

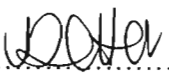
**Policy Networks in South African context: Environmental networks in
Pietermaritzburg as a case study.**

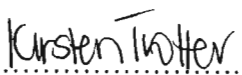
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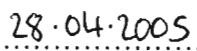
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As the candidate's supervisor I have/~~have not~~ approved this thesis/dissertation for
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Abstract

The current organisational framework of public policy management offers a powerful tool that of network management. Policy network theory revolves around the idea that no one can work in isolation, and therefore, the notion of interdependency between different organisations becomes very important in order to achieve policy goals efficiently and with efficacy. This encompasses the interactive relationship that is based on information sharing as well as resources. The assumption behind policy network is that nobody is an expert in everything, and nobody has sufficient resources to address every problem. The concept of interdependence entails the co-operation and collaboration of various autonomous actors who have different interests and yet collaborate to achieve certain policy objectives. There is then a need to build "bridges" to facilitate these interactions. The size and scope of policy networks depend on the nature of each policy and the context in which it is formulated, implemented and evaluated.

Environmental networks in South Africa, and especially in Pietermaritzburg, has been utilised in order to address the problem of environmental management. The Keep Pietermaritzburg Clean Association has been instrumental in implementing waste management programmes using a policy network strategy. This research focuses on one such programme "Adopt a Spot". Here there are 123 stakeholders all with the aim to beautifying Pietermaritzburg. This research indicates the usefulness of policy networks particularly as an instrument to facilitate policy implementation.

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I. INTRODUCTION

This research is an attempt to contribute to the body of knowledge about the usefulness of environmental network for better public policy implementation. My interest in researching this particular topic is motivated by the assumption that successful implementation depends on effective network management. The research intends to explore the environmental network in Pietermaritzburg from an organisational perspective. This will be done using Keep Pietermaritzburg Clean Association (KPCA) and their role in implementing waste management programme in Pietermaritzburg as stipulated in South Africa environmental policy.¹ In implementing waste management programmes, the organisation is engaged in partnership with many other actors in managing environmental projects such as: Adopt-A-Spot, Cleaning Up Campaign, Schools Programs, EASY Program and ECO-School, Community Program, School EDU-Plant Program, and the Recycling Program.²

This research used KPCA as a case study to analyse different interactions the organisation has with its partners in the implementation of its goals and objectives. Although active in many programmes, this study will focus on one of KPCA's programmes the "Adopt A spot" programme.

Using a qualitative approach and content analysis, the research question being explored is whether policy networks are useful for environmental policy implementation in Pietermaritzburg.

The study will use in depth interviews as well as personal observation to gather necessary information. The study will also use secondary information comprising of literature from the library and the Internet.

The data will be collected using in-dept interviews and participant observation. Allan Bryman (1988:45) argues that "the best-known of these methods is participant observation, which entails the sustained immersion of the researcher among those whom he or she seeks to study with a view to generating a rounded, in-dept account of the group, organisation, or whatever." These types of interviews will open two-way discussion between respondents and myself so that a good understanding may be gained. Monette R. Duane et al (1990:190) suggests that "interviews can help to

¹ Department of Environment Affairs: Policy on National Environmental Management System for South Africa. White Paper. 1993: 11.

² Interview with Mrs Cherie Pascoe on 14/08/2004 at Keep Pietermaritzburg Clean Association

motivate respondents to give more accurate and complete information." Insights will be gained because quality time (an estimated 30 minutes) will be spent on each interviews. Examples of discussion areas include activities carried out in conjunction with others around environmental policy network. The advantages and challenges of network relationships will be discussed and how it can be improved.

This study will be enriched by secondary data collection, which will involve library study using books and articles from journals. An Internet search for information related to environmental policy and managing networks will also be used as secondary information. The sample will be taken from a specific in the geographical area, that of Pietermaritzburg. The "Adopt A Spot" programme has 123 organisations throughout this area who have "adopted" spots. The copy of these organisations will be attached to this research as Appendix A. The population used of this research has been extracted from the KPCA database.

This research project will have four parts: Firstly, Part One present policy network theory. Part Two will discuss the specific policy issue being explored that of environmental networks. Part Three will present the findings of the research and offer a final analysis. Finally a conclusion to the research question being discussed will be presented.

The research found that policy networks between KPCA and other stakeholders help to implement waste management. This because some actors are engaged in constant interactions and they have built linkages that enhances their relationships. There is a flow of information among actors. The properties of networks that is interactions and management are used in the "Adopt A Spot" programme. Therefore, networks offer assistance in achieving environmental policy implementation in Pietermaritzburg.

III. POLICY NETWORKS

The concept of policy networks evolves around the policy processes from its design to the end and entails the interactions between interdependent actors. I maintain that policy networks have the potential to be a powerful tool for managing policies successfully throughout the course of policy cycle. Policy network occur because nobody, whether individual or organisation, can work in isolation. As Jeffrey Pfeffer (1992, 24) notes "virtually all of us work in positions in which, in order to accomplish our job and objectives, we need the cooperation of others who do not fall within our

direct chain of command. We depend, in other words, on people outside our purview of authority, whom we can not command, reward, or punish even if we wanted to." The study completed by Kickert et al (1997:1) indicates that the experiences of the 1960s and 1970s indicates that the rise of good governance imperative required government to deal with many other important actors in the policy fields in which it operates. These observations necessitated reflection upon the relationship between government and society or other actors. Social scientists labelled this new idea, which has become increasingly popular, policy networks.

- My understanding of policy networks is that when the government, civil society, people, and organisations realise that it is no longer possible to work in isolation,
- ✓ networks are adopted. This has been stimulated by the development of management principles coupled with information technology which have become indispensable dynamics of organisational management of these days. For instance the government used to run almost all parastatals which were big in size and difficult to manage. Then, new government reforms encouraged privatisation and contracting out some of the activities to outside companies or enterprises. This new management reform entails different actors who have a certain degree of autonomy. Government and organisations realised that the goals of policies cannot easily be achieved if networks are not used since each group complement the others in the process of policy implementation.

Another example is that information technology has become an indispensable tool in our daily lives. Production is done by machines. If one does not have that particular machine, then one will need to cooperate with those who have it. Research institutes are able to disseminate information from laboratories in a form useful to organisation. There, the usefulness of networks is illustrated with links being built between those who have information and those who need it.

Even before networks became a scientific tool of management, there has been collaboration among governments and civil society at international, regional, and national levels, and Klijn (1997:18-19) points out that network approach to public policy was at first strongly influenced by interorganisational theory. This theory

focused on the relations between organisations, their interdependencies and their strategies.

It is also believed that networks help to mobilise different actors around a policy. Toole et.al (1997:139) argue that networks are intended to be used as instruments for mobilising the energies and efforts of individual actors to deal with the problem at hand. Manuel Castells (2000:5) reiterates the usefulness of policy networks when he says that a network is simply a set of interconnected nodes. He maintains that "the strength of the networks is their flexibility, their decentralising capacity, their variable geometry adapting to new task and demands without destroying their basic organisational rules and goals." This means that policy networks offer a platform for actors to engage in collaborative venture without losing their independence. (<http://www.chet.org.za/castells/devinfage.html>)

- ✧ Sometimes, for policy networks to work better there should be some ways of strengthening it. Brinkerhoff (1999:128) notes that incentives are the essential lubricant that makes networks possible. Positive incentives provide the stimulus that impels partners to work together. Incentives are related to participation in the sense that opportunities for increased participation and empowerment furnish incentives to civil society to enter into networks. For example, the government may give incentives
- ✧ by creating conducive working conditions of civil society and other organisations. The same organisations might give incentives such as certificates of recognition, of participation, or awards, etc. He emphasises that these incentives are fundamental to the feasibility of using networking mechanisms for policy implementation, and to the sustainability of policy outcomes.

Policy networks might be informal or formal depending on the nature of the policy its stakeholders. Brinkerhoff (1999: 139) points out that there are two forms of networks, the formal and informal. When we talk of informal networks approach, it appears to be successful when it engages different actors for purposes of policy dialogue and advocacy. It permits a co-operation without committing either side to a formalised path until trust and agreed-upon modes of interaction can be developed. Brinkerhoff (1999 140) also presents formal networks by saying that formalised network mechanisms appear to be appropriate for networks whose objectives focus on

clear term of reference within the networks. These formal networks are characterised by contracts, agreement, and clear framework for network. In these formal networks, there might be agreed upon activities, responsibilities of different actors, and clear time and scope of interactions.

From the literature perspective, there are nine key roles that policy networks play in the implementation of policy. Firstly, is the notion of interdependence. This stems from the assumption that there is no single organisation in the world that does everything. This justifies the fact that interdependence is inevitable because it helps to interact with others who can offer what the organisation is not able to do. For policies to be successfully implemented there is a need for interaction between interdependent actors within the policy community. Kickert et al (1997:6) defines policy network by saying that it is used to indicate patterns of relations between interdependent actors, involved in processes of public policy making. He indicates that policy networks are (more or less) stable patterns of social relations between interdependent actors, which take shape around policy problems and/or policy programmes. Policy networks involve interorganisation relations. As Klijn (1997:30) has put it, this concept of networks is the clusters of organisations or sets of interorganisations relations. Klijn quotes Aldrich and Whetten (1981) where they say that a network is the totality of all the units connected by certain type of relationship, which are constructed by building ties between all organisations. Kickert et al (1997:6) believe that actors in networks are interdependent because they cannot attain their goals by themselves, and therefore, they need resources of other actors to do so.

↑ Wayne Parsons (1995:184) maintains that network analysis is based on the idea that a policy is framed within a context of relationships and dependencies. Because all stakeholders take part in policymaking and implementation, therefore, Parsons (1995:184) believes that network analysis assumes that actors are participating in a social system in which other actors impact upon one another's decisions. To build strong policy networks there is a need to fill the gaps through establishing linkages of communication, and share necessary resources with trust. This can take place in an informal or formal setting of networks and Mark Considine (1994:246) has also emphasised that there should be informal and semi-formal linkages between individuals and groups in the same policy networks.

Melody Hessing and Michael Howlett (1997:149) in *Canadian Natural resource and Environmental Policy*, argues that because the policy community is so large and fragmented, a policy network is increasingly important in the case of Canadian resource and environmental policy-making. Emphasising dependency of one another within policy community, Klijn (1997:27) identifies the policy community as a special type of policy network. He says that policy networks refer mainly to a complex of organisations connected to each other by resource dependencies and distinguished from each other by breaks in the structure of resource dependencies. The concept of policy communities thus usually refers to a tightly integrated network with dense interactions between actors.

Pressman and Wildavsky (1973:xvii) point out that the implementation of policy depends on complex chains of reciprocal interaction. This is why there should be a policy network that links those chains so that policy implementation may be smooth. In order for networks to make an impact on policy, people need to know each other very well and know what they need from their collaboration. This is what Grindle (1997:12) suggests is the first step in assessing the capacity needs in the implementation of policies, more especially looking at how actions, actors, and events interact. Wayne Parsons (1995:184) argues that network have clear attractions in that it draws attention to the way in which policy is the product of a complex interplay of people and organisations and provides a more informal picture of how 'real' politics takes place.

Secondly, networks serve as bridges or linkages, which helps the interactions of skills and experiences and the sharing resources. For example, the government funds different organisations to carry out a certain policy and universities produce skilled people to go and design, implement, and evaluate policies. Sharing experience also happens when there has been a successful story in policy implementation somewhere and other government, organisations, and people may need to learn from that experience. I can compare the state-civil society interface that Brinkerhoff (1999: 126) talks about with policy networks. Policy networks again evolve around cross-sectoral collaborations whose purpose is to achieve convergent objectives through the combined efforts of both sets of actors. In these types of relationships the respective roles and responsibilities of the actors involved remain distinct. The essential rationale

is that these interactions generate synergistic effects, so that better outcomes are attained than if the network partners acted independently.

Thirdly, there is a need within the existing networks for co-ordination of the different groups involved in policy implementation. This emerged because in each policy there are many actors who have different preferences and interests. So in order to focus on policy goals and objectives, there must be co-ordination. Co-ordination calls for common understanding of policy issues, and helps to mobilise all stakeholders around specific programme objectives. Policy networks entail building strong co-ordination and linkages between policy communities. Brinkerhoff (1999:140) put it succinctly, stating that the success of state-civil society networks depends upon co-ordination of effort and effective linkages among the actors involved. Also co-operation is another key strategy in policy networks which, I believe, can be enhanced by co-ordination.

Kickert et.al. (1997: 9) note that public policy making within networks is about co-operation or non-cooperation between interdependent parties with different and often conflicting rationalities, interests and strategies. Policy processes are not viewed as the implementation of ex ante formulated goals, but as an interaction process in which actors exchange information about problems, preferences and means, and trade off goals and resources. Marsh and Smith (2000:5) using Lauman and Knoke's theory of policy networks, suggest that formal network analysis argues that it is the position and roles which actors perform which are crucial and the relationships between these roles, not the individuals who occupy them, which defines the network. They go on to say that networks simplify the policy process by limiting actions, problems and solutions. Networks define roles and responses (2000: 6).

The fourth role of policy networks is to disseminate information among different actors. In policy networks, communication plays a major role because of many reasons. One might be the fact that the policy has some objectives that involve a number of activities. All actors within the network may need to what is happening because it may condition their work. Secondly, is the reporting system that informs the participant in the network how things are and what are successes and failures if there are. Disseminating information may in a sense bring people closer to each other

because it makes each member to feel part of the policy and increases understanding of policy issues.

Robert Agronoff et al (1999:21) notes that network are the result of the development of information and other factors of modernity that require comprehensive approach in tackling a problem. Using the work of Alter and Hage (1993), Agronoff mentions that network are more prevalent because of the general diffusion of information among several organised entities. It was also motivated by the increasing culture of trust as diverse organisational representatives learn to work together and this coupled with increasing education requirements. The networks also help to deal with expanding knowledge bases that complicate abilities to reach solutions and rapid shift and technological advances which one organisation can not claim to be independent of.

Fifthly, is the fact that policy networks helps to use efficiently human resources and others resources. I am saying this because different organisations may do similar things in the same place, which can be regarded as duplication or waste of resources. These resources are very important for any policy to achieve its objectives. These might be money, skills, infrastructures, etc. Some organisations may have money to give out, others may have skills, and other may have land, legal authority and so on. Networks help to share all these resources within and among different policy actors.

Sixth, is the issue of capacity which when referring to one proverb from my culture which says that "*abashyize hamwe nta kibananira*" which means that "*for those who are united nothing is difficult for them.*" There a sense that with policy networks, government and other organisations will have more capacity to deal with implementation and its challenges. Hessing and Howlett (1997:153) argue that when network members agree on the overall goals of policy, they tend to settle minor policy differences as a series of technical questions, successful excluding the concerns of the wider policy community as irrelevant to the smooth implementation of a settled policy. Klijn (1997:30) has vigorously argued that networks both constrain and facilitate the actions of organisations.

Policy networks are positive tools for successful good governance, Grindle (1997:11) advises that there should be first an assessment of policy community within which

policy networks will take place. She says it is imperative to assess the action environment, the institutional context of the public sector, the task network surrounding the accomplishment of particular functions, the organisations most central to achieving specific objectives, and the nature of the human resources involved in the task. These networks do not happen by themselves, rather they must be assessed, built, and strengthened.

The seventh role of policy networks, as I understand it, is the collaboration and participation that it promotes. Collaboration stresses again the idea of co-operation and interdependence because network brings a range of actors to work together around the same policy. Participation within policy networks entails the idea of vocation and ownership. Here my argument is that some organisations would like to get involved and provide their contribution in the implementation and at the same time create the sense of ownership. Nowadays deciding with whom to work, and under what condition co-operation should take place becomes more and more important. Also there should be mechanisms within policy networks be conflict resolution, bargaining, and decision making to strengthen co-operation in order to achieve positive outcomes.

Anderson (1997:152) talking about decision making where there is different interests suggests that first is to determine those interests, second look at the need for organisation and procedures to represent and balance interests in such a way that can resolve issues. Such mechanisms can enhance co-operation within policy networks. The same with bargaining activity, it can help to reach agreements among actors. Richard Ned Lebow (1991:1) arguing on the art of bargaining for decision-making notes that bargaining is communication designed to promote satisfactory exchange. The idea is that among different actors a mutual satisfactory solution must exist if there are to maintain co-operation. There must be sufficient overlap in the preferences of the parties for them to be able to find a solution they are happy with. Mutual trust must exist between or among the parties (1991: 62-63).

Agronoff et al (2001:24) argue that where networks are operational, decision-making is viewed, in some senses, as rational rather than individual decision-making. Actors complement each other and try to look for consensus on decisions that will engage

them. Multiple parties bring multiple alternatives to consider with more information available enrich decision system that is less bounded by the frailties of individual thinking. Additionally, decisions in networks may not only be the product of a more rational process, but they may occur as a result of a synergy that can develop when multiple players pursue a common solution. While policy networks happen amongst different actors and around different policy issue, implementation becomes successful when networks are strong. Klijn (1997:31) reiterates that policy networks consist of a wide variety of actors who have different interests, goals, and strategies. The glue that holds them together is motivated by interests these actors see in the networks.

The importance of policy networks cannot be overemphasised. Kickert and Koppenjan (1997:40) study indicates that policy networks help to achieve goals and this requires the actors in networks to participate in the tasks. It is important to note that where participation is effective actors are prepared to modify their perception of problems and interests and it becomes possible to find new solutions, which have a increased value compared to solutions which actors pursue independently.

The eighth reason for the value of policy networks is their ability to provide a framework for good governance. In fact, Kickert et. al (1997:2-7) locate the reasons for government failure within a lack of effective policy networks. It is also understood that the concept of policy networks provides an alternative to the traditional rule approach characterised by non democratic structures and hierarchies This network gives us a way to manage fragmented institutions resulting from privatisation, deregulation, and decentralisation.

Hessing and Howlett (1997:149) maintain that the existence and nature of a policy network within the larger policy community is significant for policy analysis, because of the potential the network has to either bring harmony or discord to a set of policy actors within the larger community. With regard stakeholders in the policy networks, Hessing and Howlett (1997:152) talk of the subset of actors who interact within more formal institutions and procedures of government are members of sectoral policy networks. These networks include representatives from the community but there are 'inner circles' of actors, those who effectively hold power and influence the policy process. These include the community leaders or political party leaders in their

constituencies. On this point Grindle (1997:15) suggests that in order to strengthen networks there is a need for building teamwork and improving information and communication.

In policy networks there is no central authority that should impose and force others because everything works through interactions. Marsh and Smith (2000:7) believe that networks are both structural and causal, structural because they run through the structure of organisations and this can be in a formal structure. They are also causal because they stimulate and motivate actions. Policy networks are bridges that facilitate actors to feel that they are not alone in the implementation process. Rather feel that they are connected to the rest of stakeholders. Robert Agronoff and Michael McGuire in Myrna P. Mandell (2001:19) advise that power in networks can be portrayed neutrally, or a dualistically, as property that either prevents or facilitates action. Collaboration can involve changes in structures of domination or asymmetries of resources employed in the sustaining of power relations. Because constant collaborative meetings, common agreements and other interactions can reduce the weight of power. Decision making in this sense is made through consensus. Marsh and Smith (2000: 5) point out that networks are structures which constrain and facilitate agents, and second, the culture of a network actors as a constraint and/or opportunity on/for its members. The policy networks are political structures that drive policy goals and objectives. They determine the political line of the policy and pattern of networks themselves. The relationships within the networks are structural because they define the roles which actors play in their interactions, prescribe the issues, which are discussed, and how they are dealt with. These structures of policy networks also have distinct sets of rules, and contain organisational imperative, so that, at least, there is a major pressure to maintain the network.

Though policy networks promote democratic values, there is a necessity of power in management. Pfeffer (1992:38) argues that the essence of organisations is their interdependence, and it is not news that all of us need to attain the assistance of others in order to accomplish our jobs. There is agreement that power is necessary to influence actors to get the job done. As Grindle (1997:158) has put it good governance happens through the network of implementers of public policy. Networks

can provide another alternative to hierarchy as they involve a set of social relations which bridges gaps and assists people to work as a team.

The Ninth important role of policy networks is that it helps to build relationships and this in turn helps to harmonise interactions and enhance partnerships. Policy networks run through policy life and one of its strength lies in relationship building among stakeholders. Keith Downing (2001: 100) suggests that the outcomes of a policy depend on network activity and this needs to evolve out of good relationships. Different actors need to build strong relationships as James E. Anderson (1997:145) suggests stating that agencies often have well-developed relationships with interest groups and strive to represent their interests in forming and administering policy. These relationships can happen in formal or informal networks. When considering Guy Peters (1996:86) idea that current organisational trend is to operate in an interorganisational network which in turn interacts to constitute a social institution, it becomes clear that without relationship building, networks will suffer. David Marsh and Martin Smith, using the idea of McPherson and Raab (2000:5), see networks as based on relationships that are built on trust among individuals or groups who share beliefs, vision, and common culture.

There is clear indication that policy networks can help to improve the management of public policies. Kickert et al (1997:8) claim that in order to improve public policy making and governance, there is need of clarifying policy goals. This can go with better information concerning clear intentions of the policy and increased monitoring and control of activities. Sometimes in situations involving a number of actors, this network model suggests strengthening co-ordination and it can become necessary to propose reorganisation in order to bring previously autonomous actors within the jurisdiction of one central co-ordinating authority.

A policy network is now believed to be an important management strategy in policy implementation. Throughout history people depend on each other in order to accomplish their goals, however, in modern times, interdependency has become an even more important reason given advances of knowledge, information technology, and the like.

I recognise that there are limitations to policy networks, which I would also like to articulate. Cultural differences in worldviews or values and the alike may be regarded as challenges to the concept of networks. Different actors engaged in networks have different values and cultural differences and worldviews. Here I think of western culture, worldview, and values in relations to African ones and these gaps sometimes challenge policy networks. For example, I have seen few Africans feeding birds or I can also say that the notion of beauty and its value becomes important according to the context one is in. Again, some people see environment as something to be exploited for their survival, while others strive for conservation. In addition, the issue of language barrier also might be a challenge because of the sheer number of languages in the world. Researches and technologies produced in Germany, English, Spanish, French, Dutch, and others take time to be translated in African and Asian languages. The issue of race and ethnicity may also challenge the policy networks in a sense that people may hesitate to co-operate with others whom they believe are different to them.

Secondly, policy networks may also be challenged by power relations within different actors, which might be exercised to dominate and control the networks. Brinkerhoff (1999:154) maintains that while the policy network reflects greater heterogeneity, the power of different actors within it remains strongly differentiated and the representation of non-productive interests remains underdeveloped. But as we have seen earlier, there is a need for a certain amount of power in policy networks to get things going, but the advice is that it should be used carefully. The problem of this is that powerful organisations may take advantage of the small ones to achieve their goals. The same might be true with small organisations, which might enter into networks only to benefit from it. The danger is that when they don't find what they want they might not continue with the networks. Thinking of power, I also see political pressure having significant influence with regards power. Many NGOs and civil society more generally are sometimes compelled to abide by the government pressure. The civil society may also be influenced by the donors' policies even if these policies are different from their plans.

Thirdly, sometimes the interests and preferences of different organisations coupled with resistance to change by some actors may hamper policy networks. This can be

visualised with the picture of two people pulling one string in two different directions. If those people are not careful, the string will break. The same in policy networks, if different in goals and preferences persist, relationships will break down. Collaboration and co-operation will be sustained and, therefore policy networks will weaken to achieve assigned objectives.

Fourthly, is the lack of capacity or skills of actors to manage the networks effectively. The majority of policy community at the grassroots level does not have skills to engage in the collective and co-operative ventures because they don't know how to go about it. Some have a problem with writing and reading capabilities and most of work is done at this level. Nonetheless, policy networks still have the potential to assist in in the South African context.

IV. ENVIRONMENTAL NETWORKS

The concept of environmental management entails the idea of caring for the environment so that the world remains habitable with the maximum guarantee of life to all species in it. The environmental network therefore, gives a framework that integrates global processes with local environmental action and ensures broad based participation of peoples and communities living within localities and regions.

Environmental networks entail also the process by which the production and access to adequate information for decision-making at all levels about environment is circulated. It is basically about appropriate relationships among governments and other key stakeholders within environment management; especially international organisations, governments, parastatals, the private sector, organised labour, public interest groups, and civil society and all must happen in a participatory democracy.

Environmental networks, involve all movements that strive to deal with environmental degradation. It encompasses everyone who is interested with the environmental care. John Friedmann and Haripriya Rangan (1993:11) present a comparative study done by Lisa Peattie where she indicates that each environmental movement has a base and a superstructure. The base, in her view, comprises of communities and groups organising around a local ecological cause or issue, and the

superstructure consist of persons or formal organisations of a more general concern about the environment. Environmental networks draw on as many people as possible because of the environmental importance of human life. Many organisations and individuals are involved in the environmental network because of the fact that other policies are interrelated with environment. Donald T. Wells (1996:1) asserts that "environment is the milieu within which we survive as biological creatures".

