s and early 1990s. However, the broader legislative framework limited the scale of these processes and in many areas they never even started. As the process of constitutional change unfolded at national and provincial or regional level, new opportunities for local negotiation nevertheless emerged. By 1993, the Local Government Negotiating Forum (LGNF) had been established, providing the context for negotiations between some of the major stakeholders in local government. Meanwhile, the Multiparty Negotiating Forum also addressed local government as a part of the broader institutional scheme of things. The Local Government Transition Act, Chapter 10 of the Interim Constitution and the Agreement on Finances, Services and Service Rendering evolved from these processes.

These documents set the framework for the transitional processes which now need to be examined by local stakeholders.

2.2 The Local Government Transition Act

The Act provides for:

- the pre-interim and interim phases for the restructuring of local government;
- the establishment, by the Transitional Executive Council, of provincial committees for local government;
- the establishment of local forums for negotiating the restructuring of local government in each area for the pre-interim period; and
- provincial demarcation boards to set the boundaries of local authorities and delimit the electoral wards within them.
- the powers of the Administrator to ensure and control the transitional process; and
- the repeal of certain local government laws that will become redundant when the transitional system comes into force.

It also leaves scope for some local initiative.

The local negotiating forum for each area, set up at the commencement of the pre-interim phase, can negotiate the form of local government that will apply for the pre-interim period. Several options are allowed by the Act. It is only where the local negotiating forum is unable to reach agreement after a specified period that the Administrator will be entitled and compelled to make a decision.

Once established, each local authority can determine its own priorities, set up its own policies and pass its own bylaws, within the framework set by higher authorities.

2.3 Impact on the old order

The arrangements are different from previous ones in two ways in particular. There are, firstly, distinct deadlines. Secondly, representatives from political and civic structures, which never participated in formal local government before, are now co-signatories to the agreement underpinning the transitional order.

Furthermore, the racially-based structures of the past will be phased out, either through the new amalgamated and new non-racial local authorities or more gradually through the co-ordinating committees.

RSCs and JSBs could continue to exist, but their areas may have to be amended in certain cases.

However, where a transitional metropolitan council is established for an area, that area will have to be excised from the area of any RSC or JSB, because the powers and duties of metropolitan councils and RSCs or JSBs are essentially the same. A transitional metropolitan council cannot coexist with RSCs and JSBs in the same area.

RSCs and JSBs may also be replaced by a body, to be known as a Service Council, Subregional Council or District Council, which will exercise and carry out to certain local government functions for a non-metropolitan area of local government.

The position of traditional authorities has not been finalised. The transitional Constitution (sec 18) stipulates that they will continue to exist. All such authorities may, however, be expected to fall under some or other metropolitan or district council. In this case, the traditional leader will become an ex officio member of such a council.

The Constitution also stipulates that a House of Traditional Leaders at regional level and a Council of Traditional Leaders at national level should be established to advise and comment on aspects pertaining to traditional communities.

Due to the poorly developed delivery structures of traditional authorities, expertise may have to be contracted in, eg from the district councils, to perform certain functions on behalf of traditional authorities.

2.4 Forums: the starting point

LGNFs must be established for each economically and historically bound area.

This could range from a stand-alone town with or without satellites to a complex metropolis. Such forums must be established within 30 days of the promulgation of the Act.

Criteria for the establishment of a forum include commercial and industrial linkages, daily commuting patterns, provision of services and the areas of jurisdiction of local government bodies. A forum must be recognised formally by the Administrator before it can function in terms of the Act.

Many towns and cities, of course, already have local negotiation or development forums. In such cases, these forums could apply to become recognised as negotiating forums in terms of the Local Government Transition Act. They will, however, have to ensure that they are inclusive and that they meet the criteria set out in the Act. In towns and cities where no such forums exist, roleplayers will have to be identified and forums constituted.

The Local Government Transition Act allows space for local actors to negotiate within a metropolitan or local context. Any negotiating forum established for a metropolitan area must function similarly to a local negotiating forum. The only difference is that a negotiating forum established for a metropolitan area must negotiate on the establishment of a transitional metropolitan council with transitional metropolitan substructures. The metropolitan council will have certain defined powers and duties and the substructures all other local government powers and duties.