Environmental networks started as movements, which were created to address the issue of environmental exploitation Europe. People realised that the lives and livelihoods were in danger and they started to sensitise people. The sensitisation had an aim to form strong bodies that could change the pattern of environmental degradation. For instance in Germany, Collins in "*A Greener Vision of Home: Cultural Politics and Environmental Reform in the German Heimatschutz Movement 1904-1918*" argues that the movement Heimatschutz – encouraged contemporaries to envision an alternative to the exploitative relationship between society and nature that was common under capitalism. This movement used familiar language of nationalism that appealed to share values associated with the national community. This movement had 30.000 members in Germany and challenged economists, policymakers, and other people with influence in the field of environment. Then, the Movement encouraged the public to participate in an emergent environmental culture which was believed to improve human living conditions (1999:121). The environmental networks reached the highest level when it was on the agenda of the most powerful nations of the world. Gareth Porter and Janet Welsh Brown (1991:1) indicate that the heads of state of the group of seven (G7), which includes the United States, Canada, the United Kingdom, Japan, Germany, France, and Italy, focused at length on the global environment at their annual summit meeting in Paris in 1989.

International Environmental networks

Environmental networks are evident at the international level within the most powerful organisations. There are a large number of these organisations with a wide variety of objectives. These include the multiple-purpose international agencies such as the United Nations Environmental Programme, the World Bank, the International Monetary Fund, and the United Nations Educational Scientific, and Cultural

Organisation. These organisations play a major role in the environmental networks through research, funding, and organising conferences on environment. Other specialised agencies work directly with people and concern themselves with population, children, agriculture, food, and health, and the climatology. Porter and Welsh (1999:48) indicate that “the agenda –setting function in global environmental politics has been dominated by the United Nations Environment Programme (UNEP) because of its unique mandate, growing out of the 1972 Stockholm conference, to be a catalyst and coordinator of environmental activities and focal point for such activities within the UN system.”

Further, international non-governmental organisations (NGOs) form a part of the worldwide environmental network. The objectives of these organisations basically are to facilitate international cooperation on matters related to the environment and to promote education among nations.

Regional Environmental Networks

Donald (1996:22) argues that there is one supranational institution and several regional intergovernmental organisations that play important roles in environmental policy. He calls the supranational the European Community. There are also other regional environmental organisations which are, according to Donald (1996:23), intergovernmental organisations such as Africa Unity, Arab League and the Organisation of American States. All these organisations and others that are not mentioned are able to provide substantial technical assistance to member nations with regard to many of the complex environmental issues.

The decentralisation paradigm in environmental networks created opportunity for many organisations to have regional offices in different continents. Lafferty and Meadowcroft (1996:230) argues that these reforms provide opportunities for regional, local and environment interests to have a future say in shaping the decision-making. The figures of organisations that have joined their efforts together for environmental networks are very impressive. Porter and Welsh (1991:57) have compiled the list and say that according to the meeting organised in 1974, within the European Environmental Bureau (EEB) and Northern American NGOs, a confederation of 120

national-level environmental organisations with membership of 20 million in the twelve states of the European community. This is true of Africa too. Donald (1996:32) recognises that there are important alliances of environmental groups which form the African NGOs Environment Network, and the Alliance of Northern People for Environment and Development, the Asia-Pacific people's Environment Network. In total the African NGOs Environment Network consists of over 530 member NGOs in 45 African countries.

African continent

As mentioned above, the African continent has made considerable advances in the creation of environmental networks. These environmental networks have been extended to the grassroots levels of the rural Africa. Africa has been privileged to host the United Nations Environmental Network Office in Nairobi, and I do believe that this has made an impact on the continent.

Environmental Networks at National-Level

At the national level, environmental networks have become a key activity of many government in the world for a variety of reasons. Some of these reasons include the need to address the issue of environmental degradation, waste management, and pollution control. Because of the intensity of the problem, environmental management requires each nation to adopt a policy that allows different stakeholders to take part of environmental management. After creating a space for civil society, governmental department dealing with environment, and community organisations, then followed the concept of environmental networks. May J. Peter et al, (1996:1) indicates that the intergovernmental dimensions of environmental management for countries with multi-tiered systems of governance lead to shared governance of the environmental issues. Then, the government attempts to get buy in from other stakeholders while pressure groups ensure that environmental policy is effectively implemented.

Non-governmental organisations constitute a major new political force in world environmental management and these have emerged particularly during the 1980s. An estimation in the 1980s indicated that there were approximately 13,000 environmental

NGOs in developing countries. Today, the total membership of the national environmental organisations is now estimated at 13 million, with the Humane Society in the United States, which is active on marine mammal issues, enjoying a membership of 1.1 million on its own (Porter and Welsh 1991:36).

Environmental Networks in South Africa

The South African government has adopted a system that favours environmental networks. Before and after Apartheid regime, environmental issues have been given important attention. The country has a wide range of environmental actors and forums that enhance environmental networks. Anne V. Whyte (1995:22) indicates that the new South African government has inherited a set of administrative structures and relationships, together with laws, guidelines, and procedures, that have until now formed the basis for managing the environment.

Anne V. Whyte (1995:xxi) study recommends the need for forums on Environment and Development, which can work as an advisory bodies at national, provincial, and local levels to provide inputs from civil society to the government about the wider issues of environmental policy and sustainable development.

The government environmental policy creates a conducive environment for civil society and other organisations to get involved. This is because of the need for coherent environmental networks to allocate these environmental goods and services to each sector according to overall national economic and social goals. Currently, environmental networks within environmental management are the joint responsibility of the national and provincial governments, with certain aspects under the jurisdiction of local authorities.

Environmental policy actors range from national, provincial, and local government. Other actors, as we have seen earlier are those such as non-governmental organisations, civil society, pressure group, scientists, community associations, and other interested groups. Donald (1996:32) argues that the dynamics that fuel environmental policy are the various actors in the policy process. Scientists are also part of pressure groups and they can be located in universities, governments, or environmental interest groups.

They provide guidance and scientific judgement on environmental issues because they conduct research.

There are also many organisations which are not of an environmental nature which are involved in the environmental networks. Some examples include Pick'and Pay, car manufacturers, schools, etc, education programmes with aims to change the attitudes of companies themselves and the general public. For instance, most South African schools and universities have integrated environmental concerns into their curriculum, as it is necessary to educate the future generations about environmental concerns. In the article '*Taking Green seriously*' in the journal '*Environmental Planning and Management*', Kay Montgomery et al (1997:27) say that companies have taken initiatives to promote environmental awareness among South Africans. Though South Africa as a country has environmental networks already in place, there is still room to improve. There are organisations such as rural community associations, which still need to be integrated within the environmental networks. Whyte (1995:29) believes that South Africa needs to develop an effective system for environmental management, keeping in view the necessary components of good legislation, independent enforcement, public and stakeholder involvement, research, and political commitment.

As policy networks provide a way of information sharing, education facilities, co-ordination, and collaboration among actors, environmental networks also offer the same. Environmental policy networks help interdependent actors to interact in the process of policy implementation. Some of these organisations are involved in the research; others are primarily educational and informational. They sponsor conferences, publish materials, establish communication networks, and encourage educational activities for young people. Donald (1996:33) indicates some of the activities done by these environmental organisations that are part of environmental networks. The major grouping of NGOs is directly engaged in direct environmental activities and mobilisation of individuals to engage in such activities. For example, KPCA trains community environmental organisations, and there are many organisations, which fund the environmental programme. The interest groups play a very significant role as national-level organisations with the most significant part of their activity within the environment. Timothy O' Riordan (2000:82) indicates that

these groups' aim is to encourage governments to provide other alternatives and where possible correct ill-managed regulation. They also raise awareness and provide various channels for articulated protest.

Environmental networks at local government level

Environmental management is applied at the local government level because that is where the policy is implemented. All activities are conducted at grassroots whether it is waste management, pollution control, water management, etc. Here environmental policy is implemented by street-level bureaucrats in conjunction with the population at the grassroots level. For environmental networks to be effective they must take into consideration the participation of the community. Ghai Dharan and Jessica M. Vivian (1992:141) suggest that it is very important to involve local populations in development or conservation projects. In their everyday life they deal with the environment in order to survive. Often the environment is overexposed and overexploited, and its management is an urgent need. That is why massive action is thereby called for, and must naturally be done by environmental organisations with co-operation of the local people.

For example, the case we find in the article "*Environmental Management Study*" by Mike Luger (1994:6) where he indicates that because of the complexity of water management in Kuis River, Western Cape, one of the principles underpinning the council for the environment's Integrated Environmental Management guidelines is consultation with interested and affected parties. The environmental experts could not achieve their waste management objectives at Kuis River without involving local people. This suggests that environmental networks need to include local communities for policy to be effective.

The types of organisations in environmental networks are diverse because they emerge from different community context. Some are rich, others are not, others well organised others have a loose organisational structure, and some are achieving their objectives while others struggle to achieve theirs. Donald (1996:38) asserts that grassroots organisations are nongovernmental organisations that work at the

community level. Most of these organisations form because of collective concern about the environment.

The environmental networks offer following advantages:

- They co-operate around environmental management
- They enhance the legitimacy of the decision-making process
- They are the source of facts and perspectives that would not be available otherwise.
- They push items on the agenda
- They disseminate information
- They serve as watchdogs
- They help in accessing funds
- They build the capacity and accountability

The environmental networks help all these movements to share information among stakeholders. Lafferty and Meadowcroft (1996:75) assert that the openness of the information system is an important condition for successful environmental policy. This is why within environmental networks people support pluralistic systems because it fosters free environmental campaigns and create condition for such openness. Timothy O’Riordan (2000:82) argues that networks of specialist interest groups form around particular government departments to trade information and share the burden of decision making. One example is the 'Environmental Justice Networking Forum' (EJNF) which is an organisation in South Africa formed to foster environmental networks. is a network in the sense that it seeks to improve the strategic information and communications functions of participating organisations.³

Another example is Keep Pietermaritzburg Clean Association whose primarily purpose is to facilitate communication and co-operation between its members and partners. They also provide advice, information, and training in the areas of their primary policy interests like water management, recycling, deforestation, sustainable agriculture, and the alike. Environmental networks are mechanisms for exchanging information and exchanging resources. Environmental networks are themselves

³ <http://www.botany.uwc.ac.za/inforeep/ENJF.htm>

shaped by international organisations, governments, civil society, and pressure groups whose activities are nowadays highly influential.

The environmental networks involve participation and play a significant role in decision-making. Benjamin Seel (2000:17) suggests that the environmental organisations should be given opportunities to participate in policy making. Through participation we know that environmental groups can put their concerns on the government agenda including attracting international attention.

We have seen how environmental networks enhance co-operation, which happens at different levels from international to the continental level and national to local. Lafferty and Meadowcroft (1996:76) call this co-operation an intrapolicy co-operation on different levels of the political system and interpolicy co-operation between environmental and other policy sectors. It is important to recognise that an environmental protection agency or strong central agency for the environment cannot be effective alone. Another level of co-operation in environmental networks, according to Whyte, (1995: 29) goes beyond the environmental groups because to be effective, there is a need for good legislation, political access, public accountability, and public support, all underpinned by a strong research program. Patti, L. Petesch (1992: 96) indicates that because of the very nature of the environmental threats, developing countries must receive enhanced cooperation and resource flows so that the whole world can benefit.

Most governments and environmental organisations encourage the idea of environmental networks because of the idea of advancing a sustainable development. The world agreed that sustainable development depends on the way in which the environment is cared for. For example, the Pietermaritzburg Clean Up Campaign promotes good health, which in a sense sustains lives of people. Another example on a global scale is given by Porter (1991:148) where he points out that there is a concerted effort by industrialised and developing countries to collaborate widely on sustainable development and this facilitates environmental networks.

Another idea in the environmental networks is that there is a degree of sharing responsibility concerning environmental management. The principle behind networks

of independent actors coming together in partnership with others is very important. I can say that environmental pressure groups and other stakeholders, which are regarded as civil society, play a role of service delivery. They can use their expertise and resources to share responsibility with the government in matters of environment. Lafferty and Meadowcroft (1996:150), suggests that the sharing of power in an ecological corporatist fashion to ensure the effective involvement. This refers to realignment of policy communities, or collectivities of potentially shared interests. Such realignments would involve business, employees, customers, shareholders and environmental groups. Each one can play his or her part and in so doing, they share responsibility of caring for environment.

Another advantage of environmental networks is that there is a flow of resources among the stakeholders. Small organisations, community associations, and other small organisations may get funding through these networks. Donald (1996:18) argues that institutions function in several ways as semi-autonomous actors in the environmental policy arena. One way is in the distribution of resources. Some of these resources are tangible, such as money and human resources.

In this collaborative venture of environmental networks, institutions function as autonomous actors and yet try to work out ways in which they can modify individual preferences to suit other partners. Together within the environmental network must design the rules of the game by forming the action channels within which policy takes place. As we have seen environmental networks may operate in a large field. As Porter and Welsh (1991: 15) argue the actors may transcend a single region, and then, it becomes a global environmental issue.

Challenges

As there are always implementation problems in policy processes, I think that there also problems in the environmental networks. This mostly happens because environmental policies are not clear enough and have vague objectives. In addition to this, Peter (1996:90) says that when multiple agencies share responsibility for policy implementation, there is always conflict over jurisdiction, concern about turf, and differences in policy interpretations which can lead to variation across agencies in implementation effort and style. Environmental networks can also be hampered by

lack of capacity of stakeholders. Finally, the political dynamic in the international environmental networks as well as the regional, country and local level, may be influential.

Though there are these challenges, environmental networks still play a very significant role in making sure that environmental management takes place. I strongly believe that policy networks are very useful as a management principle and that the environmental networks have drawn success from it.

In conclusion, I would like to stress the usefulness of environmental networks because they enhance co-operative between intergovernmental departments and civil society. They give policymakers flexible interpretations of policy guidance, and emphasis on reaching policy goals. But because of the enormous environmental risks, I believe that there must be a way for constant transformation of environmental networks to stabilise and reverse those environmental risks. There is a need to strengthen these environmental networks for the entire globe, continent, country, and local level and this can be done by mobilising communities and through coordinated multilateral actions.

V. RESEARCH FINDINGS AND ANALYSIS

Introduction

The Msunduzi Municipality or local council is known as local government in terms of the new Constitution where local government is a sphere of government in its own right and no longer a function of national or provincial government. Local government has also been given a distinctive status and role in building democracy and promoting socio-economic development (White Paper, Section A. 2002:1). Local government is committed to working with citizens and groups within the community to find sustainable ways to meet their social, economic and material needs and improve the quality of their lives (White Paper, Section B. 2002:1) (See Appendix G).

The local government has a task to implement environmental care and management as the report of the Acting City Manager stipulates in Section 156(1) of the Constitution (1996) and Section 84(1) and (2) of the Municipal Structures Act (1998), that the

cleansing function is a local municipality function (Appendix F. Report by the City Manager of 8 October 2004). In the annual report of KPCA, it is stipulated that KPCA and Waste Management Division have forged a mutually beneficial relationship in 2002, which can only improve in the interests of a clean and healthy city. (KPCA, Annuals Report. July 2002- June 2003). In order to function, the council has different departments that co-ordinate activities for service delivery including environmental management.

What is KPCA?

The Keep Pietermaritzburg Clean Association was established in 1992 in response to requests from the public of Pietermaritzburg to reduce the litter in the city. Thus 12 years ago an organisation called "Keep South Africa Beautiful" encouraged Municipalities to set up keep clean organisations to combat litter. It is in this way Msunduzi municipality created KPCA and regarded it as a service provider. (Pascoe Cherie, Oral Interview, 27/10/2004). It now aims at addressing the widespread environmental degradation through holistic environmental education. (See Appendix 4: Pamphlet of KPCA, EASY Programme). Its vision is "a clean, green and healthy environment for all in Pietermaritzburg-Msunduzi", and its main program is "Waste Management Education"(Pascoe, Oral Interview, 17/8/2004).

although they have 13 specific goals, these can be captured into 2 broad, encompassing goals:

- Clean up the litter in the city
- Produce and sustain an environmental awareness campaign for Pietermaritzburg citizens.

KPCA -Msunduzi Municipality interface

The Council doesn't have an education section for waste though they are required to do so by Municipal System Act (1998) above mentioned. Pascoe indicates that municipal waste management service collect waste from source (homes, shops, or where goods are assembled) and transport it to the municipal landfill site. It is out of the need for environmental education that KPCA was born and was given autonomy (Pascoe Cherie, Oral Interview, 27/10/2004). KPCA is an independent environmental organisation, which operates under the Msunduzi Municipality. Because they deal with the activities that traditionally fall under the Municipality's mandate, the

Municipality provides funds which are around R 220 000 per year to carry out its job. Thus, KPCA is accountable (reports) to the Msunduzi Municipality.

The following organisational structure shows the relationship between KPCA and the relevant division of the Municipality. The council has different Business Unit or departments and KPCA falls under the Community Service, more precisely Social Equity Office. KPCA is among the organisations that receive grant-in aid to carry out Municipal activities but they function independently. (Pascoe Cherie, Oral Interview, 27/10/2004).

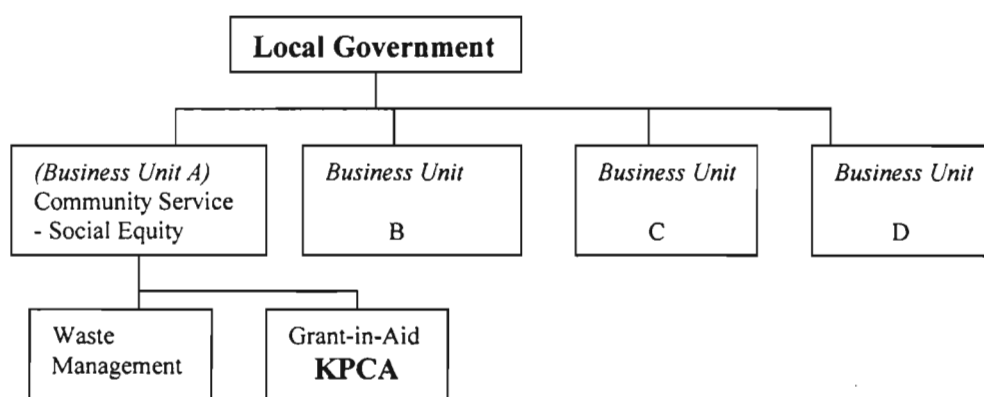


Diagram 1. Organisational Chart

Adopt A Spot

The idea of Adopt a Spot originated from the United States of America, from the organisation "Keep America Beautiful". It was introduced in South Africa and it is implemented independently of this USA organisation. (Cherie Pascoe, Oral Interview, 1/9/2004). The "Adopt A Spot" Programme entails educating the community through action, learning how to maintain the area and to report any person dumping waste on the spot. It also involves teaching the community to cut the grass, plant trees and flowers and to check if there are bins and if they are well spaced. Further, to removing alien vegetation and replanting new indigenous plants, etc. (See Appendix E. Pamphlet of Adopt-A-Spot).

Schools, businesses, individuals and various community groups have adopted over 200 spots of public land throughout Pietermaritzburg. These areas have saved the municipality on maintenance costs, are now either restored to their natural beauty and

cleanliness or are being used for community gardening projects to the benefits of the entire surrounding community, depending on the nature of the spot (KPCA Annual Report, July 2002- June 2003). So far only public land can be adopted.

The research findings

The research findings are drawn from in-depth interviews, which I held with different organisations, businesses, schools and KPCA itself. The research sample was taken from the population of 123 stakeholders within "Adopt A Spot" programme. (See Appendices A & B).

Sampling Procedure

The sampling procedure was non-probability sampling and more purposive because of the qualitative nature of the research. An emphasis was put on in-depth interviews in order to discuss, in detail, issues pertaining to network management. Again this required the targeting of strategic key informants who are directly involved in "Adopt A Spot" programme. The methodology of selecting a sample was based on choosing a degree of representation in different category of stakeholders so that generalisations can be made. One strategy was to identify different institutions according to the nature of their activities. Among the respondents were 10 businesses, 2 secondary schools, 7 primary schools, 2 pre-schools, 2 petrol stations, and 4 community organisations. The distribution of this sample took into account the nature of these organisations, their activities, and their locations. All these criteria will help to compare and determine the levels of networks according to different variables. The selection was randomly done according to accessibility and limited means at my disposal. I was also trying to form clusters in the sampling process whereby I grouped together organisations located in the same area. The covered areas comprise of the Central Town, Prestbury, Scottsville, Hayfields, Pelham, and Northdale.

The table below illustrates the institutions which participated in this study.

BUSINESS	SECONDARY SCHOOL.	PRIMARY SCHOOL	PRE-SCHOOL	PETROL STATION	ORGANISATIONS, NGOs
-Ghala D.S - Palmo Est. - Kismet H. -Africa L.Tr -Selfast F. -Ellerines F -Ballim Ph. -Exec.C.W -Fashion W. -Boutique K.	-Girl's High -Epworth H. School	-St.Nich.D -Merchiston -Scottsville -Green H P -Newholme -Forest HP. -Open Gate Sp.School	-Rangrage Pre-Prim. -Merryland P.Centre	-Autobahn -Autoworld	-Umgeni W. -Zwartkop -Fp Scout.G -PFTA
10	2	7	2	2	4

Table 1. List of participants according to their activities

Profile of different stakeholders

A) Businesses

- Ghela Dayaran and Sons is a shop that manufactures clothes of best quality and is located on the corner of Longmarket and Retief Streets.
- Palmo Estates is a business that helps people to find houses to buy/sell or to rent/let and is situated on Longmarket Street.
- Kismet Hotel is a business that provide accommodation to those who require it them and is situated opposite Ghela Dayaran and Sons, on the corner of Longmarket Street and Retief street.
- African Link Travel is a travel agent that deals with tourists and other people who need to travel. They are located on Burger Street.
- Selfast is a business that sells clothes down-town on is located in Church Street.
- Ellines Furnishers is a business that sells furniture and is located on 450 Church Street.
- Ballim Pharmacy is a business located at 450 Church Street.
- Executive Car Wash is a business, which washes cars and is located on Longmarket Street.
- Fashion World is a business that sells clothes and is situated at 458 Church Street.
- Boutique Kabaret also sells clothes and is located at 458 Church Street.

B) High Schools

- Pietermaritzburg Girl's High School is a secondary school for girls and is located on Alexandra Road.
- Epworth High School is a secondary school located on Golf Road.

C) Primary Schools

- St. Nicholas Diocesan School is a Primary school situated at 34 Loop Street.
- Merchiston Preparatory School is a Primary school situated at Boshof Street.
- Scottsville Primary School is located in Scottsville area

- Green Hill Primary School is located in Northdale
- Newholmes Primary School is located in Northdale
- Forest Hill Primary is situated in Mountrise
- Open Gate Special School is situated on 535 Boom Street

D) Pre-Schools

- Rangrage Pre-School is situated at 484 Longmarket Street
- Merryland Play Centre is a Pre-School located at Balhambra Way in Northdale

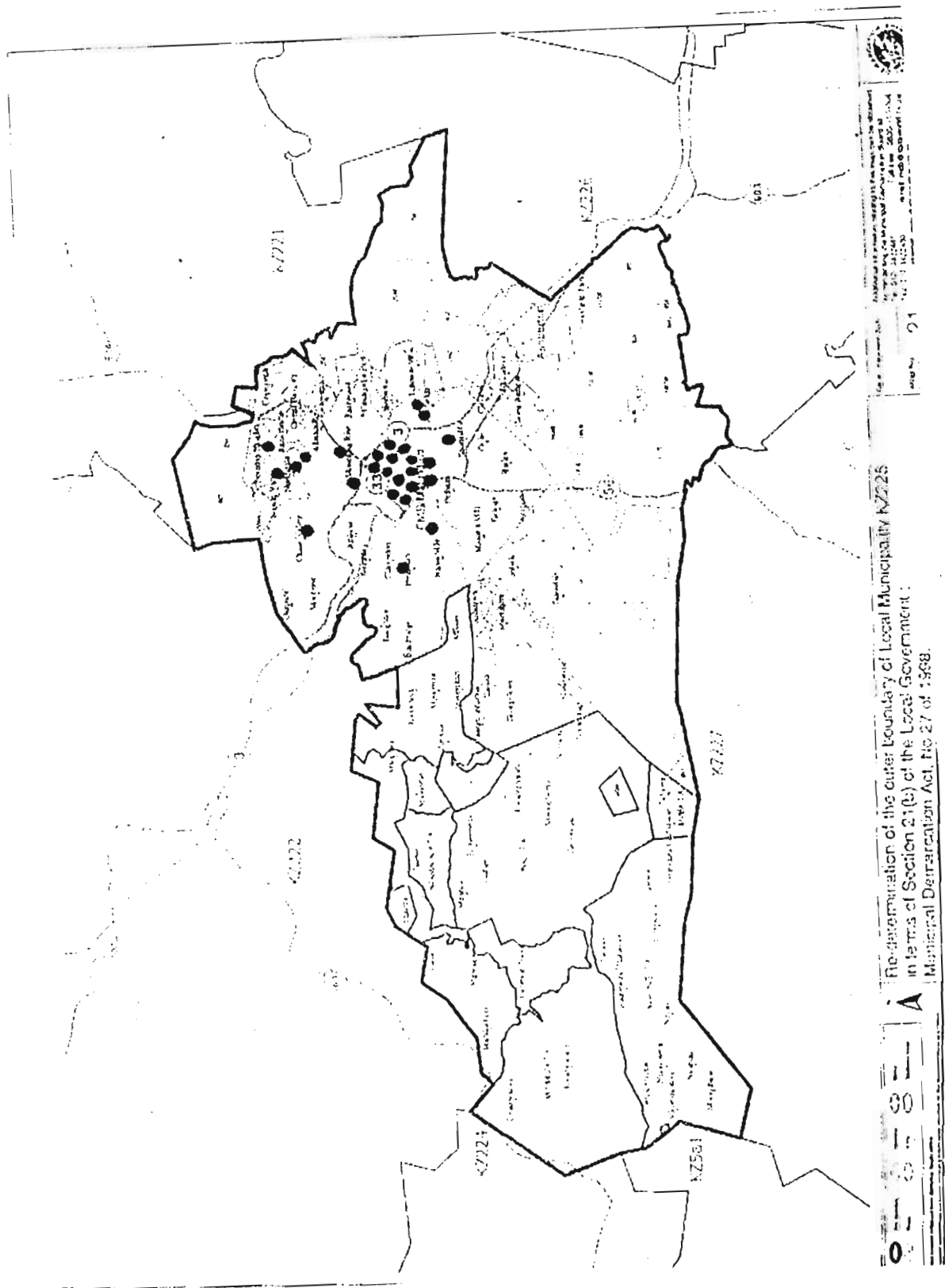
E) Petrol Stations

- Autobahn and Autoworld are two petrol stations owned by one family and located in the Hayfields area.