Obviously, this choice might well relate to the eventual options local stakeholders choose with regard to metropolitan and/or local authorities. We suggest that section 3.1 below on the demarcation of boundaries be studied as a guide to decisions in this regard. As far as the current transitional local authorities – and probably also the more permanent ones to be established later – are concerned, metropolitan structures and local ‘substructures’ should not be seen as mutually exclusive. Careful consideration

ought to be given to the functional needs of local and metropolitan areas. Now is the time for local stakeholders to shape their institutions. They must therefore take a critical look at their options as determined by local realities and the broader institutional framework.

The local negotiating forums offer an important starting point in this regard. These forums are intended to negotiate which areas they believe should be included in their local authorities, and the form which they believe the local authority should take before the municipal elections.

Agreements reached by forums on the areas of jurisdiction and form of local government must be submitted to the Administrator within 90 days of the promulgation of the Act. If a forum cannot reach agreement within the set time, or if no forum can be established for a given area, the administrator will take the necessary steps to institute a local government for the specific area.

2.5 Local government options

The local negotiating forums may choose one of two options for restructuring local government within their areas during the pre-interim phase.

Option 1 entails the appointment of local councils or metropolitan councils. The councillors will be nominated by the forum on the basis that at least half of the persons nominated should be acceptable to the statutory component and at least half to the nonstatutory component. The existing number of councillors (of all races) will be used as a basis for determining the total number of seats for such a newly created local authority.

The councils established in terms of this option will become the transitional local council for a primary local authority or the transitional metropolitan council.

Option 2 makes it possible to retain the existing councils provided that an umbrella body known as a local government coordinating committee (LGCC) is established. The forum should nominate persons to serve on the LGCC on the basis that 50 per cent should be acceptable to the statutory component and 50 per cent to the non-statutory component.

The powers and functions of local government will be apportioned between the LGCC and the existing councils. A condition is that the LGCC be responsible for ensuring that all persons in the area have access to water supply, sewerage, electricity, refuse removal, roads, stormwater drainage, health and emergency services and financial administration. The budget of the LGCC should include a sum of at least 10 per cent of the individual town councils' assessment rate. The LGCC can receive grants and must distribute them in such a way as to address service and development backlogs.

If a negotiating forum is not established or a decision is not reached by a forum in respect of a local authority for its region, the Administrator will institute a local authority in terms of option 1 in cases of local governments graded higher than a grade eight. In cases of local authorities graded eight and lower, local authority structures will be established in terms of option 2.

2.6 Other structures

Forums and, later, transitional councils will operate in tandem with three other institutions in particular. The first is the office of the Administrator of each province or, after the national and regional elections in April 1994, the elected executive authority for the province.

The second is the Provincial Committee for Local Government, which will be appointed for each region as soon as the Transitional Executive Council is up and running. These committees will support the Administrator who must act in concurrence with them.

Any disputes between the Administrator and the Provincial Committee will go to a special Electoral Court, set up under the Independent Electoral Commission, for resolution.

The third structure is the Local Government Demarcation Board, set up in each province to consider, redraw and adjust the boundaries of local authorities.

3. Immediate issues

3.1 Demarcation of boundaries

The following issues could be considered in the demarcation process:

Socio-economic functionality

Economic activity (typically GGP per capita is used as an indicator), the provision of social (including education and health) and physical infrastructure, spatial considerations (such as commuting, migrancy and labour dynamics) and the flow of goods and services are typical issues here.

An adequate economic and financial base is important, but not to the extent of attempting the full equalisation of areas. Given the unevenly distributed resource base in South Africa, some regions, cities and towns will have greater potential than others. Players debating this issue have, however, realised that an attempt to equalise economic potential in these areas could lead to other distortions. It is therefore suggested that economic functionalism – and not full spatial equality – be the key consideration.

Another factor often highlighted in the South African debate is geographical coherence. Sentiments are that, given the history of racially-based local government, new structures at this level should be compact and non-fragmented. Whereas areas were separated and separately managed in terms of racial categories, spatial cohesion is the developmentally sound route to go. This demands a new approach focusing on links between places of work and residence, employment patterns, land use patterns, the utilisation of open spaces and the potential revenue bases of areas.