F) Community Organisations and NGO's

- Umgeni Water is a company that provides water to the Greater Pietermaritzburg area, and it is located 310 Burger Street.
- Zwartkop Valley and District Ratepayers Association is a community association located in Prestbury area.
- First Pietermaritzburg Scout Group is a scout group located in Prestbury. They teach young children to help others and care for the nature.
- PFTA which is Pietermaritzburg Association for the Aged and is located on Balhambra Way in Northdale. It's a centre that cares for aged people.

A Map illustrating the location of “Adopt A Spot” sites is on the following page. The black dots represent the location of the institutions I have interviewed.



Map 1. The Map showing locations of interviewed institutions in Pietermaritzburg.

Research Process

First of all I have designed a structured questionnaire with four major themes with two or three sub-questions under each main question (See Appendix 3). In order to understand different dynamics within environmental networks, questions were designed in such a way that they will identify the following dynamics that are found in policy network: the interests and preferences of different stakeholders, the relationships/collaboration between actors, the benefits actors gain from networking. Also I considered the challenges that occur around policy network, the experiences actors have that facilitate or hamper networks, and how networks can be improved.

I had in mind the policy network theory, which offers a framework of building relationships, cooperation, sharing of information and other resources and its good use, good governance, interdependence, and help enhance interaction among actors by building strong bridges and linkages. The questions were open-ended as a form of scheduled interviews with the aim of allowing more time for interview and space to as much as the respondent is willing to say so that important issues can be discussed in depth.

During the process of these interviews, most of the businesses were engaged in everyday activity and discussions were disturbed in listening and noise in tape recording of conversation. Some of the identified stakeholders neglected to keep interviews appointments. Many organisations are based far from the city centre and I thus encountered a transport problem. I am not a Zulu speaker and this language barrier prevented me from including information from rural organisations. Another research constraint was that some respondents were not the ones who started the programme and the new people could not answer fully some of the research questions.

The following are the research findings presented in four themes: the motives to join the network by adopting a spot, the benefits, the challenges, and the experiences.

1. The motives for joining the environmental network

a) Business

The motives for joining the "Adopt A Spot" programme expressed by businesses were across all respondents. Firstly, they say that in order to become a business of good

quality, they would like to have a clean environment, encouraging a positive social, atmosphere for the location of their business. The surrounding areas need to be kept clean because of the large number of birdlife found in the area and the tendency these animals have to make a mess. They believe that it makes a difference when customers walk in a clean environment. The pharmacy particularly wants a clean environment because they like to maintain good hygiene and cleanness reflects on how they run their business. Essentially, all businesses feel that when they adopt a spot they want the clean environment to reflect on their business. The other motive few business people from Muslim faith expressed is that their religion teaches cleanness and they adopted a spot because is part of their mandate..

Asked why they chose specifically to work with KPCA, they all mention that KPCA has the highest profile. They indicate that the organisation took the initiative and is doing a good job. Other businesses feel that the Municipality was not co-operating in keeping the city clean and the responsibility was left to individuals. Some expressed the view that their area is high crime area and it is a good idea to have the place cleaned.

b) Pre- School, Primary Schools, and Secondary Schools

I have chosen to combine all schools together, which is different from the way they are displayed in the previous table because I find similarities across all respondents. The motives that stimulated the schools and which were expressed by pre-schools, primary schools and high schools to Adopt a Spot can be broken down into four points: First, is to teach the children about keeping the environment clean. Second, is to promote and advertise their schools. Thirdly, a clean environment allows children with decent place to play. Lastly, is to challenge the neighbourhood to clean their places so that the city may look nice.

c) Community Organisations and NGO's

The community organisations and NGOs are combined because I have realised that they have some similarities in their motives for adopting a spot. Despite this problem, those that participated in this study indicated that the motives for adopting a spot are

first of all to promote a clean and safe environment. Secondly, those organisations would like to contribute to keeping environment clean so that they keep the vegetation alive. Like Umgeni Water, these NGOs and CBOs felt that clean water depends on clean environment.

2. The benefits of joining a network

a) Business

The businesses see the benefits in joining a network in terms of promoting their businesses. Another benefit is good health as a result of living in a clean environment. Again, they say that to keep their place clean is adding value to their property so that when they want to sell it will be easy. Lastly, they enjoy conducive environment for the business and it attracts more customers. Some suggest that the system of awards, encourages them and it is a benefit for them to collaborate with KPCA.

b) Pre-School, Primary Schools, and Secondary Schools

The schools benefit in different ways. These include getting information from KPCA to incorporate in to their school curriculum, having safe environment for children and the opportunity of teaching the community not to litter. Merchiston School achieves its mission of environmental care and "Adopt a Spot" programme by collaborating with Mondi Recycling, Comrades Association, and the community around the school. Scottsville Primary School indicates that they benefit in term of income generating from waste collected around R 10 000 per year through recycling. They do this through collaboration with Central Waste, Damol Lurie, and Reclam.

d) Community Organisations and NGO's

Community organisations and NGO's, see benefits of being part of a network in exchanging different information and ideas. Secondly, they make use of different specialities in the network, which broadens the horizons of the organisation. Another benefit is motivated by the fact that healthier environment contributes to good health of people which they can achieve in collaborative venture. They strongly consider

gratification as a benefit especially when passing cars stop where they are cleaning and thank them.

3. The challenges

a) Businesses

Many businesses expressed no significant challenges at all. Mostly the challenges were felt in adopting a spot in terms of the pressure of keeping the place clean. They also feel challenges by the fact that they are in competition, which puts them under pressure. This becomes a challenge of being a network because actors must be ready to be flexible to do extra work or less than what they thought.

Some indicate that the challenges are seasonal because during winter people living in the street make fires on the pavement which makes it hard to clean. Street children also exacerbate this problem. The challenges here of litter are weighted to benefits and actors decide to move forward within the network. To part of the networks is not to walk always on a smooth path.

b) Pre-School, Primary Schools, and Secondary Schools

The challenge some school have is communication which is not the way they should be. Many activities associated with being a part of the "Adopt A Spot" programme are dangerous. These include avoiding broken beer bottles from nearby taxi ranks and geographically dangerous area of the Duzi River.

d) Community Organisations and NGO's

The community organisations and NGO's consider being the challenges when the cleaning the spot becomes costly to the organisation. Being a part of network can be costly as some of the organisations feel that it is also difficult to maintain the spot with other activities they have to add on top of their normal responsibility. The big challenge is the confusion about the question of whose responsibility to clean the city. They also indicate the pressure of how the spot is viewed by people outside. Other organisations suggest that the challenge comes when different organisations do not have clear goals and ground rules that determine each one's responsibility.

4. The experiences

a) Businesses

Many businesses did not have experiences in environmental care while others were cleaning their environment before joining the network. A number of the businesses feel that their experience in environment is from reading newspapers, magazines and their personal concerns about nature. Asked about how their network can be improved, many businesses believe that KPCA and the Municipality should get more people involved in “Adopt a Spot” and teach people not to litter. This is a useful indication of the success of the network.

b) Pre-Schools, Primary Schools, and Secondary Schools

The schools had a variety of environmental experiences. Some included environmental care in disciplinary studies such as geographical and science, while others drew on their own environmental education experiences as students.

d) Community Organisations and NGO's

Most of the community organisations interviewed have experience in environmental management. One organisation deals with water and collaborates with various ranges of different actors within environmental networks to safeguard water and environment. The Scout movement, by nature, strives for community well being by involving themselves in community work. Among many things they do, they include keeping environment clean in their surrounding community.

Asked how this network with KPCA can be improved, the organisations and NGO's suggest that the stakeholders in “Adopt A Spot” need to increase so that they can share in cleaning the city. People should also know that they are not expert in all fields, we therefore need each other. Some stakeholders feel that the channels of disseminating information should be improved. There is a need to increase the sharing resources among stakeholders. They also raised the issue that in order to improve networks; there is a need to avoid politics. Their main focus is to clean the city and to do this regardless of their political affiliations. Another area that they feel to be

improved is research in order to assess the situation and suggest better ways of mobilising the public for the “Adopt A Spot” programme.

The following table below gives a summary of the response from key informants:

Questions	Businesses	Schools	Community Org. and NGO's
1. Motives	<ul style="list-style-type: none"> - Clean Environment - Display Business. - Good hygiene - Attract customers - Religious motives 	<ul style="list-style-type: none"> - Teach Environment. - Clean environment -Challenge neighbour 	<ul style="list-style-type: none"> - Promote environment - Keep plant alive Clean the city - Teach community
2. Benefits	<ul style="list-style-type: none"> - Boost business - Good health - Gratification - Value of property - Information - Encouragement - Reduce crime 	<ul style="list-style-type: none"> - Development. Curriculum - Information - Safe environment for Kids - Technology class - Make money - Good health - Promote schools 	<ul style="list-style-type: none"> - Information - Gratification - Share resources - Good health - Build relationships - Help their work
3. Challenges	<ul style="list-style-type: none"> - Competition - Pressure to clean -Whose responsibility 	<ul style="list-style-type: none"> - Dangerous litter - Badly littered place - Pressure 	<ul style="list-style-type: none"> - Critics - Lack clear responsibility - Expenses
4. Experiences	<ul style="list-style-type: none"> - Used to clean home - No experience - Reading about environment - Religious teachings 	<ul style="list-style-type: none"> - Geography class - Leadership at school - Family habits - Reading books 	<ul style="list-style-type: none"> - Strong experience - Family cleaning - Association Mission - Reading books
5. Improvement	<ul style="list-style-type: none"> - More org. to adopt-spots - Communication 	<ul style="list-style-type: none"> - Workshops - Communication 	<ul style="list-style-type: none"> - Clear goals - Communication

Table 2. Summary of Responses

This summary of the motives, benefits, challenges, and perceived areas for improvement explains the different dynamics of interconnectedness. It shows influences that hold different actors together while they maintain their autonomy. Individuals and organisations join networks because they identify a particular benefits which are summarised in motives and benefits in the table above. Joining a network does not mean that all problems are avoided, because even within network itself there are challenges.

Research Analysis

After getting this data, the next step is to investigate the nature of the network between the KPCA and all these other stakeholders within this particular policy area. This also will help to answer my research question of whether policy networks are useful for environmental policy implementation in Pietermaritzburg. The analysis takes into account policy networks and environmental network theories in relation to research findings. The way in which I would like to present it is to analyse what keeps KPCA and its partners in the “Adopt a Spot” programme.

We have seen from Part One that there are nine important elements to policy networks and I would like to use this as the framework for my analysis. These elements include interdependence of actors, building bridges or linkages that help interactions and co-ordination in order to have common understanding of policy issues. There also exists a certain level of information exchange or communication, the efficient use of human resources and other resources, and capacity building based on uniting efforts of different actors. In policy networks we have a degree of collaboration which promotes participation, and good governance, as well as building relationships.

The available data helps to show how the motives and benefits of different actors for adopting a spot impact on the level of interdependence and relationships. Either strengthening the network or weakening it. The other level of my analysis looks at the challenges of being part of the network and adopting a spot, which speaks to issues of collaboration, problems of governance, and problems of interaction between stakeholders.

"Without networks we are nothing". These words were spoken by Cherie Pascoe, Director of KPCA where I interviewed her about the usefulness of environmental network. (Oral Interview, 17/8/2004).

The diagram below illustrates the reciprocal interactions with this particular environmental network and where there is one way communication. The diagram illustrates individual actors with KPCA at the centre as the initiator. However, all remain autonomous actors are independent.

The diagram on the next page shows interactions between individual stakeholders

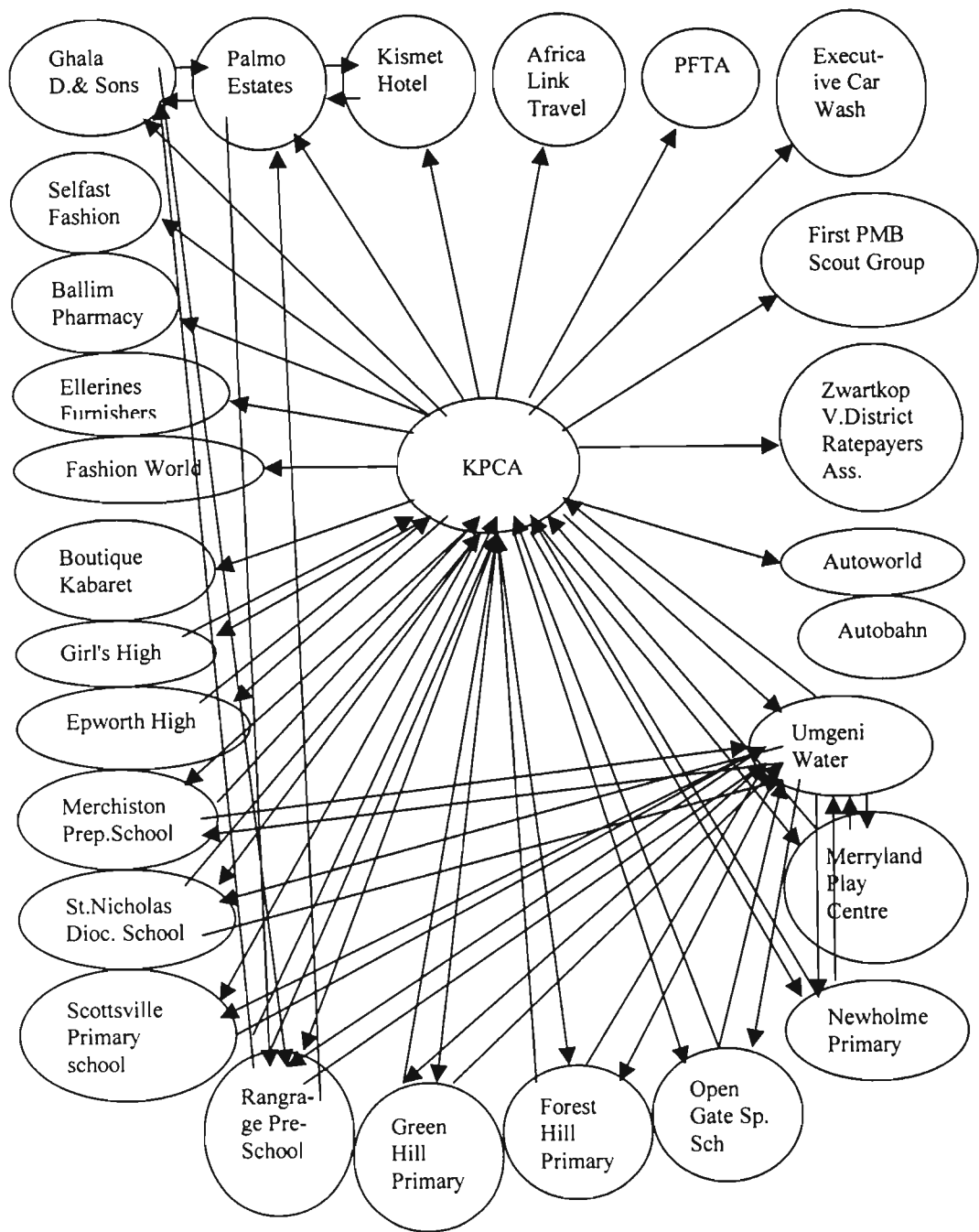


Diagram 1. Individual interactions

In this research the nodes in the network are the businesses, schools, community organisations and NGO's, while the links show relationships or flows between the nodes. The diagram tries to show the degree of connectedness between each other in the way they work in collaborative and co-operative relationships. This diagram shows the interactions between individual actors and is demonstrated in four levels:

The first level is between KPCA and schools and community organisations/NGO's where reciprocal interactions take place. Second is between community organisations/NGO's and schools. This happens mostly between Umgeni Water and schools. The third level is between few businesses where Rangrage Pre-Primary and Palmo Estates, Ghela Dayaran and Sons, Selfast Fashion, and Kismet hotel interact among themselves which can assure the sustainability of this particular networks. The fourth level is not networking as such because it is one way communication from KPCA to businesses. Two nodes are connected if they regularly talk to each other or interact in same way.

The second diagram combines stakeholders in four major groupings according to their activities, like schools, businesses, organisations and NGO's, and KPCA.

This diagram shows network of groups of stakeholders

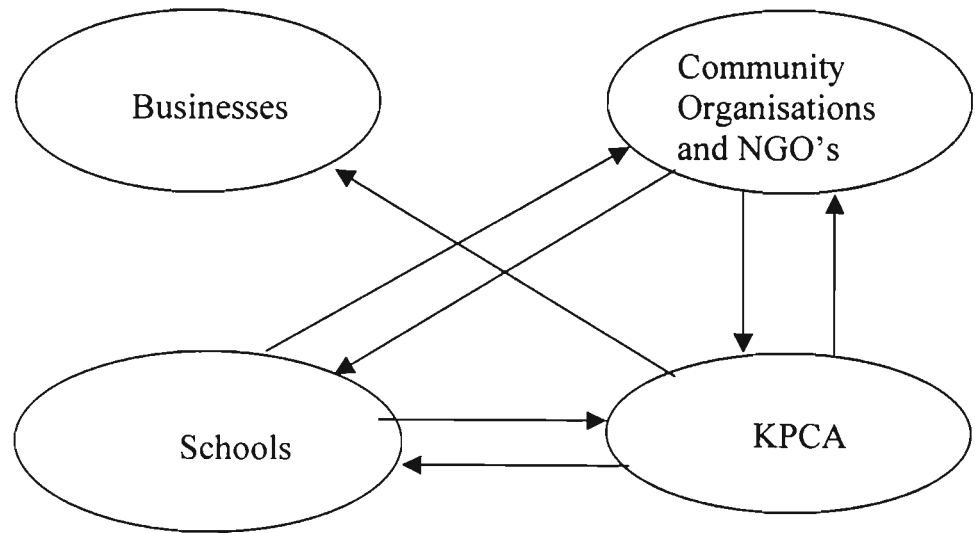


Diagram 2. Group interactions

A general observation based on the findings of the research is the usefulness of the environmental network between schools, community organisations, NGO's and KPCA. There are other environmental issues these actors do together like EASY school Programme and Community campaigns. This shows some of the spin off effects of relationships created in the environmental network

Some schools' teachers are part of KPCA committees, and Umgeni water gives water bottles to children free of charge. On the issue of sharing responsibility, there is an example when schools could not attend the World Summit on Sustainable

Development held in Gauteng, the actors held their own "Mini-WSSD" hosted by St. Nicholas Diocesan School on 4 September 2002 where they showcased products from several primary schools. (KPCA Annual Report July 2002-June 2003). This is another sign of strengthening networks towards sustainability where one school host an environmental event of this kind.

Networks are not only determined by the physical location of actors, but also their abstract location in terms of interdependency, and the intensity of interaction between actors and frequency. The local government and KPCA cannot clean the city alone or have enough resources to do that, therefore the environmental network has created room for interdependence between these actors. The beautification of the city through this particular "Adopt A Spot" is framed within a context of relationships and dependencies.

This case study has indicated that networks do transcend boundaries, identities, and interests. Networks are made of many cultures, many values, many projects, that cross through and between the stakeholders. Many respondents adopted a spot because they like to live in a clean environment, teach others not to litter and promote environmental care among citizens. It can be said that all respondents were stimulated by the fact that a clean environment is vital to life. Teaching children and other citizens is a common goal between KPCA and other actors.

The indication is that the network idea is more powerful because of what people are able to achieve in terms of implementation of a policy. The "Adopt a Spot" programme is an amazing scenario where, out of different interests, different organisations have joined the network in cleaning the city. To illustrate this argument, KPCA has only two staff and yet undertake a large number of project and programmes. Further, "Adopt A Spot" programme has 123 organisations involved and serve over five hundred thousand (500.000) people living in the city.

The management of the network is that the 'policy networks' provides an alternative to the rational central rule. What a network offers is co-ordination and collaboration of actors with common agreement of what needs to be done. KPCA co-ordinates the "Adopt A Spot" programme, and in doing so it uses incentives (certificates, and

trophies and the like). Positive incentives provide the stimulus that encourage partners to work together.

Horizontal networks may expand due to new members who adopt spots or through other activities related to the “Adopt A Spot” programme. For instance different schools have formed linkages with other organisations. Scottsville Primary School networks with Central Waste, Damol Lurie, and Reclam. Merchiston Preparatory School also is engaged in a horizontal network with Mondi recycling, and Comrades Association. Umgeni Water has strong linkages which facilitate the implement their activities. These are just few examples but in reality many of the actors within the “Adopt A Spot” programme are engaged in one way or another in a network with other member of the environmental policy community.

The study noted that a network depends on two fundamental elements, which are connectedness and consistency. Connectedness between different nodes with structural ability exists to facilitate communication among stakeholders. The essential rationale here is that the interactions generate synergistic effects, so that better outcomes are attained than if the network partners acted independently. Consistency refers to the extent to which there is sharing of interests between the network goals and the goals of participants. Diagram 1 & 2 demonstrate such connectedness between organisations. Consistency is also demonstrated in the data whereby different actors show their interests in the “Adopt a Spot” programme and in the way that some have been busy working together.

Others take networking as a strategy of building relationship to get the objectives of their organisations achieved. KPCA, Umgeni Water, various schools, and community organisations and NGO's have their goals to achieve and they use these network structures to do so. It again emphasises the degree of relations between interdependent actors. Another issue that came out strongly is the dissemination of information among actors. KPCA helps schools by providing information to incorporate to their curriculum and provides other organisations with the information as they need to take care of the environment.

KPCA gives gloves and bags which help children to collect litter. Schools are able to get R 10 000 through recycling and other organisations may get cash or in-kind gifts.

Scottsville Primary school is able to collect bottles and other reusable materials and sell them. The “gift-in kind” includes water bottles Umgeni Water gives to schools.

In terms of the challenges of the environmental network, all respondents mentioned the pressure of keeping the spot clean and competition amongst partners in order to get an award. Challenges show also the level of interaction among different actors. The most common challenge is found in communication, as two schools in the Northdale area mentioned. Newholme Primary School feels that communication need to be improved (Oral Interview, 4/10/2004) and Green Hill Primary, says that they need a workshop otherwise it will not improve looking at the busy schedule and the level of littering due to being closer to the road (Oral Interview, 4/10/2004). Another challenge are unclear goals which may have impact on the networks. For instance, Lungisile Mkhaye from Umgeni Water, asks whose responsibility it is for cleaning the city she feels that it is the job of Municipality (Oral Interview, 27/9/2004).

This fieldwork was a wonderful experience because I learnt a lot about policy networks and environmental networks more particularly in Pietermaritzburg. I understood the motives, benefits, challenges, and experiences different actors have which have impacted on the successes and failures of the environmental network. These research findings and analysis indicate an agreement with what policy network theory says about this organisational tool. Though there are challenges, environmental networks still play a very significant role in making sure that environmental management takes place effectively and efficiently. Therefore, to answer my research question, there is an indication that policy networks have potential to be very useful as a management tool in policy implementation.

VI. General Conclusion

This study explored the usefulness of policy networks in the South African context, with a particular emphasis on environmental networks in Pietermaritzburg. The study used Keep Pietermaritzburg Clean Association (KPCA) to analyse different interactions around environmental management policy. The main focus was on one specific policy issue within waste management, which is "Adopt a Spot Programme".

The motivation for this study was the desire to understand the organisational framework underpinnings of good governance in public policies. The methodology used to investigate different dynamics within policy networks was to make use of primary and secondary sources. The primary sources comprised in-depth interviews and through this process more understanding was gained. Secondary sources were basically books, journals, and the Internet.

The research's theoretical framework has been the policy network theory, which was developed in Part I and Part II. The major properties of networks are interactions and management between different actors. This encompasses the notions such as interdependence, information sharing, collaboration, relationships building, and co-operation. All these offer good governance during the course of policy implementation and in this case, environmental management.

The fieldwork was done to collect data that was designed to help illustrate the interactions and management of networks. To be able to do this, the study used 27 interviews selected randomly from the population of 123 stakeholders within the "Adopt A Spot" programme. These actors comprise businesses, schools, community organisations and NGO's.

In order to understand dynamics that join different actors together, the study investigated the motives, benefits, and challenges of joining the policy network. It was found that people join networks because of specific interests and benefits they intend to get from it. In this case study, the primary motivations and benefits were clean environment, education of the school children and the community, good health, and displaying a good business in a clean environment. Though there are benefits to policy networks, there are also challenges such as unclear goals, communication breakdown, and lack of follow up on adopted spots, etc.

Diagrams were used to visually illustrate the research findings. Some were found to be reciprocal interactions while others were not. Many actors showed to be fully involved in the real network where they share information, resources, and other activities on a regular basis.

After thorough analysis of the data in relation to the policy network theory, the study came to the conclusion that networks can be useful for policy implementation considering how different actors in independent institutions are involved in different aspects of environmental management, and yet all form part of “Adopt A Spot” programme environmental network.

Appendix A

Adopt a Spot

Adopt a Spot	Contact	Tel	Fax	Email	Cell	Address	Code	Area Adopte	Sign In
Africa Medical									
	Bongani Shelembe	3454205	033 3454205	mwaldan@m		257 Prince Al	3201	Pavement bet	
African Link Travel									
	Bunny Bhoola	3453175	3453172			241 Commer	3201	Vacant lot bet	
AH Cassimjee									
	AH Cassimjee	3421145	3948300			22 Thomas S	3235	Shop front	
Alpha Pharmacy									
	Sagren Perumal	3420074	3942981			PO Box 8593	3235	Pavement	
Asakheni Network									
	Tshepo Dlamini	033 3982972			082 363 7077	PO Box 477,	3216	Corner of Dr	
Ascot Inn and Bush Lodge									
	Vernon Niemack	3862226	033 3462649		0824144833	210 Woodho	3201	Woodhouse	
Athlone Primary School									
	Laurie Kelly	3429530; 342	345591	ath@futurene		PO Box 1378	3202	Between Tau	
Baker Road Residents									
	Fidela Fouche	033 3442094		fouché@futur		13 Baker Roa	3201	Baker Road	
Ballim's Pharmacy									
	Rashid Ballim	3453130	3942523			450 Church S	3235	Shop frontag	
Banoos Boutique									
	Rashida Malani	3427840	c/o 3423134			472 Church S	3201	Shop Front a	

Adopt a Spot	Contact	Tel	Fax	Email	Cell	Address	Code	Area Adopte	Sign In
Boutique Kabaret									
	Yusuf Manzoo	3426666	3426666		082 641 8123	458 Church S	3201	Pavement in f	
Brookby Learning Project									
	Louise Thomas	3443094	3443094			98 Morcom R	3201	Playground o	
Buhle Buyeza Garden Project									
	S'busiso Makhoba				072 4028 667	Y-32 Mazibuk	3216	Mpumusa Sh	
Caluza Public Primary School									
	ET Hyde	3994342				Private Bag X	3217	Area outside t	
Candy Lane									
	Absheer Osman				082 561 2252	2 Elfin Place,	3201	Shop Front	
Capitol Caterers									
	Vaughan Robinson	3940310	3943580	capitolcaterer		PO Box 3572	3200	Alex Park an	
Chan's Mini Market									
	Abed or Aslaam	3948384				476 Church S	3201	Shop Front	
Clarendon Primary School									
		3421734	3425901			PO Box 2216	3208	The Botanic	
Comfort Zone									
	Waq	3427840 / 07	3423134			472 Curch Str	3201	Shop front	
Community Corrections									
	Mr ZM Ngubane	3426970	3423859			Private Bag X	3200	Various areas	
Community of St Francis of Assisi									
	Theresa Terry	3903364				14 Viola Plac	3201	Honey Suckle	

Adopt a Spot	Contact	Tel	Fax	Email	Cell	Address	Code	Area Adopte	Sign In
Conservers									
	Mrs AN Twala	W 5699926	033 5699926			PO Box 1012	3209	Area surroun	
Copesville Combined School									
	Mr Ncolosi	3903452				PO Box 8848	3235	Haniville	
Delta Pharmacy									
	M Hassim	3946437	3943421			PO Box 8141	3235	Shop front pa	
DR MJ Gause									
	DR Gause	3944683	3944683			PO Box 8446	3235	Pavement in f	
Dr MS Turton									
	DR Turton	3946486	3948943			PO Box 2577	3200	Shop Front	
Ellerines Furnishers									
	Jan Botha	3453330	3453330			450 Church S	3201	Shop frontag	
Entokozweni Special School									
	Miss NS Ncobeni	3249046/50	033 3249046			PO Box 3028	3201	Front Gate in	
Epworth High School									
	Ann Finchum	3862351	3862147	marketing@e		Provate Bag	3209	Golf Road	
Esigodini Public Primary school									
	Mrs NP Ndlmande	3998570				Private Bag X	3217	Esigodini Sho	
Executive Car Wash									
	SM Mvelase				082 403 1793	Box 2126, Pi	3200	Pavement at	
Fashion World									
	Mohamed Kajee	3423988				458 Church S	3201	Pavement in f	

Adopt a Spot	Contact	Tel	Fax	Email	Cell	Address	Code	Area Adopte	Sign In
Fezokuhle Public Primary School									
	Miss Skhakhane	3211345	3211345			PO Box 4904		Area outside	
First Pietermaritzburg Scout Group									
	Mrs Sue Mornet	3441931	3441436	mornet@mail		PO Box 2178	3208	Brudge over	
Forest Hill Primary School									
	Mrs G Lawrence	3876262	3876262			PO Box 667,	3200	Greytown Rd	
Freshmeats Butchery									
	Shabeer	3457738 / 34	3945019			466 Church S	3201	Pavement ar	
Funulwazi Public Primary									
	Miss LJ Sibisi	3981471				PO Box 1742		Area ourside	
Ghela Dayaram and Sons									
	Jay Ghela	3423626	3423604			PO Box 8515	3235	Shop front pa	
Girls' High School									
	Mrs Allison	3869271	3868273			Private Bag x	3200	Verge surrou	
Green Hill Primary									
	Mrs J Naidoo	3871889	3871889			PO Box 897,	3207	Area outside	
Haniville Environmental Network									
	Lindiwe Ndlovu				072 5462 734	PO Box 2474	3204	Thokoza Rd	
Hayfields Mall									
		3867030	3867030			28 Blackburro	3201	Corner of Clel	
Hazelwood Pre Primary									
	Mrs Terry A'Bear	3862621				Box 12034, O	3205	Area surroun	

Adopt a Spot	Contact	Tel	Fax	Email	Cell	Address	Code	Area Adopte	Sign In
Henryville Primary									
	T Makhaye	3981577	3429503			PO Box 440,	3200		
Heritage Academy									
		3441862	3442852			8 Stott Road,	3201	Area surroun	
Hlelingomuso Public Primary School									
	ZC Phini	3987020				PO Box 1154	3219	The stream b	
Hoërskool Voortrekker									
	Sally Herbert / Christa	3422214	3943613			PO Box 1367	3202	Dorpspuit wit	
Ikhwezi Association Group									
	Ernest Dladla & Joyce	3980201				B7 Road, Ash	3216	Vacant land	
Kara Nichha's									
	Henry Kara	3979177				537 Old Grey	3201	Area outside	
Khwezi Public Primary									
	Mr VP Nxumalo	3902332				PO Box 2009	3210	Pavement alo	
Kismet Hotel									
	Ronnie Chetty	3451141	3948459			PO Box 8852	3235	Corner Retief	
Kwa Mpungose Primary									
	Mrs MA Mnikathi	3999001				Private Bag X		School Verge	
Lotus Café									
	Dr TG Naidoo	3947676	3948733			523 Longmar	3201	523 Longmar	
Lungisile Public Primary School									
	MF Ngcobo	3984684				PO Box 7371	3200	Pavement out	

Adopt a Spot	Contact	Tel	Fax	Email	Cell	Address	Code	Area Adopte	Sign In
Malinyane Environment Group									
	Muziwenhlanhla Ndlov				0721152712	Box 131, Ples	3216	Several areas	
Marian Home for the Aged									
	Angela Mayer	3868005	3868005			282 Alexandr	3201	From 282 Ale	
Masihlanzeke Club									
	Mr Mbongiseni Mchun	5031443				PO Box 688,	3233	Trustfeed	
Masizisebenze Project									
	Bonglwe Njiyela	3452970			083 597 8252	PO Box 1659	3200	Area behind	
Massimo Trading									
	Tahir Docrat				084 5565221	490 Church S	3201	Pavement in f	
McCarthy Primary School									
	Miss TJ Mchunu	3902370				Box 8931, Cu	3235	Area outside	
MediClinic and Payne Street Residents									
	Dr Dave Thompson		033 3426507						
Medport Pharmacy									
	Asif	3944246	3944130	medport@m		485 Longmar	3201	Area in front	
Merchiston Preparatory School									
	Mr D Beetar	3421838	3426329			PO Box 394,	3200	School sectio	
Merryland Play Centre									
	Isobel Jacob	3970773				PO Box 8079	3235	Balhambra W	
Mfundwenhle JP School									
	Mrs MN Rusere	3987665				PO Box 2925	3219	Front gate of	

Adopt a Spot	Contact	Tel	Fax	Email	Cell	Address	Code	Area Adopte	Sign In
Mhlanga Rocks Boys	Vusi Mkhize				082 6499552	PO Box 3262	3200	An area in W	
Mrs KL de la Rey	Karen				072 3380 164	19 Hodson R	3201	Shop frontag	
Muzi Thusi Environment Forum	Wiseman Mngenela								
Ndeleshane Primary School	Mrs MC Mabaso	5050011				Private Bag X	3217		
Newholme Primary School	Mr P Naicker	3872603				PO Box 640,	3207	Olympia Way	
Newton High School	Mls Dupper	3420011	3424233			PO Box 4122	3200	Newton Circl	
Nichols Junior Primary School	Mrs PF Ngcobo	3994794				P Bag X9087,	3200	Church Premi	
Nontombi Road Park	Dora E Khumalo				072 2711410	Box 31742, A	3216	Nontombi Par	
Northbury Park Secondary	Mr MS Bridglall	3914451	3913803			18 Pastoral R	3201	Bombay rd In	
Northdale Primary School	Mr PV Moodley	033 3874045	033 3874045			20 Dresda Ro	3201	The playgrou	
Nqolayabasha Project	Thulani Keneth Hlong				083 673 1040	House 1258		Open area th	

Adopt a Spot	Contact	Tel	Fax	Email	Cell	Address	Code	Area Adopte	Sign In
Open Gate Special School									
	Angelline Stephens	3425281	3425281			535 Boom Str	3201	Pavement ar	
PAFTA									
	Mr R Harkhu	3878005	3878005			PO Box 393,	3207	Corner of De	
* Palmo Estates									
	MI Rangrage	3944271				PO Box 8068	3235	Pavement in f	
Panorama Primary School									
	Miss P Pillay	3902502	3902502	jugwanthk@n		01 Navan Bo	3201	Front of scho	
Pelham School									
	Mrs Liz Crossly	033 3861211	3862420	admin@pelha		Melville Rd P	3201	Pelham Park	
Pfizer Laboratories									
	Colin Roland	3872336	3876778			PO Box 359,	3200	Both verges o	
Pietermaritzburg Region Scouts Association									
	Bheki Mbanjwa		3995241		083 3630163	5 John Walch	3201	Imbali Camp	
Primrose Neighbourhood Watch									
	Aulnash Kadoo				083 926 3813	34 Primrose r	3201	Corner o f Els	
Prince Alfred Primary									
	Mrs B James	3452664	3452664			378 Prince Al	3201	Area in front	
* Rangrage Pre Primary School									
	Kay Baker		3423134	083 786 2425	082 645 7598	PO Box 8365	3235	484 Longmar	
Ridge View Primary School									
	Mrs VF Naicker	3871810	3871810			20 Bertha Ro	3201	Bertha Rd pa	

Adopt a Spot	Contact	Tel	Fax	Email	Cell	Address	Code	Area Adopte	Sign In
Sam's Florist									
	Sam / Nalini	3945598	3426336			8 Knipe Stree	3201	Shop front	
Sanzwili Public Primary									
	Phumelela Nkosi	3995031				Private Bag X	3217	Open land ou	
Savuka Youth Development Forum									
	Maxwell Dumisani Zon	3996382	3420303			Box 2477, Pi	3201	Stream In Wa	
Scottsville Primary School									
	Les Wilkins	3425881	3423814			Private Bag 3	3209	Sign located	
Security 21 Natal									
	Mr WP Buter	3426878/9	3426879			PO Box 1140	3206	Corner of Loo	
Selfast Fashion									
	Zubair	3428318		selpmb20@pi		439 Church S	3201	Store front	
Sewduths Fresh Produce									
	Sewduth	3971641			072 6417979	507 Greytow	3201	Ramdeen Ce	
Silwanetshe Primary									
	Mrs Khanyile	3210000				PO Box 84, P	3216	S	
Sinamuva PP School									
	Edgar Khanyile				083 5474811	PO Box 3115	3200	Verge surrou	
Sinathing JP School									
	NR Hlatswayo	399902				PO Edendale	3217	In front of the	
Sinethemba Youth Development									
	Mlungisi Dlamini & Sifi	3983107 / 39			0828182157	PO Box 7369	3219	Imbali Stage	

Adopt a Spot	Contact	Tel	Fax	Email	Cell	Address	Code	Area Adopte	Sign In
Siqongweni High School									
	Lindiwe G. Mthembu	033 3221168	03 3221168			Suite 42 Post	3200	Area outside t	
Sisonke Development Agency									
	Skhumbuzo Mlambo				083 5620056	PO Box 1010	3209	Unit J Comm	
Siyakhula Project									
	Khulekani J Nyembe	3985687 / 39				PO Box 1098	3219	Imbali stage	
Siyamu JP School									
	Mrs NJ Madlala	3995304						School verge	
Siyanda Bricks and Blocks cc									
	Edwin Andile Ndlovu	3901557		dalmation@		PO Box 2059	3210	The main ent	
Siyaphambili Youth Forum									
	Mondli	3986761				PO box 3645	3219	All vacant are	
Siyathuthuka Enviro Project									
	Godfrey Bhengu				073 159 6414	PO Box 3203	3200	Westgate Im	
Siyavuka Youth group									
	Ntokozo Ntsikthi	3241940				PO Box 2932	3200	Waterfall, Za	
Siyazama Youth Club									
	Sihle Khumalo . Mthok				072 182 5846	PO Box 1445	3216	Harewood	
St Annes College									
	Mrs C Darroch	3933300	3431623	mist@stanne		Private Bag 6	3245	Verge of sch	
St Nicholas Diocesan School									
	Marilun Mills	3451566	3420077			34 Loop Stre	3201	Entire verge	

Adopt a Spot	Contact	Tel	Fax	Email	Cell	Address	Code	Area Adopte	Sign In
SWAPO Agricultural Development Project									
Ntiti Mokoena									
Sweets and Things									
	Basheer Osman				082 561 2252	2 Elfin Place,	3201	Area Immedi	
The Autobahn Service Station									
	Johan van der Merwe	3866060	3867976	autobahn@fu		Postnet Suite	3202	Blackburrow	
The Autoworld Service Station									
	Johan van der Merwe	3866060	3867976	autobahn@fu		Postnet Suite	3202	Blackburrow	
The Book Shop									
	Shamitha Gopal	3457377	3457377		082 9361172	522 Church S	3201	Corner of Ch	
Umgeni Water									
	Lungisile Makhaye	3411111	3411084			310 Burger St	3201	Burger Street	
Umthombo Junior School Club									
	Mrs LV Duma	2380809	3994387			PO Box 152,	3216	Nokulunga G	
WA Lewitt Primary School									
	DP Ellapin	3871961	3871961			PO Box 884,	3207	Pavement out	
Westgate Youth Club									
	Silindile Mbambo	3865042				23 Jordaan R	3201	Area between	
Wheatfield Mission Outreach									
	Mrs Carol Holby	3875351				29 Cedar Ro	3201	Site 11 Wood	
Willowton Meats / Bakery / Restaurant									
	Goolam	3423828	3944864			519 Longmar	3201	Thomas to Lo	

Adopt a Spot	Contact	Tel	Fax	Email	Cell	Address	Code	Area Adopte	Sign In
Zamane Day Care									
	Victoria Peters								
Zamokuhle Pre School									
	Monica Mkhize	3998441				PO Box 78, P	3217	Pavement in f	
Zwartkop Valley and District Ratepayers Ass.									
	JAT Venter	3442915				PO Box 2144	3208	Prestbury Mo	

APPENDIX B

Classification of organisations in the Adopt a Spot Programme

Schools	Businesses	Community Org. & NGO's
Athlone Primary	Autobahn Petrol Station	Baker Rd.Resid.
Caluza Publ. Prim	Autoworld Petrol St.	Comm.correct.
Clarendon Primary	Africa L.Travel	Comm. St. Fr. Assisi
Ent.Sp.School	Africa Medi.	Conservers
E.Publ.School	AH Cass	First PMB Scout Group
Forest Hill. Prim.	Alpha Pharm	Ikhwezi Ass..Group
Fun.Publ. Prim.	Ballim's Pharm	Marian Home. Aged
Green Hill Prim	Bannos Boutique	Mhlanga R.Boys
H.Pre-Primary	Boutique Kabaret	Nontombi Rd Park
Henry Primary	Candy Lane	Palmo Estates
HI.Publ.Primary	Capit. Cater	PMB Reg. Scout. Ass
Khwzi Pub.Prim	Chan's Mini Mark.	Primrose Neighb.Watch
Kwa Mp. Prim	Comfort Zone	Zw.V.D.Ratepers Ass.
Lung.Publ. Prim	Delta Pharm.	Masihl.Club.
McCathy Prim	Dr MJ Gause	Ass. Netw
Merchiston Pre-Pri	Dr MS Turton	Brook L. Proj.
Mfund.JP.Prim	Ellines Furnish.	Buhle B.Gard.Proj.
Ndelesh. Prim	Executive car Wash	H.Enviro. Network
Newholmes Prim.	Fashion World	Mal.Enviro.Group
St.Nicholas Prim	Fresh Butchery	Masiz. Proj.
Northdale Prim	Ghela Dayaran.Son	Muzi T.Enviro.
Open Gate sp. Sch.	Hayfields Mall	Nqol. Proj.
Panorama Prim	Hoerskool vool	PFTA
Pelham School	Kara Nichha's	Savuka Yth Dev.F.
Prince Alfr. Prim	Kismet Hotel	Sinth.Yth.Dev
Rangrage Pre-Pri	LotusCafé	Sisonke dev. Ag.
Ridge View Prim.	Mass Trading	Siyakhula Project
Sanzwili Publ. Prim.	Medi linic	Siy. Youth forum
Scottsville Prim.	Medport Pharm	Siyath. Enviro. Proj.
Silwan.Prim.	Mrs KL de la Rey	Siyaz. Youth Club
Sinamuva PP.Sch.	Pfizer Labo.	Swapo.Agri.Dev.P
Siyamu JP Prim.	Sam's florist	Umgeni Water
Nichols Pre-School	Security 21 Natal	Westgate Yth Club
Umth.J.School	Selfast fashion	Wh.Mission Outrea.
Wa Lewitt Prim.	Sewduths Fresh Pro.	
Zamane Day Care	S.Brick. Blocks	
Zamokuhle Pre Sch.	Sweets and things	
Sinath. JP Sch.	Book hop	
Cop.Comb. Schol	Willowt. Meats/B/R	
Epworth High		
Heritage Academy		
Newton High		
Northbury Park Sec.		
Siq.High Sch.		
St. Anne College		
Marryland Pl.Centre		
48	40	35

Appendix C

SCHOOL OF HUMAN AND SOCIAL STUDIES
UNIVERSITY OF KWAZULU-NATAL/POLICY & DEVELOPMENT STUDIES
PIETERMARITZBURG

In-depth Interviews

1. Identification

- Name:.....
- Address:.....
- Tel:
- Nature of organisation:

2. The motives for joining the environmental network

- Why have you decided to join the Adopt a Spot Programme?
- Why did you choose to work specifically with KPCA?
- Are there other reasons which encouraged you to join?

3. The Benefits of joining a network?

- What do you consider are the benefits to your organisations?
- What do you think you gain out of this collaboration with KPCA?

4. The Challenges

- Are there any challenges in participating in the Adopt a Spot Programme?
- Any challenges to being a part of the broader environmental network in PMB?
- What are the reasons of these challenges?
- Can these challenges be solved?

5. The Experiences

- Tell me about your experiences of being part of environmental network?
- Are there any aspects of this programme/the broader network you would change?

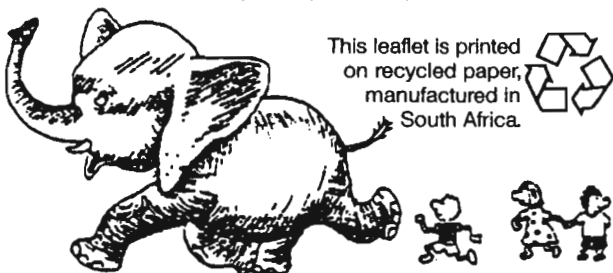
Appendix D

How can you become involved?

- Contact the Keep Pietermaritzburg Clean Association on 395 1201 to attend a Teacher's Workshop.
- Register your School on the EASY programme, you will then receive your 200 page fun filled EASY Teacher Manual
- Arrange for a Keep Pietermaritzburg Clean Association member to address your school.
- CONGRATULATIONS - your school is now an active participant and is in line to win the year end Floating Trophy.

There ... wasn't that
EASY!!

Keep Pietermaritzburg Clean Association
Private Bag 321, Pietermaritzburg 3200
email: kpca@pmbcc.gov.za



70 Pietermaritzburg Schools participating in the EASY Programme

Helped us to educate our Teachers
to get our youth involved
Boomers - Pre-Primary School

The EASY Scheme is an excellent
programme to get an entire school working on
an environmental theme across the curriculum
using outcomes based education
Scottsville Senior Primary School

Our Environment - it's EASY!
We're all in it together!
Merchiston Preparatory School

The EASY Programme
has helped the juniors
a lot through easy
communication in
classes as well as their
awareness of litter.
Heritage Academy

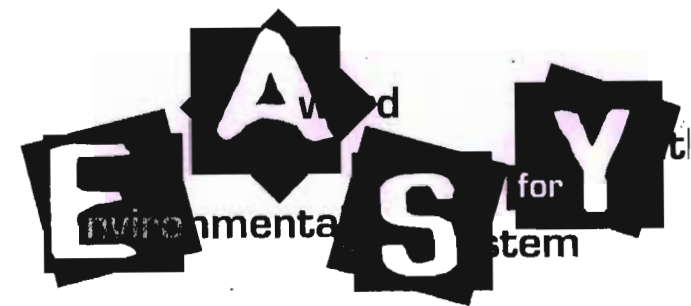
Thanks for
such easy to
use material
*Newton High
School*

WHAT FUN
WE HAD!
St Nicholas

This book is very popular among the teachers
because it helps them with their assignments
and increases their knowledge
Fezokule Primary School

The Department of Education is aware of,
and supports, the work of the Education
sub committee of KPCA and its package
for schools called the EASY Programme.
Dept of Education & Culture

LIGHTHOUSE DESIGNS 033 3421474



PROGRAMME

What is the Keep Pietermaritzburg Clean Association?

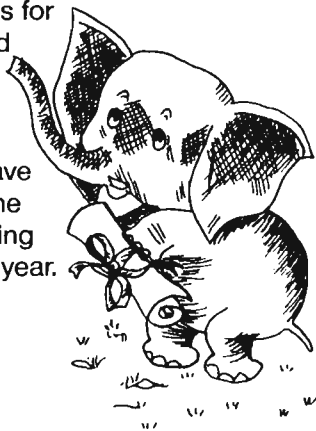
The Keep Pietermaritzburg Clean Association was established in 1992 in response to requests from the public of Pietermaritzburg to reduce the litter in the city. **It now aims at addressing the widespread environmental degradation through holistic environmental education.**

The Association is a non-profit organisation which relies solely on an annual grant from the municipality, which covers basic administrative costs, and on sponsorship from commerce and industry which enables the association to undertake various community based projects.

What is the EASY Programme?