The debate on economic functionality has also focused on urban-rural considerations, particularly with regard to the danger of approaching metropolitan areas in isolation from their rural hinterlands. Moreover, small rural local structures suffer from severe resource constraints. Their tax bases are limited and the skills in these structures are not

as expansive as in many of their urban counterparts. It is therefore imperative to investigate ways in which these shortcomings can be countered.

Institutional criteria

The capacity should exist in a given area to manage local structures and development. Typically relevant factors include the existence and quality of policy, strategy and planning arrangements, management potential (inclusive of administrative support, leadership quality, organisational development, technical ability, training potential and others), financial management and the capacity to ensure the participation of people. The trade-off between responsiveness and functional efficiency will have to be carefully considered.

Responsiveness will probably be improved if boundaries are drawn so that each local authority contains a coherent, self-defined community. Efficiency considerations, in contrast, might require that large units be used. The local authority boundary should coincide with the zone of economic functionalism. There could be a tension between the principles of functional efficiency and communal solidarity.

The present multiplicity of administrations and the potential for new third-tier bureaucracies to proliferate, with the likelihood of increased burden on the taxpayer, should also be dealt with. It is encouraging that the rationalisation of local structures is implied in the amalgamation process. In deciding on boundaries and functional focus areas, the challenge is now to balance the number and complexity of local structures with the services required and the calls for rationalisation.

Socio-cultural criteria

Local identity and historical boundaries seem to be particularly important socio-cultural factors.

However weak or strong local identities are, it seems desirable that people in given areas should themselves express their sense of identity, belonging and place with regard to

local demarcation. This may become especially important in the case of a dispute. This would give meaning to the value of local government as the level closest to the people. The forum processes also provide a basis for this and need to consider the sense of belonging in an area. This should, naturally, be balanced with other economic and political considerations, but should not be merely discussed.

Historical boundaries can also be used as a basis for demarcation. Africa has a history of disregard, especially colonial disregard, for historical boundaries, and offers many lessons on how not to demarcate.

In the South African case, old local authority boundaries might offer some guidance, but they will probably need to be adjusted to incorporate the realities of our changed situation. Many black and small local authorities have proved to be unviable and all local authorities are politically illegitimate. Boundaries therefore need to be redefined.

The simple amalgamation of formerly racially-defined local authorities might not necessarily always be appropriate. For example, in big cities functional lines will still have to be drawn. It would seem unlikely that the seven-odd million people in Johannesburg and Soweto could have their local matters attended to within a single local structure. Hence, although racially-based boundaries will have to be redrawn, careful consideration should be given to ensuring viable structures. In many small towns even amalgamation might not solve the problems. Local authorities in many of these towns have small taxation bases because of the limited scale of industrial and residential property in their areas of jurisdiction. This has a detrimental effect on economic growth and on the prospect of many small towns overcoming their financial predicament. In most cases, rates and/or service charges will have to become excessively high if the local authority is to provide any sort of sound infrastructure and town development.

3.2 Current processes as the basis for participative local government

The active involvement of the public in decision-making and overseeing the management of local authorities can enhance the ability of the local authority to address the needs of the public sensitively and appropriately.

The present local government system is, albeit amidst the flaws of apartheid, essentially based on principles of 'representative democracy'. This means that councillors are elected for fixed periods and that they oversee the administrative aspects of municipal management from a political point of view. In designing a new system, specific issues around modes of representation will have to be investigated. It may also be useful to consider ways and means through which more sustained public participation could be encouraged or even institutionalised. The challenge is to facilitate an ongoing process of interaction between councillors, officials and the public. Of course, this cannot be forced on people. If they choose not to participate, they should be allowed to abstain. However, a genuinely democratic local government system should provide opportunities for effective and ongoing participation in order to enhance accountability.

Public opinion can be canvassed through, *inter alia*, structured committee linkages between administrative structures and citizen forums; measures enabling the public to recall councillors should it feel deeply disenchanted with the performance of the latter; and displays, exhibitions, hearings, surveys and referenda. All these methods have distinct merits, but they have shortcomings. Care should be taken to ensure that single issues do not become exaggerated in the quest for good decisions; there is also a danger that complex arrangements to structure ongoing participation could themselves become bureaucratic and cumbersome.

Moreover, specific attention is required to ensure that the voice of lower income groups becomes audible. Internationally, disadvantaged sections of society have often been marginalised and neglected by

government. There are encouraging signs that people on the ground are increasingly overcoming some of these obstacles by becoming involved in bottom-up development ventures. Non-governmental organisations (NGOs) often represent locally-based initiative and it may be useful to investigate more thoroughly how, if at all, their activities could compensate for the shortcomings of formal and governmental institutions. The emergence of voluntary associations around common interests could enhance the bargaining power of the poorer sections of society with regard to the allocation of especially local resources. A developmental local government should encourage the involvement of groups representing disadvantaged sections of society in decisions which affect their lives. Community organisation is a precondition for meaningful participation.

4. Some longer term issues

This is, arguably, an appropriate time to place a few policy issues on the table for consideration by the roleplayers involved in local government restructuring. DBSA believes that the following issues are particularly pertinent:

Local economies need to be able to generate revenues.

Creative development-minded local authorities can shape the nature and scale of economic activities in their areas. Higher tiers could support them when they lack the capacity to do so. Artificial incentives have failed rather seriously in South Africa and many other countries and each urban complex should be managed strategically in terms of its strengths and weaknesses. Based on their relative strengths, metropolises, small cities, major towns or service centres could then pursue the challenges of local management.

The local authority's ability to collect and administer revenue is vital.

Many local authorities in South Africa simply do not have significant capacity in this respect. They often do not have sound taxable industrial and commercial activities and privately owned residential property bases in their areas of jurisdiction. Many face backlogs as a result of

the boycotts of recent years. Community compliance even with negotiated user charges remains low and even the introduction of a genuinely legitimate system might not resolve the matter.

Intergovernmental transfers will therefore have to form part of the financial arrangements for local government to enable local authorities to meet the demands of a future South Africa. The nature and scope of such grants (whether general or specific, conditional or unconditional) will need careful consideration.

Furthermore, appropriate levels of services and infrastructure, and their affordability, require attention. The history of local government caused services to become politicised. It is in the interests of good local government that this be rectified and that efficiency, affordability and the proper financial and technical management of services become the order of the day.

Existing services need to be expanded or upgraded.

The necessary financial, technical and institutional steps need to be undertaken to ensure that such services are maintained.

As substantial capital investments will be required, significant fiscal challenges face new local authorities. Capital programmes devoid of proper maintenance mechanisms will result in serious wastage. Sustainability will require serious attention.

The level and standard of services need to be addressed. They clearly need to be affordable. Furthermore, the ability of local authorities to financially and administratively manage and maintain services will be crucial. It is in this context that capacity-building and training have to be considered. Aspects such as organisational development, skills transfers and broad public information campaigns all have to be improved.

One issue which will require attention here is the standards of services in different areas. Systematic policy debate is necessary on

whether standards in affluent areas have to be lowered in order to facilitate upgrading in others. Of course, users could carry the burden to secure maintenance of existing levels. Whatever option is chosen, local roleplayers need to address these matters as they reshape their local governments.

It is important to have realistic expectations about what local authorities can deliver.

Local authorities in many countries have limited capacities. As pointed out earlier, in South Africa many of them have never even had the financial bases to perform their basic administrative functions. In such a context, development activities seem rather far removed from reality and limits and possibilities in this respect need to be clarified. For local government to become more developmental would require much deliberation and considered institutional and financial arrangements. This urgently requires the joint inputs of national, regional and local government bodies, the private sector, development agencies, NGOs and other community based organisations at various levels.

The administrative culture of local government will also require attention. Historically, local government was oriented towards control and regulation. Many officials were never exposed to the challenges coming from poor areas. To address this will require the strategic refocusing and reorientation of existing local administrations. Moreover, the demographic composition of local authorities will have to resemble that of their communities more closely. This means that new officials need to be trained and recruited. Local negotiations should engage in discussions around these issues as a matter of priority.

Policy and institutional reform is necessary at all levels.

Old policies failed in many ways either to capitalise on the benefits which cities and towns could bring or to structure rural development through local leadership.