The EASY Programme is an exciting approach to outcomes based education that has been linked to the national curriculum. In association with other Pietermaritzburg organisations involved in environmental education, the Environmental Award System for Youth provides schools with an environmental programme that has been designed with easy to-use-activities for teachers to bring a world of environmental topics into the classroom.

All registered schools have a chance to qualify for the award of the EASY Floating Trophy at the end of the year.



How can you and your School benefit from the EASY Programme?

**Prepared
Hands on
Activities**

**CREATES
ENVIRONMENTAL
AWARENESS**

**OVER 50 prepared activities
for EASY implementation
into the Classroom**

develops
inter-
school

**Teachers
Resource
Manual
available
at **NO** cost to
registered
schools**

**RAISES PROFILE
of your school
in the
community**

**promotes
community
participation**

**Cross
Curricular
Activities**

**encourages
team building**

**INCREASES
Communication
skills
through
DRAMA
and
DEBATES**

**EASY
linked to outcomes
based education**

**endorsed by the
KwaZulu-Natal
Education Department**

Appendix E

Tying up your rubbish bags is a great help. Keeping your bins securely closed will prevent the spillage and spreading of litter. Please only put them outside your residence on the day of collection, to minimise the possibility of dogs tearing them open and spreading the waste, creating a nuisance.

REPORT CLEAN-UPS TO KPCA

If your group plans a large one-off clean-up, please phone KPCA and tell us of the date you plan to have the clean-up and where you will leave the full bags, so that we can inform the Waste Management Division to pick them up. The full bags should be left at an easily accessible point for collection. Routine clean-ups as part of caring for your spot, do not need to be reported to KPCA.

ADOPT A SPOT IS FOR EVERYBODY

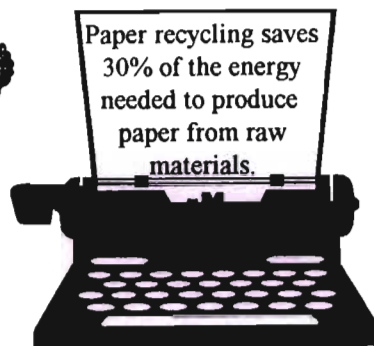
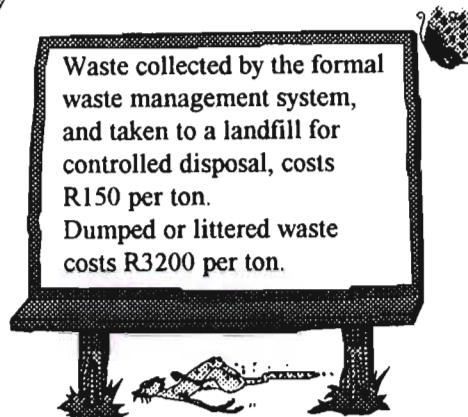
The Adopt a Spot programme is not meant for schools only, but for businesses, industries, churches, youth groups or even individuals. The programme is supported by business in Pietermaritzburg, and aims to create an awareness of the environment around us, by all sectors in our society.

If your business would like to support this programme but does not have the capacity to undertake activities personally - you can sponsor the maintenance of a spot. Contact KPCA for details.

KPCA would like to thank its sponsors Amalgamated Beverage Industries and the Department of Agriculture and Environmental Affairs for their wonderful support and sponsorship of the Adopt a Spot Signs.



Research has shown that people who live near trees and places of natural vegetation are more calm, experience less stress and are much less likely to become violent or aggressive than people who live where the environment has been destroyed.



The Keep Pietermaritzburg Clean Association
Private Bag 321
Pietermaritzburg
3200 Email: kpca@pmbcc.gov.za
Tel: (033) 3951201 Fax: (033) 3457558

Adopt a Spot

*Keep Pietermaritzburg
Clean Association*



*Tips on how to
Adopt your Spot*

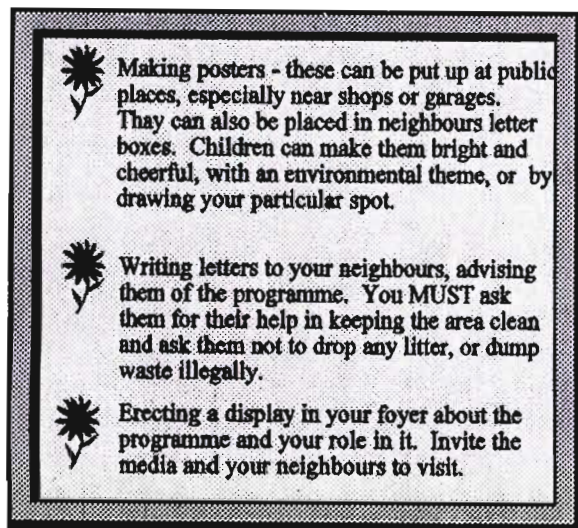
Adopt a Spot

"Be active and beautify your spot."

Now that you have formally adopted your spot - school, group or company there are many activities that you can undertake to improve your area, and be an active "adoptee".

Here are some of the things that you can do:

1. Firstly, let all of your neighbours know that you have joined the programme and are taking responsibility for yours and their environment. Do this by:



2. Devise a strategy as to how you will maintain your area, and note down who is responsible for what. (For example - which class will pick up litter or plant flowers on which days, who will approach the neighbours).

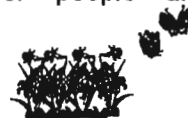


Report any person you see dumping waste on your spot, to the local authority or Keep Pietermaritzburg Clean Association - you must take down their car registration number, and details such as "where, when, what, who"! The whole school can be on the look out for this. Or if you are in the area, speak to offenders politely and ask for their assistance in keeping the area clean.

Help Keep Your City Clean



4. If the grass needs cutting, schools could try to arrange for parents to assist. Other groups may be able to enlist the assistance of volunteers. The Parks & Recreation Division of the Municipality are ultimately responsible for Council owned land, but if you can arrange it yourselves, then you have **truly** adopted the area.
5. Plant trees and flowers (preferably indigenous). Here you will also need to record which classes, office sections or people are responsible for doing this so that the plants are not neglected.
6. If there are broken municipal signs, pavements, manholes, etc. in the area - report it. Explain to the department that you have adopted the area and are trying to keep it looking nice.
7. At all adopted areas, make sure there are refuse bins adequately spaced out. If not, contact the municipality's Waste Management Division directly on telephone 3944202. Arrange bin painting exercises and place your own bins in the area. Just remember to let the Waste



management Division will arrange for the bins to be emptied.

8. If you have adopted a stream or river - look at removing alien vegetation and replanting new indigenous plants. KPCA will assist in putting you in touch with the experts who will discuss this with you and assist.
9. If you have adopted a large open area, consider turning it into a park that the community can also enjoy. Trees, flowers, playground equipment etc, could be obtained.



10. The municipality's Security Section have also pledged their support for this programme. If you see vagrants or suspicious people in your spot, and your spot is Council property, phone the Municipal Security Section, on telephone 3862333 and ask them to pay you a visit.
10. Encourage other groups or schools around you to also adopt areas joining yours, so that the area being looked after is extended.
11. Ask KPCA for a list of other "adoptees" and network with them to gain more ideas.

ENCOURAGE OTHERS TO HELP SOLVE THE PROBLEM

Remember, the aim of the programme is to educate all of those around you to help keep it clean - involve whoever you can. Keeping our city clean is a job for each one of us. No matter where you are, please put your waste materials in the proper waste receptacles, or carry it with you until you find a bin.

Appendix F

THE MSUNDUZI MUNICIPALITY
REPORT BY THE ACTING CITY MANAGER
FOR THE
AUDIT COMMITTEE

DUPLICATION OF FUNCTIONS: GRANT-IN-AID ORGANISATIONS

1. PURPOSE

At its meeting on 25th May 2004, the Audit Committee requested that the Acting Municipal Manager prepare a condensed report for the next meeting of the Audit Committee on the matter of grant-in-aid funding to organisations, with particular reference to the possible duplication of functions that were a local government responsibility.

2. BACKGROUND

- 2.1 At the Audit Committee meeting of 24th February 2004, Mr Layman suggested that Council review its Grants-in-aid policy, particularly with regard to organisations that performed agency services for Council eg. Pietermaritzburg Tourism (PMB) and the SPCA. He suggested that these organisations should be paid for the services they perform, rather than receive a grant-in-aid.
- 2.2 Based on a report by the Strategic Executive Manager: Finance dated 10th May 2004, the following organisations were singled out : Keep Pietermaritzburg Clean Association (KPCA), Msunduzi Housing Association (MHA), SPCA, PMB Tourism and Community Chest.
- 2.3 The point of departure for addressing the proposal as put forward by Mr Layman would be to state whether the above-mentioned organisations "qualify" as service provider to the municipality as apposed to a grant-in-aid organisation.
- 2.4 According to section 156(1) of the Constitution of Section 84(1) and (2) of the Municipal Structures Act, the pound function is a local municipality function.

- 2.5 According to Section 156(1) of the Constitution and Section 84(1) and (2) of the Municipal Structures Act, the cleansing function is a local municipality function.
- 2.6 According to Section 156(1) of the Constitution and Section 84(1) and (2) of the Municipal Structures Act, the local tourism function is a shared municipal function with district. In relation to the local municipality, "local tourism" means the promotion, marketing and, if applicable, the development of any tourist attraction within the area of the municipality with a view to attract tourist, to ensure access, and municipal services to such attractions and to regulate structure and control the tourism industry in the municipal areas subject to any provincial and national legislation, and without affecting the competencies of national and provincial government pertaining to "nature conservation", "museums", "libraries" and "provincial cultural matters".
- 2.7 According to Schedule 4 of the Constitution of the Republic of South Africa, housing is a concurrent function between the national and provincial government.
- 2.8 It would also be necessary to add the Safe City Project (SCP) to this list as they are also carrying out a Local Government function. According to section 156(1) of the Constitution, and Section 84 (1) and (2) of the Municipal Structures Act, the control of public nuisances is a Local Government function.
- 2.9 The above points indicate that KPCA, MHA, SPCA, PMB Tourism and the SCP clearly, to a lesser / greater extent, carry out what would otherwise be municipal functions.
- 2.10 Community Chest does not fall within any specific ambit of a municipal function. Rather, it may be considered as a charity and welfare organisation and is currently funded from the grant-in-aid vote : charitable and welfare category.
- 2.11 **COMMENTS: ACTING SEM FINANCE:**

The intention of the Audit Committee's request is unclear. However, provided that any contracts entered into are in line with current levels of support, there will be no additional financial implications to Council. Where services are rendered to Council, the principle of paying for these services, which are currently funded by way of grant-in-aid in terms of a service contract, is supported. However, in preparing the necessary contracts, the terms of payment would need to be carefully considered in order to ensure that

Council is not locked into further increases over which it has little or no control.

3. RECOMMENDATION

It is

RECOMMENDED

3.1 The Grant-in-Aid funding of the abovementioned organizations, that is,:

- (i) KPCA (vote no: 086 175 2555)
- (ii) MHA (vote no: 086 175 2509)
- (iii) SPCA (vote no: 060 100 1117)
- (iv) PMB TOURISM (vote no: 086 175 2645)
- (v) SAFE CITY PROJECT (vote no: 086 175 2554)

be reviewed in terms of no longer being regarded as Grant-in-Aid , but rather be considered as service providers and be financially compensated as such (financially this should be viable as these organizations currently receive excessive funding under the auspices of 'Grant-in-Aid').

3.2 Currently there seems to be no policy (document) that deals with Grant-in-Aid. There is a document that is headed "Guidelines: Grant-in-Aid Applications" that is currently used in the application process of grants. This is inadequate, a policy needs to be developed, possibly based on the abovementioned document.

3.3 Furthermore, such a policy should contain a provision which clearly states that organizations which provide a Local government service and/ or function that would otherwise be provided for by the municipality, does not constitute Grant-in-Aid funding and should be treated as a service-provider and be compensated accordingly.

3.4 Such a policy should also contain a provision that lists the names of such organizations and a provision that states that such list is subject to alteration from time-to-time dependant on: (i) applications for Grant-in-Aid received from organizations falling within this category and, (ii) the discontinuation of such a service being provided to the municipality by any such organization.

ACTING CITY MANAGER
MR T ZULU

Council is not locked into further increases over which it has little or no control.

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ACTING CITY MANAGER
MRT ZULU

Appendix G

THE WHITE PAPER ON LOCAL GOVERNMENT



The White Paper is dedicated to the memory of Tshepiso Mashinini (1966-1998), chairperson of the White Paper Working Committee, and all the other women and men who contributed to the building of a democratic system of local government in South Africa

Obituary to Tshepiso Mashinini

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The White paper process

Foreword by Mr Pravin Gordhan

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SECTION B DEVELOPMENTAL LOCAL GOVERNMENT

SECTION C COOPERATIVE GOVERNMENT

SECTION D INSTITUTIONAL SYSTEMS

SECTION E POLITICAL SYSTEMS

SECTION F ADMINISTRATIVE SYSTEMS

SECTION G MUNICIPAL FINANCE

SECTION H THE TRANSFORMATION PROCESS

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Reference guide on legislation affecting local government

Annexure B

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Annexure C

Maps

Annexure D

Summary of the principles in Chapter 1 of the Development Facilitation Act

GLOSSARY

GENERAL

- Foreword by Minister Mohammed Valli Moosa
- Foreword by Mr. Pravin Gordhan
- Introduction

FOREWORD BY MR. MOHAMMED VALLI MOOSA, MINISTER OF PROVINCIAL AFFAIRS AND CONSTITUTIONAL DEVELOPMENT

South Africa has been given a rare and historic opportunity to transform local government to meet the challenges of the next century. Although local government will, until 1999, remain subject to the precepts of the transition process as regulated by the Local Government Transition Act, 1993, the new Constitution envisages a complete transformation of the local government system. In terms of the new Constitution, local government is a sphere of government in its own right and no longer a function of national or provincial government. Local government has also been given a distinctive status and role in building democracy and promoting socio-economic development.

The Ministry for Provincial Affairs and Constitutional Development has embarked on a policy process that will give effect to this new vision of local government. An intensive 18-month period of consultation and research has culminated in the White Paper on Local Government. This White Paper spells out the framework and programme in terms of which the existing local government system will be radically transformed. It establishes the basis for a system of local government which is centrally concerned with working with local citizens and communities to find sustainable ways to meet their needs and improve the quality of their lives.

In the development of this White Paper, every effort has been made to ensure that the process has been inclusive, interactive and transparent. A three-phase approach ensured that all stakeholders were included in the consultative process over the past eighteen months. The first phase of consultations resulted in a Discussion Document published in April 1997, containing the initial strategic questions to be addressed in the White Paper. The second phase, which consisted of issue-focused research processes, provincial and local workshops and other consultation mechanisms, resulted in the Green Paper on Local Government, which was released for public comment in October 1997. The third phase, consisting of Portfolio Committee hearings, a local government Summit, public submissions and sectoral consultative conferences, resulted in the White Paper on Local Government, which has been approved by Cabinet. Appropriate legislation will now be prepared to enact the policy directions contained in the White Paper.

This White Paper on Local Government is unique, as it does not deal with a sectoral policy, but with an entire sphere of government. It can almost be regarded as a "mini-Constitution" for local government, as it will affect all South Africans. Local government is the sphere of government that interacts closest with communities, is responsible for the services and infrastructure so essential to our people's well being, and is tasked with ensuring growth and development of communities in a manner that enhances community participation and accountability.

I would like to take this opportunity to thank everyone who has contributed their time and energy to this process to make it a truly unique and nation-building experience. I am convinced that this has laid the basis for a better life for all South Africans through an effective local government system.

Local government stands at the threshold of an exciting and creative era in which it can and will make a powerful impact on reconstruction and development in our new democracy.

[White Paper Contents | Top of page](#)

FORWORD BY MR. PRAVIN GORDHAN
CHAIRPERSON OF THE WHITE PAPER POLITICAL COMMITTEE

The process of transforming the institutions of the South African state is premised on the fact that the new democratic state has a specific mission, that of meeting the new developmental objectives which will help to create a better life for all.

The policies in the White Paper are the result of a long process and an even longer history. A history of a strong civic movement, a history of popular participation, and the development of principles which will underpin local government structures through the years of struggle.

The process for developing a new policy for local government was done against the backdrop of globalisation and the redefinition of the nation state as well as a new emphasis on decentralisation.

The White Paper is the expression of the belief that our decentralisation of a special type can work. South Africa has developed a unique form of decentralisation in the context of the creation of three spheres which are required to govern in a cooperative manner.

Actually implementing the policies contained in this Paper will take a supreme effort, tremendous resilience and constructive participation of all role players. It will require our participation and rolling up of sleeves, our acting like citizens, as opposed to mere atomised consumers of municipal services. It will require very specific commitment and effort from national and provincial government and not in the least, from councillors and administrators within local government.

I believe that all who have contributed to developing this White Paper have succeeded in contributing to a formidable historic project, one of building a modern African state, which cares for its people, that is rooted in our history, in the soil of this land and this continent. We can be proud that this White Paper is a product from which people across the globe can learn, one which can take us into the next millennium and into our renaissance.

I must express my singular sadness at the passing away of Tshepiso Mashinini whose brilliant and energetic contribution played a pivotal role in the policy process.

I would like to thank you all who have contributed to this long history and process. Thank you specifically to those who have worked with Minister Moosa, Tshepiso Mashinini and myself on the actual writing of this paper which includes the White Paper Political Committee members (Mr Jomo Khasu, Mr Collin Matjila, Mr Sicelo Shiceka, Mr Lechesa Tslenoli and Mr Nhlanhla Zulu); Mr Zam Titus, Director General DCD, the White Paper Working Committee members (Mr Andrew Boraime, Mr Len Dekker, Mr Chris Heymans, Ms Lynelle John, Ms Jackie Manche, Mr Rudolph Mastenbroek, Mr Shoots Naidoo, Dr Crispian Oliver, Adv Paddy Roome, Mr Richard Sizani, Dr Koos Smith, Mr Robert Willemsse, Mr Roland White); the Editorial Team (Ms Dominique Wooldridge and Mr Patrick Cockayne) and the White Paper Secretariat (Ms Minee Hendricks, Ms Marina van der Merwe and Ms Charmaine Hartman).

I trust, as I believe Tshepiso trusted, that the effort of writing this paper will, ultimately, be proven worthwhile.

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INTRODUCTION / EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

Apartheid has fundamentally damaged the spatial, social and economic environments in which people live, work, raise families, and seek to fulfil their aspirations. Local government has a critical role to play in rebuilding local communities and environments, as the basis for a democratic, integrated, prosperous and truly non-racial society.

The Constitution of the Republic of South Africa (1996) mandates local government to:

- Provide democratic and accountable government for local communities.
- Ensure the provision of services to communities in a sustainable manner
- Promote social and economic development
- Promote a safe and healthy environment
- Encourage the involvement of communities and community organisations in the matters of local government

Local government must also promote the Bill of Rights, which reflects the nation's values about human dignity, equality and freedom, and uphold the principles enshrined in the Constitution

Within the framework of the Constitution, this White Paper establishes the basis for a new developmental local government system, which is committed to working with citizens, groups and communities to create sustainable human settlements which provide for a decent quality of life and meet the social, economic and material needs of communities in a holistic way

Section A: Current Reality, provides a brief history of local government under apartheid, which points to the origins of many of the problems currently faced by local government in South Africa. It highlights our history of community mobilisation, and locates the current transition process in its broader historical context

This section also provides an outline of the current local government system, and discusses the specific strengths and weaknesses of the different models of transitional municipality created under the Local Government Transition Act. It points to the need for systems of metropolitan government which ensure that Metropolitan Councils have sufficient powers to fulfil their intended role, and to the need for flexibility in local government systems outside of metropolitan areas to accommodate the vastly different settlement types (ranging from large secondary cities to sparsely populated rural areas) which fall within the District Council system

It also sketches the existing settlement patterns and trends in the country, and highlights the particular challenges which South Africa's unique settlement patterns pose for the new local government system

The **second section** of this White Paper, **Developmental Local Government**, puts forward a vision of a developmental local government, which centers on working with local communities to find sustainable ways to meet their needs and improve the quality of their lives.

It discusses four characteristics of developmental local government, namely exercising municipal powers and functions in a manner which maximises their impact on social development and economic growth, playing an integrating and coordinating role to ensure alignment between public (including all spheres of government) and private investment within the municipal area, democratising development, and building social capital through providing community leadership and vision, and seeking to empower marginalised and excluded groups within the community

It urges local government to focus on realising developmental outcomes, such as the provision of household infrastructure and services, the creation of liveable, integrated cities, towns and rural areas, and the promotion of local economic development and community empowerment and redistribution.

It also provides three approaches which can assist municipalities to become more developmental, namely integrated development planning and budgeting; performance management, and working together with local citizens and partners. It emphasises the potential of integrated development planning as a mechanism to enable prioritisation and integration in municipal planning processes, and strengthen links between the development and institutional planning processes. It proposes a process for the development of a performance management system for local government; and suggests ways in which municipalities can engage citizens and community groups in the affairs of the municipality in their capacities as voters, citizens affected by municipal policy, consumers and end-users of municipal services, and partners in resource mobilisation for the development of the municipal area.

The **third section** of this White Paper, **Cooperative Government**, situates local government within a system of cooperative government. It notes that, under the new Constitution, local government is a sphere of government in its own right, and not a function of national or provincial government. While acknowledging that the system of intergovernmental relations requires further elaboration, the section provides a preliminary outline of the roles and responsibilities of national and provincial government with respect to local government. It also provides a summary of national departmental programmes which impact on local government, and notes that local government is increasingly being seen as a point of integration and coordination for the delivery of national programmes

This section concludes with a discussion on the role of organised local government, and horizontal relations between municipalities.

Section D deals with municipal **institutional systems**. It begins by highlighting the particular needs and circumstances which South African municipal institutions must cater for

It then focuses on metropolitan municipal institutions, and puts forward three key motivations for the retention of metropolitan government systems in metropolitan areas, namely that metropolitan government provides a basis for socially just and equitable metropolitan governance, enables strategic land-use planning and coordinated public investment, and the development of a city-wide framework for economic and social development within the metropolitan area

Two types of metropolitan government are proposed: Metropolitan government with Metropolitan Substructures, and metropolitan government with Ward Committees

The system of metropolitan government with Metropolitan Substructures caters for metropolitan areas where a structured correspondence between political and administrative decentralisation is desired. The system of metropolitan government with Ward Committees allows for maximum administrative flexibility, but ensures that diversity within the metropolitan community is given voice through the establishment of decentralised Ward Committees

The paper then discusses municipal institutions outside metropolitan areas, and motivates for a system of district government with responsibility for district-wide integrated development planning, infrastructural development, the provision of technical assistance to category (B) municipalities, and the direct provision of some municipal services in areas where category (B) municipalities lack the capacity to perform all municipal functions

Three forms of category (B) municipality are proposed, namely urban municipalities, rural municipalities, and amalgamated urban-rural municipalities. Although the paper does not allow for the continuation of the existing Transitional

Representative Council system or the "Remaining Area" system, it recognises that not all rural municipalities will be able to assume the full range of municipal powers and functions, and that, in a few exceptional circumstances where the establishment of category (B) municipalities are completely unviable, the district government may assume direct responsibility for the delivery of all municipal functions in the area

The relationship between traditional leaders and local government is discussed. A cooperative model is proposed whereby traditional leadership will have representation on Category (B) and (C) municipal Councils. This model will apply in all areas of traditional leadership.

This section of the White Paper concludes by outlining the criteria for the demarcation of municipal boundaries.

The next section of the White Paper is concerned with municipal **political systems**, and begins by highlighting the importance of dynamic local political leadership.

It discusses the advantages of allowing for the delegation of executive powers by a municipal Council to either an Executive Committee or an Executive Mayor, and proposes that both options are accommodated.

The paper notes that Section 155 of the Constitution envisages some further differentiation between municipalities in addition to the different categories of municipalities provided for. It is proposed that municipal political systems provide a basis for such differentiation, and for the development of municipal types.

This section concludes by proposing a mixed municipal electoral system where the proportional representation component is geared to adjust distortions in representivity, and proposes an approach to reducing the number of municipal councillors.

The **seventh section** of this White Paper introduces the issue of municipal **administrative systems**. It notes that the local-level transition process has largely been concerned with the amalgamation of previously separated municipalities, and that significant changes to administrative systems have not yet taken place.

The bulk of this section focuses on service delivery systems, and a wide range of approaches to transforming municipal service delivery systems are put forward. While certain national interventions (such as the development of a regulatory framework for municipal public-private partnerships) are required to enable municipalities to utilise the full range of options available, each municipality is encouraged to develop its own institutional transformation programme and adopt the options which are best suited to its circumstances.

This section of the White Paper also outlines proposed changes to the local government training system, and stresses the pivotal role that the South African Local Government Bargaining Council will play in enabling the transformation of municipal administrative systems.

This section of the White Paper deals with municipal finance. It sketches the current situation, noting that while the aggregate size of the municipal budget in South Africa is significant, totalling over R48bn this year, there are vast disparities between the revenue-bases of different municipalities.

The paper puts forward a set of principles to guide the development of a new framework for municipal finance, and then elaborates the key aspects of that

framework.

These include local revenue instruments and policies, where it is noted that while existing sources of municipal revenue should remain, some regulation of the property taxation system and the regional and establishment levies is required. Additional sources of revenue, such as a fuel levy and the extension of property taxation to rural areas, are explored. Municipalities are encouraged to develop clear tariff policies and credit control mechanisms, to ensure that poor households have access to basic services and that services are provided on a sustainable basis.

The second aspect of a framework for municipal finance discussed in the paper is intergovernmental transfers. The paper distinguishes between agency payments, capital transfers, and transfers to fund operating costs. The latter system is currently inconsistent and inequitable, and will be restructured to introduce a formula-based system of transfers which will constitute the "equitable share" of national revenue to which local government is constitutionally entitled. The "equitable share" will be structured in a manner which enables all municipalities to provide a basic level of services to low-income households in their areas of jurisdiction at an affordable cost.

The final aspect of a framework for municipal finance addressed in the paper is leveraging additional investment in the municipal sector. Private sector investment in municipal infrastructure is required to meet the costs of inherited backlogs, and interventions to enable the involvement of both private sector institutions and public sector financial intermediaries are discussed.

This section concludes with a discussion of municipal budgeting, accounting, financial reporting and management systems, including generally accepted accounting practices, reserves, capital accounting, and internal and external reporting. It stresses the need for accurate financial information to enable sound financial management, private sector investment, and community involvement in municipal budgeting systems.

Finally, this White Paper puts forward an approach to **municipal transformation**. It notes that national government is committed to developing a stable and enabling framework in which change can occur, and providing a range of support mechanisms to assist municipalities during the transition. However, transformation ultimately rests in the hands of each municipality. Municipalities are encouraged to think critically about how they operate and relate to local communities, and to develop their own strategies for meeting local needs and promoting the social and economic development of communities in their areas of jurisdiction.

Strong and capacitated developmental local government has a substantial contribution to make to improving South African citizens' quality of life, and to the development of the nation. This White Paper outlines the systems which will make developmental local government a reality.

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SECTION A. CURRENT REALITY

In this section:

This section provides a history of local government, an overview of the existing transitional system of local government, and an outline of settlement patterns and trends. It concludes by defining the challenge for local government.

1. A History of Local Government
2. The Current State of Local Government
3. Settlement Patterns and Trends
4. Defining the Challenge For Local Government
5. Concluding Comment

1. A HISTORY OF LOCAL GOVERNMENT

Apartheid has left its imprint on South Africa's human settlements and municipal institutions. Transformation requires an understanding of the historical role of local government in creating and perpetuating local separation and inequity, and the impact of apartheid on municipal institutions. Equally important is the history of resistance to apartheid at the local level, and struggles against apartheid local government.

Racial segregation

Apartheid was not the beginning of geographic, institutional and social separation at the local level. Segregation was already a policy by the time apartheid was introduced in 1948. However, the Group Areas Act, the key piece of apartheid legislation, instituted strict residential segregation and compulsory removal of black people to "own group" areas. Through spatial separation, influx control, and a policy of "own management for own areas", apartheid aimed to limit the extent to which affluent white municipalities would bear the financial burden of servicing disadvantaged black areas. The Group Areas Act restricted the permanent presence of Africans in urban areas through the pass system, and reserved a viable municipal revenue base for white areas by separating townships and industrial and commercial development.

Various attempts were made under apartheid to introduce "own management" structures for black residents at the local level. This was in part to compensate for restricted rights, and in part to bolster the political and economic privileges of racial exclusion.

- In bantustans, limited local government was established. Traditional leaders were given powers over land allocation and development matters in areas with communally owned land. Some small rural townships (the so-called "R293 towns") were given their own administrations, but these lacked real powers.
- In the 1960s, "Coloured" and "Indian" management committees were established as advisory bodies to white municipalities.
- The Bantu Affairs Administration Act of 1971 established appointed Administration Boards, which removed responsibility for townships from white municipalities.
- In 1977, Community Councils were introduced. Community Councils were elected bodies, but had no meaningful powers and few resources. They never gained political credibility.
- In 1982 Black Local Authorities replaced Community Councils. Black Local Authorities had no significant revenue base, and were seen as politically illegitimate from the start. They were rejected by popular (and sometimes violent) community mobilisation in the mid-1980s.

To some extent these forms of "own local government" acknowledged the permanent presence of black people in urban areas. However, they were designed to reinforce the policies of segregation and economic exclusion. None had resources to make any real difference to the quality of life of their constituents.

Financial constraints

Historically, most local government revenue in urban South Africa was self-generated, mainly through property taxes and the delivery of services to residents and business. This particularly suited white municipalities which had small populations to serve and large concentrations of economic resources to tax.

Financial shortfalls were built into local government for black areas. Apartheid regulations barred most retail and industrial developments in black areas. This limited the tax base and forced residents and retailers to spend most of their money in white areas. Municipalities in black areas were therefore deprived of the means to meet the needs of local residents.

In rural areas, discrimination and segregation were equally stark. Water and electricity were supplied to white residents in rural areas at enormous cost, while scant regard was given to the needs of the rural majority. Crisis and collapse were inevitable.

Communities began to mobilise against the apartheid local government system. At its launch in 1983, the United Democratic Front gave prominent attention to the Koornhof Bills which established the Black Local Authorities.

Black Local Authorities attempted to impose rent and service charges on township residents to increase revenue. This revenue source could never have provided for meaningful delivery. It only served to anger increasingly politicised communities. The rejection of Black Local Authorities in the mid-1980s led to a popular uprising which shook the foundations of the apartheid order.

Protesting against a distorted system

As the 1984 uprising gathered momentum, civics and other community bodies started to organise. Their rallying cry was the appalling social and economic conditions in townships and bantustans. Their chief weapons were the organised boycott of rents and service charges, and consumer boycotts. For the first time people began to protest systematically against the way human settlements were spatially and economically distorted.

In the late 1980s the apartheid state attempted to prop up collapsing Black Local Authorities and calm political tensions by redirecting funds to disadvantaged areas. A system of ad-hoc intergovernmental grants was developed to channel resources to collapsing townships. Regional Services Councils and Joint Services Boards were established to channel funds to black areas. However, these interventions were "too little too late". By the late 1980s most townships and many homeland rural areas were effectively ungoverned, and it was clear that Black Local Authorities (or any similar structures) would never be viable.

The crisis opened up by the collapse of the apartheid local government system eventually led to the realisation that a new deal was needed. White municipalities, experiencing the financial impact of organised consumer, service and rent boycotts, began to enter into negotiations with township representatives. Initially these forums were little more than crisis management structures. However, these initial talks formed the basis for later local negotiations, and the system of local government we have now.

Local forums recognised that the legal constraints which separated black residents from the municipal tax base had to be addressed nationally. The popular slogan, "One City, One Tax Base", could only be realised through national legislation. Local forums collectively pushed for the establishment of a national forum, the Local Government Negotiating Forum.

An Incomplete transition

The crisis in local government was a major force leading to the national reform process which began in 1990. National debate about the future of local government took place in the Local Government Negotiating Forum, alongside the national negotiating process.

The Local Government Negotiating Forum framed the Agreement on Finance and Services writing off arrears to Black Local Authorities. It also negotiated the Local Government Transition Act of 1993. The Local Government Transition Act did not provide a blueprint for a new local government system but simply sketched a process for change. The process put forward in the Local Government Transition Act was essentially a locally-negotiated transition and it has resulted in a wide diversity of forms of local government.

The Local Government Transition Act mapped out three phases of transition:

- **The pre-interim phase**, which prescribed the establishment of local forums to negotiate the appointment of temporary Councils, which would govern until municipal elections.
- **The interim phase**, beginning with municipal elections and lasting until a new local government system has been designed and legislated upon.
- **The final stage**, when a new local government system will be established.

We are now in the interim phase. The Local Government Transition Act has effectively deracialised the system of local government through the amalgamation of former racially-based structures. However, real transformation has yet to occur. The weaknesses of the Local Government Transition Act, such as its urban bias and the lack of structured support processes to enable municipalities to manage the change process, are reflected in our current municipal system. Further, the compromises reached during the negotiation of the Local Government Transition Act, such as the delimitation of wards in a manner which skewed representation and the requirement that municipal budgets must be approved by a two-thirds majority, will remain in force until the final phase of the transition.

While newly elected councils in many areas have made significant progress in addressing backlogs and extending services, they face many constraints. The huge infrastructural disparities and inequalities resulting from apartheid local government remain. The transition process has clearly shown that delivery on new municipal mandates cannot be achieved within the existing institutional framework.

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2. THE CURRENT STATE OF LOCAL GOVERNMENT

- 2.1 The different forms of municipality
- 2.2 Local government finance
- 2.3 Administration
- 2.4 Legislative complexity
- 2.5 Powers and functions
- 2.6 Global and national trends
- 2.7 The transition process

2.1. The different forms of municipality

Our existing interim system of local government comprises a number of different municipal institutions. Each presents specific challenges.

Metropolitan Councils with Metropolitan Local Councils

This two-tier system comprising a Metropolitan Council and Metropolitan Local Councils has been established in six areas: four in Gauteng Province (Greater Johannesburg Metropolitan Council, Vaal/Lekeoa Metropolitan Council, Pretoria Metropolitan Council and Khayalami Metropolitan Council) together with the Durban Metropolitan Area and the Cape Metropolitan Area. A clear definition of metropolitan areas is required to determine whether all these areas should retain Metropolitan Councils, and if other areas in the country should be designated metropolitan areas.

There is considerable variation in the size of the current areas of jurisdiction of both Metropolitan Councils and Metropolitan Local Councils, and in the number of Metropolitan Local Councils within each metropolitan area. Metropolitan Local Councils perform different functions in different metropolitan areas, and some have assumed a wider range of service delivery functions than others. Generally, metropolitan residents have not identified with the new Metropolitan Local Council boundaries, and large Metropolitan Local Councils (sometimes with over a million residents) have struggled to facilitate community participation in municipal affairs.

The Local Government Transition Act allowed for a local negotiation process to define the allocation of powers and functions between the Metropolitan Council and Metropolitan Local Councils. This has resulted in different allocations in each area. In some cases the location of municipal functions does not enable sound management and administrative practices, and simply reflects the balance of local power relations. The current lack of clarity regarding the specific powers and duties of each tier has resulted in considerable confusion and inefficiency, and in some instances has strained relations between the Metropolitan Council and Metropolitan Local Councils.

All Metropolitan Councils are responsible for redistribution across the metropolitan area. In all cases some redistribution occurs between high-income and low income consumers of services, and through the allocation of Regional Services Council levies (employment and turnover levies) to underdeveloped parts of the metropolitan area. In some metropolitan areas a metropolitan levy is also charged on Metropolitan Local Councils, and re-allocated across the metropolitan area. These mechanisms for intra-metropolitan redistribution are not optimal, do not facilitate targeted redistribution, and have resulted in significant tensions.

The current transitional arrangements are not optimal for addressing many of the service delivery, governance and management problems within metropolitan areas. A new system of metropolitan government will need to be more clearly defined, and provide both clear guidance on the role of metropolitan government, and sufficient powers to fulfil this role.

District Councils

There are considerable variations in the size of the budgets and staffing complements of District Councils. The Local Government Transition Act did not provide for clear powers for District Councils. Their powers and functions are determined by provincial proclamations which differ from province to province. Hence the roles played by District Councils vary.

In most of the country District Councils build on the old Regional Services Councils and Joint Services Boards. In some areas District Councils are completely new structures established during the transition. Generally they are responsible for the bulk service functions of the old Regional Services Councils, and in some areas they also provide municipal services directly to the public.

District Councils have been tasked with assisting in the development of new primary structures in rural areas. Most District Councils have sufficient managerial and technical capacity to fulfil 'original' (or old Regional Service Council) functions. However, some have been slow to implement new functions (including support to rural municipalities, and direct delivery on their behalf). Others have been innovative in assisting small towns and rural areas, and in extending services to poor rural communities. Some have adopted a flexible approach to addressing priority issues that are not formally within their functional scope. Most, however, have not adopted a major role as development agents.

District Councils have a strong redistributive function. However, this redistributive function is not without problems. The large proportion of District Council levy income is collected from urban areas. These urban municipalities complain that not enough of this income is re-invested in urban infrastructure. Furthermore, wealthy metropolitan areas do not fall within District Council areas. Levy income collected in metropolitan areas is thus used exclusively for the metropolitan area. This can be perceived as unfair to non-metropolitan urban areas - it potentially reinforces the development disadvantages of struggling urban centres outside of the major cities. The role of District Councils in redistribution is complicated in some cases by powerful special interest groups, who continue to wield undue influence over the allocation of funds.

District Councils operate in very different contexts and serve areas of very different size and settlement patterns, ranging from areas of dense settlements to vast, sparsely populated regions. Generally, District Councils are significant centres of municipal capacity, and consideration should be given to building on this capacity in the design of a new local government system.

Transitional Local Councils

A Transitional Local Council model has been applied to most urban areas, ranging from major cities to small rural towns, with very different economic and social realities.

There are major variations in the capacities of municipalities serving cities and larger towns on the one hand, and small towns on the other. Municipalities in cities and larger towns face problems of poverty and uneven development, but have relatively solid administrative and financial capacity. This enables them to address their current responsibilities to a significant extent with their own resources.

Many small town municipalities, on the other hand, do not have the financial, administrative or service delivery potential to provide adequate services and governance without strong external support or rationalisation. District Councils are increasingly providing financial, accounting and other administrative services for smaller municipalities on an agency basis.

Rural Councils

There are three forms of government in rural areas.

- Transitional Representative Councils
- Transitional Rural Councils
- District Councils with Remaining Areas.

Transitional Representative Councils have only a representative function and no executive powers. Although they can assume executive powers as their capacity increases, in most cases few powers and duties have been devolved to Transitional Representative Councils due to their lack of capacity. Transitional Representative Councils generally do not have their own administrations, and are little more than advisory structures to District Councils. They rely on District Councils for administrative, technical and financial support.

Transitional Rural Councils have similar powers to their urban counterparts (Transitional Local Councils), although not all Transitional Rural Councils fulfil all the functions of a Transitional Local Council. Transitional Rural Councils have taxing powers but they have limited potential to generate adequate tax and service charge revenue. They rely on grants from and through the District Councils. This financial support is limited, and the basis for transfers is not clearly defined. This leads to a degree of financial uncertainty.

In some cases, the separation of rural areas from cities and towns has imposed artificial political and administrative boundaries between areas that are otherwise functionally integrated. It also creates inequity for rural residents who contribute to the town's economy but don't benefit from its resources.

In parts of the country there are no primary rural government structures, and the District Council administers what are termed Remaining Areas. In these areas voters directly elect representatives onto the District Council through proportional representation.

The limited powers and resources of rural municipalities, and their consequent inability to serve local communities, have diminished their credibility. This poses a threat to the future development of local government in these areas.

The transitional models of Rural Councils have been applied to a range of vastly different contexts, from sparsely populated commercial farmland to densely settled areas in former homelands. The very different contexts which are categorised as "rural" imply the need for a flexible system of municipal government in rural areas, and a flexible approach to providing municipal services in these areas.

While the unique challenges of each form of municipality need to be considered, a number of more general issues should also be taken into account.

2.2. Local government finance

The amalgamation of previously divided jurisdictions has massively increased the population which municipalities must serve, without a corresponding increase in the tax base. Combined with service backlogs, collapsed or deteriorating infrastructure, and deteriorating creditworthiness and borrowing capacity, municipalities are experiencing financial stress, and in some instances crisis. Municipalities are also experiencing upward pressure on salaries and the loss of experienced finance personnel. Although payment for services is improving, problems related to non-payment for services remain. Extending effective property

taxation to the former township areas has also proved difficult

Some municipalities have inadequate financial management capacity, and as a result budgeting, accounting, credit control and financial reporting systems are weak. The budget process is often not properly linked to municipal planning, and is not always open to community participation. In some cases revenue is overstated, resulting in unrealistic budgets.

These problems have put pressure on municipal cash flows and financial management. Many municipalities have responded by spending accumulated reserves, reducing capital expenditure, deferring payments to vendors, utilising bridging finance, and refinancing or extending their long-term debt. The results of national government's monitoring exercise, Project Viability, have confirmed a generally deteriorating aggregate financial position within the local sphere. However, there are great differences between municipalities with respect to their financial position, and many municipalities are financially stable and healthy despite these difficulties.

2.3. Administration

Most municipalities have undergone some administrative changes as a result of the amalgamation process. However, many administrations are still organised in much the same way as before, and most have not made significant progress with respect to transforming service delivery systems. Many municipal administrations are still characterised by hierarchical line departments, poor coordination between line departments, and authoritarian management practices. Front-line workers remain de-skilled and disempowered, and women and black people are not adequately represented in management echelons. In many cases the lack of performance management systems and poor internal communication contribute to inefficiency in service delivery.

The changed mandate of local government (with additional developmental functions) requires new capacities, attitudes and approaches, which are only beginning to emerge. Relations between municipal Councils and the administration, between management and the workforce, and between the municipality and service-users, need to be improved.

Some progress has already been made with respect to improving the training and labour relations systems, which have historically been poorly organised and ineffective. Agreement has been reached on a process to restructure the training system, and the South African Local Government Bargaining Council has recently been established.

Significant support and investment are required to build administrative capacity for the new local government system.

2.4. Legislative complexity

There have been changes in the local government system since 1993. However, many of the laws and regulations which supported the old system remain in effect (see Annexure A). In one way or another, these continue to impact on the operation of new municipalities. These inherited pieces of legislation are often applied differently in different parts of the country, resulting in considerable confusion and uncertainty. The current legislative complexities and legal vacuums have to be addressed. The body of inherited law must be rationalised to support the new vision and role identified for local government.

2.5. Powers and functions

Local government has a range of powers and functions at its disposal. Definitive municipal powers are defined in the 1996 Constitution, in Part B of Schedules 4 and 5.

The powers listed in Schedule 4, over which national and provincial government have concurrent legislative competence, include:

air pollution, building regulations, child care facilities, electricity and gas reticulation, fire fighting services, local tourism, municipal airports, municipal planning, municipal health services, municipal public transport, municipal public works (only in respect of the needs of municipalities in the discharge of their responsibilities to administer functions specifically assigned to them under the Constitution or any other law), pontoons, ferries, jetties, piers and harbours (excluding the regulation of international and national shipping and matters related thereto), stormwater management systems in built-up areas, trading regulations, water and sanitation services (limited to potable (drinkable) water supply systems and domestic waste water and sewage disposal systems).

National and provincial governments have the right to legislate on these powers and functions, and the executive authority to ensure that municipalities perform these functions adequately.

The powers listed in Schedule 5, over which provincial government has exclusive legislative competence, include:

beaches and amusement facilities, billboards and the display of advertisements in public places, cemeteries, funeral parlours and crematoria; cleansing, control of public nuisances; control of undertakings that sell liquor to the public; facilities for the accommodation, care and burial of animals, fencing and fences; licensing of dogs, licensing and control of undertakings that sell food to the public, local amenities, local sports facilities; markets; municipal abattoirs, municipal parks and recreation, municipal roads, noise pollution, pounds; public places, refuse removal, refuse dumps and solid waste disposal; street trading, street lighting and traffic and parking.

Other local government powers are defined in national and provincial legislation. For example, the Local Government Transition Act (Second Amendment Act) gives local government powers for integrated development planning.

In addition, municipalities have potential powers and functions that may be devolved or delegated to them from provincial and national government. These national and provincial powers and functions are listed in Part A of Schedules 4 and 5 of the 1996 Constitution. The Constitution provides for the delegation of powers and functions to local government by agreement, if municipalities have the necessary capacity and are regarded as the most effective site from which these powers may be exercised. Again local government's exercise of these powers and functions is subject to national and provincial oversight.

Local government's core function needs to be understood as part of the functioning of the state and its three sphere government system as a whole. The constitutional definition of local government's powers and functions in relation to provincial and national government, is, however, ambiguous in some respects, and requires further clarification. This situation is further complicated by the fact that most powers and functions have several components, not all of which are best performed by the same sphere of government. The Constitution makes these distinctions to some extent (for example, between trade and trading regulations) but grey areas remain.

2.6. Global and national trends

No municipality can ignore the economic changes taking place in its locality, in the surrounding region, in the nation, and globally. The rise or decline of industries can have a marked impact on local income, employment and tax revenue.

Globalisation, or the internationalisation of capital, production, services and culture, has had, and will continue to have a major impact, in particular on metropolitan areas. The logic of transnational corporations, the fact that economic transactions and the integration of systems of production occur on a world-wide basis, and the rapid development of information technologies, have resulted in the emergence of the so-called "global economy". In this context large cities become the nodes or points of contact which connect economies across the globe.

The Growth, Employment and Redistribution (Gear) strategy places greater emphasis on an export-oriented economy, and will lead to increased international openness and competition. The ultimate aim is to achieve internationally competitive industries and enhance economic growth and well-being. In the immediate term, municipalities will need to manage the consequences of globalisation - such as the restructuring and relocation of industries.

Local government has an interest in attracting investment based on promoting the comparative advantages of the area for competitive industries, as well as supporting the growth of local enterprises. It will become increasingly important for municipalities to find the right balance between competition and co-operation among themselves. While some competition will improve both efficiency and innovation, co-operation between South African municipalities is necessary to enhance the performance of the national economy as a whole, and to avoid damaging forms of competition between municipalities.

2.7. The transition process

Municipalities are all experiencing problems arising from the transition process. Costly and complex administrative reorganisation has tended to focus municipalities' capacity inwards, rather than towards their constituencies and delivery. Prolonged uncertainty about powers, functions, areas of jurisdiction and a host of other matters affecting local government have added to the problem. At the same time, municipalities have faced increasing demands and expectations on delivery, often without an increase in the resources to deal with these demands, or even with shrinking subsidies. They have also faced the difficult task of realigning their operations with a range of sectoral policies and programmes. Overall there has been a lack of information and capacity.

While grappling with inherited inefficiencies and inequities, municipalities have also had to put in place a system of democratic and equitable governance, often in the face of resistance from a range of local players who benefited under apartheid.

It is essential for the successful implementation of a new system of local government that programmatic support is provided to municipalities to assist them during the next phase of the transition process.

The transition process has resulted in a local government system consisting of 843 municipalities and over 11 000 democratically elected councillors. Approximately one third of municipalities are facing serious financial difficulties or administrative problems. Serious consideration needs to be given to reducing the number of municipalities and councillors to enhance the viability of the local sphere.

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3. SETTLEMENT PATTERNS AND TRENDS

- 3.1 Introduction
- 3.2 Settlement types
- 3.3 The implications of current settlement patterns

3.1. Introduction

Given the diversity of settlements across the country, an understanding of settlement types is critical for policy-makers seeking to create appropriate municipal institutions.

- Settlement dynamics have a major influence on the resource demands made on local government, particularly demands for access to basic services and infrastructure. Factors such as the population density and economic base of a settlement influence proximity to bulk services, the cost of installing services and levels of affordability for households. Settlement conditions therefore need to be taken into account when defining approaches to service delivery and appropriate municipal institutional arrangements.
- Changes in population distribution affect the size of *functional boundaries*. Boundary demarcation needs to take into account, and anticipate, the population distribution and concentration which is to be served by any municipality.

3.2. Settlement types

There is no simple categorisation of settlement types, and the definition of "urban" and "rural" is hotly debated. However, the following loose categorisation of settlement types is intended to facilitate an understanding of the diversity of settlements, and also to facilitate discussions on appropriate municipal institutions for the different settlement types.

URBAN CORE refers to the formal city and town, including the former white municipal and former townships areas. A key characteristic of these areas is their high population density, with generally over 10 dwelling units per hectare. These areas are characterised by high levels of economic activity, and consequently higher land values.

URBAN FRINGE refers to various settlement conditions which exist within the boundaries of municipalities, but outside the urban core. This includes low-income settlements on the outer edges of towns and cities, many of which display middle order densities and large service backlogs. However, it also includes high-income low-density settlements, particularly on the peripheries of metropolitan areas.

SMALL TOWNS, most of which have intermediate density levels and the characteristic apartheid urban form - a former white area with intermediate to high service levels, and former black areas with more limited access to services. Small towns vary greatly, but most are economically and socially linked to surrounding rural hinterlands.

DENSE RURAL SETTLEMENTS There are two predominant kinds of dense rural settlement, namely:

"BETTERMENT" SETTLEMENTS, which are common in the former homeland areas. These are dense, planned settlements, with populations of over 5 000 people.

INFORMAL SETTLEMENTS, which are unplanned and largely

unserved, with populations of over 5000 people. Some are close to urban areas, and others are located in rural areas with a minimal local economic base. Some intensive commercial farming settlements also fall within this category.

VILLAGES, or smaller rural settlements with populations of more than 500, but less than 5 000 people. These are often unplanned traditional settlements or resettlement areas.

AGRI-VILLAGES are planned, dense settlements in rural areas, which service the surrounding farms.