Local level authority structures in rural areas are therefore in considerable disarray and extensive institutional reform and negotiation will be required, and must be linked to the land debate, traditional rights, agricultural development and the integration of a range of development issues in rural areas.

In urban areas, the policies of the past have often caused cities and towns to grow in a sprawling manner. This had significant implications for the quality of urban life and the efficiency of urban economies and management systems. Population densities in the central (and adjacent) parts of cities are often low. Urban dwellers in the lower income groups live mostly in the outskirts of urban areas and either have to go to great expense to get to work, or need to be heavily subsidised to do so. Land use is tightly regulated and often earmarked for limited purposes. A multitude of institutional structures oversee planning and urban management. In this environment, achieving cohesion has become a daunting task.

A new understanding of what cities and towns are about is vital if new, more effective urban management is to be achieved. This should be translated into new policies and interventions at different levels. Central government should provide a framework within which itself and others can pursue new policies. Provincial governments will presumably perform a crucial intermediary role in enabling weaker local structures to achieve key objectives and to link the central and local levels. Local authorities will be important in mobilising resources and involving various roleplayers in planning and policy initiatives.

At the top of the agenda for urban reconstruction is ensuring spatially more compact and functionally more integrated, accessible and productive urban management units and systems. To counteract the segregation and neglect of the past, infill development will be of great importance. Multipurpose land use could help to bridge the spatial disparities of the past and ensure the optimal utilisation of urban space. This should

ensure well balanced public environments, with economic, residential and recreational facilities.

Security of tenure is a central aspect of a future local management system. If urban dwellers and rural people are to accept co-responsibility for the maintenance and management of their areas, they will need to become more secure and develop a sense of belonging.

Flexible standards will be a key concern as local management systems are reshaped and refocused to cope with the complexities and realities of growing urban populations and rural areas undergoing rapid social change.

Recreational facilities, technical skills and resources and infrastructure will be affected by this. The choice exercised by investors, residents and interest groups will have to become a major determinant of governing and management processes. South Africa can ill afford restrictions on land use and development which contradict market forces and the choices people make.

South African cities and towns are relatively small. This means that there is space to accommodate, rather than counter, urbanisation.

While formal policies already suggest a shift in this regard, there is still an instinctive tendency to regard cities as problems. A more positive approach to urbanisation would involve local authorities in both rural and urban areas. The restructuring process should be used to focus attention on this.

There is a need for new planning styles and a greater emphasis on local-level alliances.

Redefined planning processes could inject public participation and accountability into development. They would aim, first, at engaging all sectors of a community – public, private and grassroots – in the quest for clarity on priorities, perspectives and a common vision on development. This could facilitate the involvement of a wide spectrum of roleplayers, such as developers, development agencies, residents and all interested parties, in setting parameters for development. Second, successful development processes are likely to

lead to ongoing interactive processes within communities. Through these, perspectives can be clarified, strategies and action plans designed and negotiations around development conducted.

Local-level planning is closely related to the notion of partnerships aimed at addressing local level conflict and development problems. Partnerships signify a recognition that people who are not directly represented in traditional decision-making processes often invest considerable effort in blocking or moderating the effect of decisions they believe do not serve their interests. Local governments could take the initiative, but private interests could also initiate cooperative planning to address community issues comprehensively and with sensitivity to the interests of different parties.

Such partnerships are now being attempted. However, for them to succeed, local government needs the legal and institutional space to be innovative. The culture of decision-making and management also has to become more open and imaginative. Once again, the issue of intergovernmental fiscal relations needs to be addressed to enable local authorities to become more pro-active and innovative. The relationships between local, regional and national levels of government in a future society will therefore need to be given priority. Unless this is done, the roles and functions of local bodies may well remain rather limited.

5. Conclusion

The transitional process offers important opportunities to local level stakeholders to shape future local government structures. The recently promulgated legal framework requires that immediate issues receive urgent attention. This document has reflected on some of these matters, but it has also highlighted a number of important issues with long-term implications which ought to form part of the debates and deliberations about local government. From a developmental point of view, these issues are important to ensure that the legally prescribed transitional steps are not taken in a vacuum. New styles and approaches to local government should receive urgent attention so as to ensure that local government fulfils its proper democratic and developmental potential.