DISPERSED OR SCATTERED SETTLEMENTS, which are mostly unplanned homestead settlements with a population of less than 500 people. Extensive settlements in commercial farming areas, some located on communal land and others on privately owned land, also fall within this category.

Each category is complicated by variations in features such as land tenure systems.

Each of the settlement types described above contains a diversity of communities and households and individuals whose relationships to their living space are shaped by the activities, interactions, needs and opportunities that colour their daily lives. These "Communities" and "households" are not homogeneous categories in which everyone is the same. Different people have different starting points in life - determined by such factors as gender, class, and race - and different opportunities to access resources and influence decision-making. Within communities and households, power dynamics can develop which see some people gain access to resources and power, and others marginalised or excluded.

Local government is uniquely placed to analyse and understand power dynamics within a community, and ensure that those who tend to be excluded and marginalised can become active and equal participants in community processes and the transformation of the settlements where they live.

3.3. The implications of current settlement patterns

Over half of the nearly 40 million people who live in South Africa are currently urbanised. Increased urbanisation, from natural urban population growth and migration from rural to urban areas, is expected to continue and result in dramatic increases in the proportion of urbanised citizens over the next two decades. Metropolitan areas and secondary cities are expected to absorb most of this growth. The population of rural areas is not expected to grow substantially - either as a proportion of the total population, or in absolute terms (in total).

The end of apartheid and the removal of legal restrictions to movement (influx control and group areas), demarcation of new boundaries, and migration trends within the Southern African sub-region have not (yet) meant fundamental change in national population distribution, urbanisation and migration. However, research reveals that profound changes may be under way in migration trends and settlement patterns, which will have a major impact on local government in the years to come.

Apartheid influenced South African settlement patterns in profoundly inequitable ways, and imposed enormous costs on mobility between rural and urban areas, and within urban areas. Municipalities can play a key role in transforming settlement types, and in addressing some of the existing distortions.

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4. DEFINING THE CHALLENGE FOR LOCAL GOVERNMENT

A new local government system needs to build on the strengths of the current system. Equally it needs to address its weaknesses, and build the capacity of municipalities to address the considerable challenges they face.

4.1. Challenges facing South African municipalities

Municipalities the world over face the challenge of managing viable and environmentally sustainable urban and rural systems. South African municipalities face additional challenges, including the following:

- **Skewed settlement patterns**, which are functionally inefficient and costly
- **Extreme concentrations of taxable economic resources** in formerly white areas, demanding redistribution between and within local areas
- **Huge backlogs in service infrastructure** in historically underdeveloped areas, requiring municipal expenditure far in excess of the revenue currently available within the local government system.
- **Creating viable municipal institutions for dense rural settlements** close to the borders of former homeland areas, which have large populations with minimal access to services, and little or no economic base
- **Great spatial separations and disparities between towns and townships and urban sprawl**, which increase service provision and transport costs enormously. Most urban areas are racially fragmented, with *discontinuous land use*, and settlement patterns. Municipalities in urban areas will need to develop strategies for *spatial integration*, while managing the continuing consequences of rapid urbanisation and service backlogs
- **Creating municipal institutions which recognise the linkages* between urban and rural settlements**. There is a wide variety of urban settlements, ranging from those which play the roles of local or regional service centres (supplying services to rural areas and other towns), to functionally specialised towns (such as mining towns) and administrative centres (common in former homeland areas). Importantly, almost all towns are functionally linked to rural areas, relying on their *hinterlands** for productive economic activity and providing critical centres for the delivery of social services.
- **Entrenched modes of decision-making, administration and delivery** inherited from municipalities geared for the implementation of urban and rural apartheid.
- **Inability to leverage private sector resources for development** due to a breakdown in the relationship between capital markets and municipalities, the lack of a municipal bond market and the poor creditworthiness of many municipalities.
- **Substantial variations in capacity**, with some municipalities having little or no pre-existing institutional foundations to build on
- **The need to rebuild relations between municipalities and the local communities they serve**. Municipalities should be particularly sensitive to the needs of groups within the community who tend to be marginalised, and responsive and accessible to people with a disability

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5. CONCLUDING COMMENT

Local government has been given a new constitutional mandate to create and sustain humane, equitable and viable human settlements. It is doubtful whether local government - as presently designed - is adequately equipped to fulfil this developmental mandate. Local government has been democratised, but the local government system is still structured to meet the demands of the previous era. A fundamental transformation is required.

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SECTION B: DEVELOPMENTAL LOCAL GOVERNMENT

In this section:

This section explores developmental local government - the central responsibility of municipalities to work together with local communities to find sustainable ways to meet their needs and improve the quality of their lives. It discusses the characteristics of developmental local government, sets out a series of developmental outcomes, and proposes several tools to assist municipalities to become more developmental.

It is in the interest of the nation that local government is capacitated and transformed to play a developmental role. National government is committed to providing support to enable municipalities to utilise the options and tools put forward in this White Paper to make themselves more developmental. The approaches put forward here create a framework in which municipalities can develop their own strategies for meeting local needs and promoting the social and economic development of communities.

Developmental local government is intended to have a major impact on the daily lives of South Africans. Where municipalities do not develop their own strategies to meet community needs and improve citizens' quality of life, national government may have to adopt a more prescriptive approach towards municipal transformation.

1. Characteristics of Developmental Local Government
2. Developmental Outcomes of Local Government
3. Tools and Approaches for Developmental Local Government
4. Concluding Comment

1. CHARACTERISTICS OF DEVELOPMENTAL LOCAL GOVERNMENT

- 1.1. Maximising social development and economic growth
- 1.2. Integrating and coordinating
- 1.3. Democratising development, empowering and redistributing
- 1.4. Leading and learning

Developmental local government is local government committed to working with citizens and groups within the community to find sustainable ways to meet their social, economic and material needs and improve the quality of their lives.

The Constitution enshrines the rights of all people in our country to dignity, equality before the law, freedom and security. It affirms our rights to freedom of religion, expression, culture, association and movement, as well as our political, labour and property rights. The Constitution commits government to take reasonable measures, within its available resources, to ensure that all South Africans have access to adequate housing, health care, education, food, water and social security.

The reality in our cities, towns and rural areas is far from this ideal. Many of our communities are still divided. Millions of our people live in dire poverty, isolated from services and opportunities. The previous local government system did very little to help those with the greatest needs. The current transitional system has not yet been able to do much to reverse these long-standing patterns of inequity and unmet human needs.

In the future developmental local government must play a central role in representing our communities, protecting our human rights and meeting our basic

needs. It must focus its efforts and resources on improving the quality of life of our communities, especially those members and groups within communities that are most often marginalised or excluded, such as women, disabled people and very poor people.

Developmental local government has four interrelated characteristics

- Maximising social development and economic growth
- Integrating and coordinating
- Democratising development
- Leading and learning

These four characteristics of developmental local government are further explained below.

1.1. Maximising social development and economic growth

The powers and functions of local government should be exercised in a way that has a maximum impact on the social development of communities - in particular meeting the basic needs of the poor - and on the growth of the local economy. Through its traditional responsibilities (service delivery and regulation), local government exerts a great influence over the social and economic well-being of local communities. Each year municipalities collect a large sum in rates, user charges and fees. They employ thousands of people throughout the country. In many cases they are responsible for the price and quality of water, electricity and roads, and they control the use and development of land. In parts of the country they own substantial amounts of land. They purchase goods and services and pay salaries, and therefore contribute to the flow of money in the local economy. They set the agenda for local politics, and the way they operate gives strong signals to their own residents and to prospective migrants or investors. These functions give local government a great influence over local economies. Municipalities therefore need to have a clear vision for the local economy, and work in partnership with local business to maximise job creation and investment.

Local government is not directly responsible for creating jobs. Rather, it is responsible for taking active steps to ensure that the overall economic and social conditions of the locality are conducive to the creation of employment opportunities.

Provision of basic household infrastructure is the central contribution made by local government to social and economic development. However, simple changes to existing procedures such as affirmative procurement policies, linking municipal contracts to social responsibility, speeding up approval procedures or proactively identifying and releasing land for development could have a significant impact with little or no additional cost. In addition, new policies and programmes can be initiated, aimed specifically at alleviating poverty and enhancing job creation. For example, local government could assist with the provision of support services, such as training to small businesses or community development organisations.

Local government can also promote social development through functions such as arts and culture, the provision of recreational and community facilities, and the delivery of aspects of social welfare services. Municipalities have the constitutional power to provide child care facilities, and may provide grants to associations for this purpose in terms of the Child Care Act, 1983. The empowerment of marginalised and disadvantaged groups is a critical contribution to social development. Municipalities should also seek to provide an accessible environment for disabled people, so as to facilitate their independence.

1.2. Integrating and coordinating

Within any local area many different agencies contribute to development, including national and provincial departments, parastatals, trade unions, community groups and private sector institutions. Developmental local government must provide a vision and leadership for all those who have a role to play in achieving local prosperity. Poor coordination between service providers could severely undermine the development effort. Municipalities should actively develop ways to leverage resources and investment from both the public and private sectors to meet development targets.

One of the most important methods for achieving greater coordination and integration is integrated development planning. Integrated development plans provide powerful tools for municipalities to facilitate integrated and coordinated delivery within their locality. The principles set out in the Development Facilitation Act should guide municipalities in their approach to building integrated, liveable settlements. There is a summary of these principles in Annexure D at the back of the White Paper. (See also point 3.1 for more detail on integrated development plans.)

While strategies for building human settlements may differ between localities, it is clear that the establishment of sustainable and liveable settlements depends on the coordination of a range of services and regulations, including land-use planning, household infrastructure, environmental management, transport, health and education, safety and security and housing. Municipalities will need to work closely with other spheres of government and service providers and play an active integrating and coordinating role here. (More is said about the departmental programmes and initiatives which municipalities should engage with in Section C: Cooperative Government, Point 2.1.)

1.3. Democratising development, empowering and redistributing

Municipal Councils play a central role in promoting local democracy. In addition to representing community interests within the Council, municipal councillors should promote the involvement of citizens and community groups in the design and delivery of municipal programmes.

In the past, local government has tended to make its presence felt in communities by controlling or regulating citizens' actions. While regulation remains an important municipal function, it must be supplemented with leadership, encouragement, practical support and resources for community action. Municipalities can do a lot to support individual and community initiative, and to direct community energies into projects and programmes which benefit the area as a whole. The involvement of youth organisations in this regard is particularly important.

Municipalities need to be aware of the divisions within local communities, and seek to promote the participation of marginalised and excluded groups in community processes. For example, there are many obstacles to the equal and effective participation of women, such as social values and norms, as well as practical issues such as the lack of transport, household responsibilities, personal safety, etc. Municipalities must adopt inclusive approaches to fostering community participation, including strategies aimed at removing obstacles to, and actively encouraging, the participation of marginalised groups in the local community.

At the same time, the participatory processes must not become an obstacle to development, and narrow interest groups must not be allowed to 'capture' the development process. It is important for municipalities to find ways of structuring participation which enhance, rather than impede, the delivery process.

A central principle of the Reconstruction and Development Programme (RDP) is

the empowerment of poor and marginalised communities. This is repeated in the Growth, Employment and Redistribution (Gear) strategy which calls for "a redistribution of income and opportunities in favour of the poor". Developmental local government is uniquely placed to combine empowerment and redistribution in a number of concrete programmes. For example:

- Service subsidies are a focused mechanism for providing services to the poor at below cost, and thereby provide an opportunity for low-income households to improve their circumstances. The 'equitable share' will provide the basis for a standardised subsidy mechanism for all poor households. Municipalities need to plan the level and amount of additional subsidies in a way which is affordable within the overall municipal budget.
- Support to community organisations in the form of finances, technical skills or training can enhance the ability of the poor to make their needs known and to take control of their own development process.
- Linkage policies aim to directly link profitable growth or investment with redistribution and community development. An example is a development levy imposed in fast-growing areas and used to subsidise housing or other services for the poor. An alternative is a condition which requires developers to make social responsibility investments in return for planning permission. Another example is the use of conditions imposed on companies which supply goods and services to a municipality (such as banks) to invest in training, affirmative action or community development.
- Socio-economic development and community empowerment is mainly directed at poverty eradication. The majority of the poor are women, and empowerment strategies which focus on women are likely to prove the most effective and inclusive. Municipalities need to develop their capacity to understand the diverse needs of women in the community, and address these needs in planning and delivery processes to enhance their impact on poverty eradication.

1.4. Leading and learning

Extremely rapid changes at the global, regional, national and local levels are forcing local communities to rethink the way they are organised and governed. All over the world communities must find new ways to sustain their economies, build their societies, protect their environments, improve personal safety (in particular for women) and eliminate poverty. There is no single correct way to achieve these goals. National frameworks and support from other levels of government are critical, but cities, towns and rural communities are increasingly having to find within themselves ways to make their settlements more sustainable. This requires trust between individuals and open and accommodating relationships between stakeholders. Local government has a key role to play in building this kind of social capital - this sense of common purpose - to find local solutions for increased sustainability.

In practical terms, municipalities can build social conditions favourable to development through:

- Building the kind of political leadership that is able to bring together coalitions and networks of local interests that cooperate to realise a shared vision.
- Responsive problem-solving and a commitment to working in open partnerships with business, trade unions and community-based organisations.
- Ensuring that knowledge and information are acquired and managed in a way that promotes continuous learning, and which anyone can access easily and quickly.

- Enhancing local democracy through raising awareness of human rights issues and promoting constitutional values and principles.
- Building an awareness of environmental issues and how the behaviour of residents impacts on the local environment, and encouraging citizens to utilise scarce natural resources in a prudent, careful manner.
- Investing in youth development as a key resource for the future, and building on their creativity and motivation through involvement in civic and development programmes.
- Actively seeking to empower the most marginalised groups in the community and encouraging their participation.
- Empowering ward councillors as community leaders who should play a pivotal role in building a shared vision and mobilising community resources for development.

Developmental local government requires that municipalities become more strategic, visionary and ultimately influential in the way they operate. Municipalities have a crucial role as policymakers, as thinkers and innovators, and as institutions of local democracy. A developmental municipality should play a strategic policy-making and visionary role, and seek to mobilise a range of resources to meet basic needs and achieve developmental goals.

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2. DEVELOPMENTAL OUTCOMES OF LOCAL GOVERNMENT

- 2.1 Provision of household infrastructure and services
- 2.2 Creation of liveable, integrated cities, towns and rural areas
- 2.3 Local economic development

Citizens and communities are concerned about the areas where they live: they are concerned about access to services and economic opportunities, mobility, safety, absence of pollution and congestion, proximity to social and recreational facilities and so on. Local government can impact on all of these facets of our lives.

The outcomes which developmental local government seeks to achieve may differ over time. However, in our current circumstances the key outcomes are as follows:

- Provision of household infrastructure and services.
- Creation of liveable, integrated cities, towns and rural areas.*
- Local economic development.
- Community empowerment and redistribution.

Each of these outcomes needs to be seen within the context of national development and the principles and values of social justice, gender and racial equity, nation-building and the protection and regeneration of the environment.

2.1. Provision of household infrastructure and services

Local government is responsible for the provision of household infrastructure and services, an essential component of social and economic development. This includes services such as water, sanitation, local roads, stormwater drainage, refuse collection and electricity. Good basic services, apart from being a constitutional right, are essential to enable people to support family life, find employment, develop their skills or establish their own small businesses. The provision of household infrastructure can particularly make a difference to the lives of women, who usually play the major role in reproductive (domestic) work which sustains the family and the local society.

The starting point must be to prioritise the delivery of at least a basic level of

services to those who currently enjoy little or no access to services. This can be achieved with the assistance of capital grants from the Consolidated Municipal Infrastructure Programme, or through local cross-subsidisation*, or by mobilising private investment in municipal infrastructure. It can also be facilitated by assisting groups within the community to establish their own delivery institutions. An example is the establishment of networks of small businesses to collect refuse in a number of townships. These networks receive payments from citizens and municipalities as well as private loans from banks. Such proactive initiatives by local residents should be encouraged and supported.

As outlined in the Municipal Infrastructure Investment Framework, the levels of services which are sustainable and affordable will vary from one type of settlement to another. The Consolidated Municipal Infrastructure Programme provides grants for bulk and connector infrastructure, to enable municipalities to cover the capital costs of household infrastructure up to a basic level for low-income households. The equitable share of national revenue* to which local government is entitled will enable municipalities to subsidise the operating costs of providing basic services to poor households. Municipalities must ensure that higher levels of services to residents and businesses are provided on a sustainable basis. This requires long-term infrastructure investment planning and a careful assessment of the levels of services which communities can afford. The provision of household infrastructure is also integral to the provision of housing, and municipalities must ensure that strategies and programmes for the provision of housing and infrastructure are appropriately integrated.

Approaches and mechanisms to transforming municipal service delivery systems and leveraging private sector investment* in municipal infrastructure are discussed in more detail in this White Paper in Section F: Administrative Systems.

2.2. Creation of liveable, integrated cities, towns and rural areas

Apartheid planning has left deep scars on the spatial structure of our cities, towns and rural areas, and the lives of millions of individuals and households. The spatial integration of our settlements is critical. It will enhance economic efficiency, facilitate the provision of affordable services, reduce the costs households incur through commuting, and enable social development. Spatial integration is also central to nation building, to addressing the locational disadvantages which apartheid imposed on the black population, and to building an integrated society and nation.

Municipal strategies for the establishment of liveable cities, towns and rural areas will differ from area to area.

Urban areas face the challenges of integrating towns and townships. Integration must ensure affordable mobility between work, home and recreation; combat crime, pollution and congestion; and structure the built environment to facilitate the participation of disadvantaged groups in the social and economic life of the city. Urban municipalities should promote mixed-use and mixed-income development*. They should plan and invest to meet current and future land-use and infrastructural needs for residential, commercial and industrial development. Metropolitan areas in particular need to anticipate and provide for the needs of rapidly growing populations.

In rural areas, the challenges of building liveable environments range from securing access to land and services for the rural poor, to addressing the distortions in ownership and opportunity that apartheid created between white and black rural dwellers. Many settlements face particularly acute challenges as a result of the apartheid practice of forcibly relocating communities to 'decentralisation points' in the former homelands. This practice resulted in dense settlements with no sustainable economic base. In many of these settlements the majority of residents

commute up to 70 kilometres to work in towns and cities. The distance between home and work not only imposes high transport costs, but also imposes harsh social and personal costs. The creation of sustainable and quality living environments for communities in these settlements requires innovative strategies and programmes.

*Environmental sustainability** is a key challenge in both urban and rural settlements. Municipalities can enhance environmental sustainability by including environmental issues in their planning processes. Many municipalities are participating in Local Agenda 21, to reach towards sustainable development in their local areas. Local Agenda 21 requires municipalities to develop long-term strategic action plans that address priority sustainable development concerns. Planning for environmental sustainability is not a separate planning process, but is an integral part of the process of developing municipal integrated development plans.

2.3. Local economic development

Local government can play an important role in promoting job creation and boosting the local economy. Investing in the basics - by providing good quality cost-effective services and by making the local area a pleasant place to live and work - is the key starting point. However, two other types of initiative are important:

- Reviewing existing policies and procedures to promote local economic development
- Provision of special economic services.

These approaches are further explained below.

2.3.1. Reviewing existing policies and procedures to enhance employment and investment

Small and large businesses rely on the actions of local government in a number of ways. They are also subject to a number of municipal regulations. A review and simplification of municipal procedures and regulations can have a significant impact on the local economy. For example:

*Procurement procedures** can be revised to maximise the impact of municipal purchasing on job creation and the local economy. In particular, preference can be given to local suppliers and small enterprises, particularly those in the informal sector. Principles such as *labour intensity** and affirmative action can be introduced. It is essential to ensure that selection criteria and procedures are clear and transparent to avoid abuse. Cost and quality must still be central criteria; however, support can be given to emerging contractors by breaking tenders down into smaller parts, providing targeted information and training, or allowing exemption from large *securities**.

Rezoning requests and applications for building permits by developers are frequently held up in cumbersome bureaucratic approval processes. In many cases these can be simplified. The establishment of a spatial framework which identifies land for residential, commercial and mixed development can help to speed up rezoning by establishing clear guidelines up-front.

Customer management and billing are often handled by several different municipal departments with offices in different locations. The establishment of user-friendly one-stop shops which can advise residents and deal with single accounts for all municipal services can increase the quality and efficiency of local services.

2.3.2. Provision of special economic services

The Constitution states that local government is responsible for promoting the social and economic development of communities. This provides municipalities with a mandate to provide special economic services, or to assist other agencies with the provision of such services, where appropriate.

Marketing and investment support can be provided in order to attract and secure potential investors. It is important that such services are cost-effective. For example, international evidence suggests that financial incentives, which are quite costly, have a very limited impact on investment decisions and should be avoided.

Small business support services can be provided to assist small entrepreneurs. The Department of Trade and Industry has launched a programme to establish local business service centres, and municipalities are encouraged to support this programme where appropriate. Such centres aim to assist with skills, premises, information, networking, marketing and access to credit.

Research and technology are important ingredients for innovation in an increasingly competitive international economy. Municipalities might provide targeted assistance to a particular sector in the economy which has the potential to expand.

Training and placement services can be provided to help people to acquire the skills they need to find work, or to find jobs once they have the skills. The Department of Labour provides such services through its regional offices. Municipalities can play a role in tailoring these services to local circumstances, in order to match supply and demand in a practical way. The relevance of these services will depend on local circumstances. It is important to establish the value of a particular service in the local area before it is initiated.

In many cases, limited resources and expertise will make it difficult for municipalities to get involved in these specialised areas; however, it may be possible for municipalities to support or contribute to the activities of other agencies, such as national departments and non-governmental organisations, in these areas.

A review of existing legislation which impedes local economic development, such as planning and rating ordinances, needs to be undertaken by both national and provincial government.

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3. TOOLS AND APPROACHES FOR DEVELOPMENTAL LOCAL GOVERNMENT

- 3.1. Integrated development planning, budgeting and performance monitoring
- 3.2. Performance management
- 3.3. Working together with local citizens and partners

To achieve developmental outcomes will require significant changes in the way local government works. This section of the paper puts forward three interrelated approaches which can assist municipalities to become more developmental:

- Integrated development planning and budgeting.
- Performance management.
- Working together with local citizens and partners

3.1. Integrated development planning, budgeting and performance monitoring

3.1.1. Why do integrated development planning?

Municipalities face immense challenges in developing sustainable settlements which meet the needs and improve the quality of life of local communities. To meet these challenges, municipalities will need to understand the various dynamics operating within their area, develop a concrete vision for the area, and strategies for realising and financing that vision in partnership with other stakeholders.

Integrated development planning is a process through which a municipality can establish a development plan for the short, medium and long-term. The main steps in producing an integrated development plan are:

- An assessment of the current social, economic and environmental reality in the municipal area - the current reality
- A determination of community needs through close consultation.
- Developing a vision for development in the area.
- An audit of available resources, skills and capacities.
- A prioritisation of these needs in order of urgency and long-term importance
- The development of integrated frameworks and goals to meet these needs
- The formulation of strategies to achieve the goals within specific time frames.
- The implementation of projects and programmes to achieve key goals
- The use of monitoring tools to measure impact and performance.

In effect integrated development plans are planning and strategic frameworks to help municipalities fulfil their developmental mandate:

- They enable municipalities to align their financial and institutional resources behind agreed policy objectives and programmes.
- They are a vital tool to ensure the integration of local government activities with other spheres of development planning at provincial, national and international levels, by serving as a basis for communication and interaction
- They serve as a basis for engagement between local government and the citizenry at the local level, and with various stakeholders and interest groups. Participatory and accountable government only has meaning if it is related to concrete issues, plans and resource allocations.
- They enable municipalities to weigh up their obligations and systematically prioritise programmes and resource allocations. In a context of great inequalities, integrated development plans serve as a framework for municipalities to prioritise their actions around meeting urgent needs, while maintaining the overall economic, municipal and social infrastructure already in place.
- They assist municipalities to focus on the environmental sustainability of their delivery and development strategies. Sustainable development is development that delivers basic social and economic services to all, without threatening the viability of the ecological and community systems upon which these services depend
- They help municipalities to develop a holistic strategy for poverty alleviation. Poverty is not just about low household income. It includes other aspects of deprivation such as a lack of assets to help households cope with shocks and stresses, a lack of the resources or contacts necessary to secure political advantage, a lack of access to education, health care and emergency services, and the lack of safe, secure, and adequately sized housing with basic services.

While the idea behind integrated development plans is to build up a comprehensive integrated plan, municipalities cannot plan everything in detail in the first year. Rather, integrated development plans should empower municipalities

to prioritise and strategically focus their activities and resources. An attempt to plan too comprehensively may result in unrealistic plans that lack the human and financial resources for implementation.

Integrated development plans should be viewed as *incremental plans*. In the annual process of review, new or changed priorities can be incorporated.

Integrated development planning is a normal and required municipal function - integrated development plans are not "add-ons" and should not be "farmed out" to consultants. The development of integrated development plans should be managed within municipalities, and provide a way of enhancing the strategic planning capacity of the administration, building organisational partnerships between management and labour, and enhancing *synergy* between *line functions*.

3.1.2. The legislative framework

At the moment municipalities are required by the Development Facilitation Act to produce land development objectives (with the exception of municipalities in the Western Cape and KwaZulu-Natal). The Local Government Transition Act (Second Amendment Act) requires municipalities to produce integrated development plans. Municipalities should see the development of land development objectives as part of their integrated development plans, and not as a separate planning process.

Municipalities are required to be multi-sectoral in their approach to integrated development planning. They are therefore also required to prepare plans that meet the requirements of different departments such as the Department of Water Affairs and Forestry, the Department of Transport, the Department of Housing and the Department of Environmental Affairs and Tourism. These requirements will nevertheless be linked to a single planning cycle and process within municipalities as envisaged by integrated development plans.

Future legislation will endeavor to reduce the legislative complexity of the various planning requirements placed on municipalities. In particular, it will ensure that integrated development plans incorporate other planning requirements into a single planning cycle.

As part of this process, it may be necessary to revisit parts of the Development Facilitation Act. As the local government environment stabilises, the role of the Development Tribunals established by the Development Facilitation Act needs to be reassessed to ensure that local government's executive authority over development procedures and approvals is not undermined.

3.1.3. What is required of municipalities?

The key elements which are required to make integrated development plans useful and practical instruments for municipalities to work with are:

Developing a strategy and clear objectives:

The land development objective components or the planning requirements as put forward in the Development Facilitation Act provide a means of developing a strategic framework for development in the area. The land development objective components are critical because they are submitted to the provincial government for approval. Once approved, they have legal status and become powerful instruments for guiding and managing development in the area.

The Development Facilitation Act requires municipalities to develop objectives for service delivery (the services which a municipality will provide, the standards of

service and the level at which they will be provided); the 'form' of the settlement (these objectives deal with issues normally associated with 'town and regional planning' or the spatial planning of an area, such as land-use control, environmental planning, integrating low-income areas into the broader settlement, etc.); and development strategies. These objectives will provide a broad strategic framework for development.

Developing action plans and budgets:

Two key and inter-linked action plans are required to move from objectives to delivery. The first is an institutional plan of action, the second a financial plan of action.

Institutional plans:

Institutional plans, including *human resource development*^{*} strategies, are particularly important tools for municipalities during the transformation period. Institutional action plans are intended to assist municipalities in reorganising their administrations for improved delivery to communities. Section F: Administrative Systems discusses institutional planning and transformation in more detail.

Financial plans:

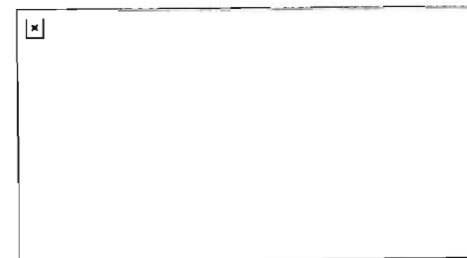
Integrated development planning should be linked to financial planning. A financial plan involves producing a medium-term (five-year) projection of capital and recurrent expenditure. This means incorporating municipal land development objectives and other strategies into the normal medium-term planning for capital and recurrent expenditure. Municipalities should also develop a plan for raising the revenue to support these strategies. The financial plan should show how the priorities in the budget change over the five-year period in order to achieve the goals set out in the integrated development plan.

On the capital side municipalities need to develop a coherent infrastructure investment plan, which sets out how they will achieve infrastructure targets, and mobilise public and private funding sources for this purpose. The development of integrated development plans and financial plans provides an opportunity for municipalities and other spheres of government to discuss and prioritise public investment in the area. Such governmental alignment could result in the production of a negotiated 'public investment plan' for an area which brings together the resource commitments of all spheres of government in relation to the integrated development plan.

Municipalities should seek private investment to supplement the public funds available for capital expenditure. They can obtain assistance and advice on how to leverage private investment from the municipal infrastructure investment unit, which has been established for that purpose.

Provincial governments should monitor the extent to which municipal budget priorities reflect the integrated development plan, and use existing conditional grant mechanisms as incentives in this regard.

The medium-term financial plan forms a basis on which annual budgets can be drawn up. The following diagram shows the relationship between planning and budgeting.



3.2. Performance management

Performance management is critical to ensure that plans are being implemented, that they are having the desired development impact, and that resources are being used efficiently. Municipalities currently set their own measures of performance, or key performance indicators. Key performance indicators vary greatly from municipality to municipality, and cover both efficiency measures and *human development indices*^{*}.

Key performance indicators can provide valuable information for two purposes:

- Firstly, development indices (such as the Household Development Index) can help municipalities to know their areas better and plan more effectively. Development indices also assist municipalities to assess the impact and effectiveness of the development strategies which they adopt, and make adjustments to their plans as required. The Central Statistical Service already provides useful indicators to assist municipalities in planning for their areas. Following the demarcation of new municipal boundaries, it will be possible to disaggregate (lift out) information according to municipal jurisdictions, which will be of particular value in the planning process. Development indicators should also be disaggregated according to gender to allow municipalities to assess the impact of their strategies on women, and ensure that the needs and interests of women are incorporated into municipal planning processes.
- Secondly, indicators which measure value-for-money in service provision can provide valuable guidance for municipal organisational transformation. Efficiency and quality indicators enable municipalities to set targets for continued improvement in their operations, to prioritise areas where organisational change is required, and assess the success of their transformation programmes.

Involving communities in developing some municipal key performance indicators increases the accountability of the municipality. Some communities may prioritise the amount of time it takes a municipality to answer a query, others will prioritise the cleanliness of an area or the provision of water to a certain number of households. Whatever the priorities, by involving communities in setting key performance indicators and reporting back to communities on performance, accountability is increased, and public trust in the local government system enhanced.

Municipal Councils will also find that developing some key performance indicators in consultation with internal municipal stakeholders (i.e., management and organised labour) can assist in developing a shared organisational vision and common goals for improved performance and delivery.

Performance monitoring indicators need to be carefully designed in order to accurately reflect the efficiency, quality and value-for-money of municipal services. International experience shows that poorly designed performance indicators can have a negative effect on delivery, and that it is critical that indicators focus on outcomes and not only inputs and outputs. For example, a municipality has a programme for cutting the grass verges. The aim is to maintain an orderly appearance in the streets and to discourage the dumping of rubbish in public spaces. However, if the municipality fails to collect the cut grass, it will build up and lead to the dumping of garden refuse by residents. This defeats the municipality's original objective. A performance management system which only measures the frequency of cutting the grass (the output) - and not the effect that this has on the maintenance of the public spaces (the outcome) - will give a misleading report on the effectiveness of the municipality's actions.

In the medium-term, a national performance management system is required to assess the overall state of local government, monitor the effectiveness of development and delivery strategies adopted by different municipalities and ensure that scarce resources are utilised efficiently. It would provide 'early warning' where municipalities are experiencing difficulties, and enable other spheres of government to provide appropriate support before a crisis develops. It would also enable municipalities to compare their own performance with that of similar municipalities across the country, identify successful approaches or 'best practice', and learn from one another.

National government will work closely with municipalities, provincial governments and other agencies that can contribute to the development of a national performance management system (such as the Central Statistical Service and the Auditor-General's Office) to develop a set of indicators which can be piloted by different municipalities and ultimately lead to the establishment of a national system.

While it is envisaged that the national system will apply in all municipalities, it will not replace the need for municipalities to set their own key performance indicators as part of the integrated development plan process. A national system can only incorporate indicators which are relevant to all municipalities. Municipalities will need to continue to develop key performance indicators which are specific to their local circumstances and goals, and to the priorities of local communities.

In summary...

Integrated development planning, budgeting and performance management are powerful tools which can assist municipalities to develop an integrated perspective on development in their area. It will enable them to focus on priorities within an increasingly complex and diverse set of demands. It will enable them to direct resource allocations and institutional systems to a new set of development objectives.

3.3. Working together with local citizens and partners

One of the strengths of integrated development planning is that it recognises the linkages between development, delivery and democracy. Building local democracy is a central role of local government, and municipalities should develop strategies and mechanisms (including, but not limited to, participative planning) to continuously engage with citizens, business and community groups.

Municipalities require active participation by citizens at four levels:

- As voters - to ensure maximum democratic accountability of the elected

political leadership for the policies they are empowered to promote.

- As citizens who express, via different stakeholder associations, their views before, during and after the policy development process in order to ensure that policies reflect community preferences as far as possible.
- As consumers and end-users, who expect value-for-money, affordable services and courteous and responsive service.
- As organised partners involved in the mobilisation of resources for development via for-profit businesses, non-governmental organisations and community-based institutions.

As voters:

As in the rest of the world, municipalities will need to ensure that voters are constantly made aware of the need to vote and that they are able to vote easily and safely. When voter participation declines, democratic accountability is diluted. The following approaches will enhance voter participation:

- Civic education programmes about the importance of voting.
- Ward-level activities to continuously connect elected leaders and their constituencies.
- Creative electoral campaigning around clear policy choices that affect the lives of citizens.
- Electoral systems that ensure that registration and voting procedures are structured in a way that enhances access and legitimacy.

As participants in the policy process:

Municipalities should develop mechanisms to ensure citizen participation in policy initiation and formulation, and the monitoring and evaluation of decision-making and implementation. The following approaches can assist to achieve this:

- Forums initiated from within or outside local government allow organised formations to initiate policies and/or influence policy formulation, as well as participate in monitoring and evaluation activities. Forums tend to work better when it comes to formulating either general community-wide development visions or issue-specific policies, rather than for formulating multiple policies that affect a multiplicity of interests.
- Structured stakeholder involvement in certain Council committees, in particular if these are issue-oriented committees with a limited lifespan rather than permanent structures.
- Participatory budgeting initiatives aimed at linking community priorities to capital investment programmes.
- Focus group participatory action research conducted in partnership with non-governmental organisations and community-based organisations can generate detailed information about a wide range of specific needs and values.
- Support for the organisational development of associations, in particular in poor marginalised areas where the skills and resources for participation may be less developed than in better-off areas. This is important because citizens tend to participate via associations rather than as individuals.

As consumers and service-users:

For many local citizens, their main contact with local government is through the consumption of municipal services, and it is here that municipalities need to begin to build relationships with citizens and communities. Municipalities need to be

responsive to the needs of both citizens and business as consumers and end-users of municipal services. Improved customer management and service provision are critical to building an environment conducive to economic and social development.

The Batho Pele ('People First') White Paper, issued by the Minister for Public Service and Administration, provides a useful approach to building a culture and practice of customer service. Batho Pele is based on eight key principles:

- **Consultation:** Citizens should be consulted about the level and quality of public service they receive, and, where possible, should be given a choice about the services which are provided.
- **Service standards:** Citizens should know what standard of service to expect.
- **Access:** All citizens should have equal access to the services to which they are entitled.
- **Courtesy:** Citizens should be treated with courtesy and consideration.
- **Information:** citizens should be given full and accurate information about the public services they are entitled to receive.
- **Openness and transparency:** Citizens should know how departments are run, how resources are spent, and who is in charge of particular services.
- **Redress:** If the promised standard of service is not delivered, citizens should be offered an apology, a full explanation and a speedy and effective remedy; and when complaints are made citizens should receive a sympathetic, positive response.
- **Value-for-money:** Public services should be provided economically and efficiently in order to give citizens the best possible value-for-money.

Importantly, the Batho Pele White Paper notes that the development of a service-oriented culture requires the active participation of the wider community. Municipalities need constant feedback from service-users if they are to improve their operations. Local partners can be mobilised to assist in building a service culture. For example, local businesses or non-governmental organisations may assist with funding a helpline, providing information about specific services, identifying service gaps or conducting a customer survey.

As partners in resource mobilisation:

Municipalities will be expected to enhance delivery within the constraints of available resources. Although becoming more efficient will be one way of achieving this, another is to mobilise off-budget resources (resources additional to those budgeted for) via partnerships with businesses and non-profit organisations. Municipalities can utilise partnerships to promote emerging businesses, support non-governmental organisations and community-based organisations, mobilise private sector investment, and promote developmental projects which are initiated but not necessarily financed by local government. Examples of the range of options for this approach include various combinations of the following:

- Community development corporations.
- Public-private and public-public partnerships around service delivery (see Section F: Administrative Systems, Points 2.2.3 - 2.2.4).
- Community contracting for services such as refuse collection.
- Development partnerships around issues such as local economic development, eco-tourism or farming.
- Community banking and various forms of community finance control (e.g., stokvels).
- Community information and learning centres as central points for using the

new information technologies (e.g., the Internet, e-mail) for development purposes.

- Emerging business development centres.
- Training and capacity-building initiatives aimed at building up the skills base for development projects.
- Social housing mechanisms.
- Value-adding initiatives aimed at transforming wastes into products, e.g., linking recycling to job creation for the unemployed.

Service delivery partnerships are discussed in more detail in Section F: Administrative Systems. The critical point here is that there are a range of creative methods through which municipalities can mobilise energy, capacity and resources outside the municipality for the development of the area.

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4. CONCLUDING COMMENT

Municipalities face great challenges in promoting human rights and meeting human needs, addressing past backlogs and spatial distortions, and planning for a sustainable future. Local government can only meet these challenges by working together with local citizens, communities and businesses, and adopting a developmental approach which:

- Enhances their capacity as policy and planning centres, able to mobilise and manage a range of development initiatives, resources and processes through a coherent vision and integrated planning framework for their local area.
- Focuses their own institutional and financial capacity on the delivery of affordable and sustainable services relevant to the needs of local communities.

A developmental role for local government offers substantive benefits to local residents, communities, provincial and national spheres of government, and the nation as a whole.

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SECTION C: COOPERATIVE GOVERNMENT

In this section:

This section situates local government within the South African system of government. It outlines the roles and responsibilities of national and provincial government with respect to local government. It describes some current national policies and programmes which have a direct impact on local government, and suggests ways in which national and provincial government can work with local government to enhance the effectiveness of all spheres of government. It concludes with a discussion of horizontal cooperation between municipalities.

1. The Framework of Intergovernmental Relations
2. Working With Local Government
3. Horizontal Cooperation Between Municipalities
4. Concluding Comment

1. THE FRAMEWORK OF INTERGOVERNMENTAL RELATIONS

1.1. Cooperative relations between spheres

The new Constitution states that government in South Africa is constituted as national, provincial and local spheres of government. These three spheres are distinctive, interdependent and interrelated. Local government is a sphere of government in its own right, and is no longer a function of national or provincial government. It is an integral component of the democratic state.

All spheres of government are obliged to observe the principles of cooperative government put forward in the Constitution. Cooperative government assumes the integrity of each sphere of government. But it also recognises the complex nature of government in modern society. No country today can effectively meet its challenges unless the components of government function as a cohesive whole. This involves:

- Collectively harnessing all public resources behind common goals and within a framework of mutual support
- Developing a cohesive, multi-sectoral perspective on the interests of the country as a whole, and respecting the discipline of national goals, policies and operating principles
- Coordinating their activities to avoid wasteful competition and costly duplication
- Utilising human resources effectively
- Settling disputes constructively without resorting to costly and time-consuming litigation
- Rationally and clearly dividing between them the roles and responsibilities of government, so as to minimise confusion and maximise effectiveness

1.2. Intergovernmental relations

Intergovernmental relations are the set of multiple formal and informal processes, channels, structures and institutional arrangements for bilateral and multilateral interaction within and between spheres of government. In South Africa a system of intergovernmental relations is emerging to give expression to the concept of cooperative government contained in the Constitution.

A system of intergovernmental relations has the following strategic purposes:

- To promote and facilitate cooperative decision-making
- To coordinate and align priorities, budgets, policies and activities across interrelated functions and sectors.
- To ensure a smooth flow of information within government, and between government and communities, with a view to enhancing the implementation of policy and programmes.
- The prevention and resolution of conflicts and disputes.

To date, the development of a framework for intergovernmental relations has focused on the relationship between national and provincial government. The role of local government is being defined as it develops in practice over time. The establishment and recognition of organised local government structures is an important step in ensuring local government representation in intergovernmental processes and forums. In 1998 local government representatives nominated by the South African Local Government Association (SALGA) have taken their place in the National Council of Provinces (NCOP). In the same spirit, we also need to work towards ensuring that provincial local government associations are accommodated within the legislative processes of provincial governments.

Section 41(2) of the Constitution requires the development of an Act to establish or provide for structures and institutions to promote intergovernmental relations. The Department of Constitutional Development is currently drafting a discussion document to open debate on the question of intergovernmental relations, with a view to initiating discussions around the content of future legislation. The roles and responsibilities of each sphere within a system of intergovernmental relations will become clearer as this process unfolds. However, a sketch of the basic roles and responsibilities of national and provincial government with respect to local government is outlined below.

1.3. Roles and responsibilities of national and provincial government

The Constitution defines the roles and responsibilities of national and provincial government with respect to local government. It obliges all spheres of government to cooperate with one another in mutual trust and good faith through fostering friendly relations; assisting and supporting one another, informing one another of, and consulting one another on, matters of common interest; and coordinating their actions and legislation with one another. The specific roles of national and provincial government with respect to local government need to be viewed within this context.

1.3.1. National government

National government has a number of roles and responsibilities with respect to local government, including:

- **A strategic role:** National government is responsible for setting the overall strategic framework for the economic and social development of the nation, and for all spheres of government. It should ensure that local government operates within an *enabling framework** and is structured and capacitated in a way that best enables it to promote the development of citizens, local communities, and the nation.
- **Coordinating the transition:** Local government is still in the process of transition envisaged by the Local Government Transition Act. National government, in partnership with other spheres of government, is responsible for the coordination, management and oversight of this transition process. It is also responsible for taking local government into the final phase envisaged by the Local Government Transition Act through legislating for a

new local government system. This White Paper is part of that process.

- **Providing a legislative framework for local government:** National government must provide an overall legislative framework for local government within the general legal framework set out in the Constitution. This includes:
 - o Establishing criteria for the demarcation of municipal boundaries, the definition of categories of municipalities and types within categories.
 - o Making provision for an appropriate division of powers and functions between category (C) and category (B) municipalities.
 - o Municipal electoral systems and administrative matters.
 - o Ensuring that provincial legislation with respect to local government is formulated within a national legislative framework.
 - o Providing a framework for intergovernmental relations, including the structures, procedures and mechanisms to promote and facilitate positive intergovernmental relations and the resolution of intergovernmental disputes within and between the spheres of government.
- **Providing a framework for municipal capacity-building and supporting municipalities:** Section 154(1) of the Constitution tasks both national and provincial government with supporting and strengthening the capacity of municipalities to manage their own affairs, exercise their powers and perform their functions. National government must establish an overall framework for municipal capacity-building and support.
- **Support for key institutions:** National government is committed to supporting and strengthening *organised local government** to enable it to perform its constitutional role effectively. In addition, national government will support other institutions which are crucial to the transformation and continued viability of local government, such as the Local Government Sector Education and Training Authority and the Local Government Bargaining Council.
- **Local government finances:** *Fiscal** provisions for local government, including managing the system of intergovernmental fiscal relations, situating local government's fiscal powers within the national tax structure, and passing legislation to determine local government's "equitable share" of revenue raised nationally and on a range of other financially related topics such as municipal budgetary forms and processes.
- **Monitoring and oversight:** To ensure the necessary levels of compatibility, uniformity and consistency, national government needs to develop an overall framework for a system of monitoring and oversight within which other organs of state, particularly provincial governments, will perform these functions.

A number of institutions require accurate and relevant information to enable the monitoring and oversight of local government. For example, such information is required to enable the oversight of municipalities by the National Assembly (required by Section 55(2)(b)(ii) of the Constitution); the monitoring of municipalities by provincial governments (required by Section 155(6)(a) of the Constitution); and to enable the Human Rights Commission to assess the measures municipalities have taken towards the realisation of specific rights. National departments with decentralised policy and implementation programmes also require reliable information from local government with respect to these programmes.

National government should provide a coherent framework to ensure that the reporting requirements placed on municipalities are reasonable, and should also ensure the rationalisation and standardisation of the current multiplicity of local government surveys into a coherent annualised national data collection system, which includes an annual survey of performance in terms of agreed key

performance indicators, and a quarterly survey of indicators as required for Project Viability, by the SA Reserve Bank, and so forth.

- **Intervention:** Although provincial government is primarily responsible for intervention, national government may also need to intervene together with provincial government or in instances where a provincial government fails to intervene, or where national fiscal resources are implicated, or where such intervention is required to maintain economic unity, essential national standards and national security, or to prevent unreasonable actions that are prejudicial to a province or the country as a whole.

1.3.2. Provincial government

There are very different conditions and challenges for the establishment of the new local government system, both between and within provinces. Some of the key differences arise from the varying capacity and revenue of existing municipalities, and the degree of unmet needs within the municipal area. Provincial governments will need to tailor their approaches to supporting local government according to the specific conditions which prevail in each area.

Provincial government's roles include:

- **A strategic role** with respect to developing a vision and framework for integrated economic, social and community development in the province through the provincial growth and development strategy.
- **A development role:** Provincial government should ensure that municipal integrated development plans combine to form a viable development framework across the province, and are vertically integrated with the provincial growth and development strategy. Provincial government is also responsible for processing grants to municipalities for bulk infrastructure, housing, public works and so forth. Provincial government should ensure that municipal planning and budgeting processes give priority to the basic needs of the community and promote the social and economic development of the community as required by Section 153 of the Constitution.
- **An intergovernmental role:** Provincial government has an intergovernmental role to play with respect to local government. It should establish forums and processes for the purpose of including local government in decision-making processes which affect it. Provincial government can also promote horizontal cooperation and coordination between municipalities in the province.
- **Regulatory role:** Section 155(7) of the Constitution gives national and provincial government the legislative and executive authority to see to the effective performance by municipalities of their functions in respect of matters listed in Schedules 4 and 5, by regulating the exercise by municipalities of their executive authority with respect to the local government matters listed in Parts B of Schedules 4 and 5, and any other matter assigned to local government by legislation.

The old provincial ordinances which regulated the functioning of local government under apartheid are still in force. In many instances these ordinances contradict the new Constitution. As part of the transformation process provincial governments need to reformulate their regulations with respect to local government to ensure that they are both constitutional, and support the new vision of developmental local government. The process of reviewing and repealing provincial ordinances will be facilitated by a nation-wide review across all provinces, and a common approach to the repeal of ordinances.

Where municipalities fail to fulfil their constitutional functions, and the regulation of

their executive powers does not succeed in ensuring that they perform their functions effectively, intervention may be required

- **An institutional development and capacity-building role:** Provincial government establishes municipalities, and is tasked by Section 155 (6) of the Constitution with promoting the development of local government capacity to enable municipalities to perform their functions and manage their own affairs. These responsibilities give provincial government an important role in the institutional development of municipalities, which will be pivotal to ensuring the success of the new local government system during the coming years

Training and capacity-building are an integral part of institutional development. Provincial government is not solely responsible for local government training and capacity building - individual municipal Councils, as employers, have a responsibility for the development of their staff, local government training structures (described in Section F: Administrative Systems) have certain responsibilities for training, and Sogsa has a key role with respect to councillor training. However, provincial government has a critical coordinating and strategic function, both with respect to developing a framework for municipal capacity-building in the province, and ensuring that capacity-building takes place. The training system proposed in this White Paper provides for provincial training structures. Provincial governments' input at this level will ensure that training strategies take account of provincial diversity, and are prioritised to meet the needs of municipalities in the province.

In addition to this coordinating function, provincial governments can build municipal capacity in a number of ways, such as facilitating or funding training programmes, providing technical assistance and mentorship, arranging exchange programmes, providing assistance with municipal integrated development plans, facilitating shared learning between municipalities, and even the secondment of staff where appropriate.

All training and capacity-building initiatives should be linked to the national legislative and policy framework for skills development put forward by the Department of Labour.

- **A fiscal role:** Provincial governments already play a role in monitoring the financial status of municipalities through the provincial task teams of Project Viability. This monitoring role may be extended.

Provinces have a critical role in building the financial management capacity of municipalities and intervening when necessary to ensure local financial viability.

Provincial government's ability to effectively monitor local government can be enhanced through tabling the Auditor-General's reports on each municipality, together with the municipality's comments thereon, at the provincial public accounts committee. Provincial Members of the Executive Council (MECs) for Finance are also represented on the Budget Forum and hence play a key role in determining budget allocations for local government.

- **A monitoring role:** Provincial government has a key role in monitoring local government in order to ensure that high standards of public service and good government are maintained. This function must be conducted in ways which empower local government, and do not impede its functions.

Provincial monitoring and oversight should be directed at local government's execution of functions allocated in Schedules 4 and 5 of the Constitution, and the

execution of assigned powers. Provincial government may also monitor municipalities with respect to the objectives of local government as given in Section 152 of the Constitution.

Provincial government's monitoring role must be supported by an information system which enables the provincial government to determine where municipal capacity needs to be built and where support is required, and to ascertain whether and which kind of regulation or intervention is necessary.

- **An intervention role:** Powers of intervention by provincial government in the affairs of local government provide a safeguard to:
 - o Protect and promote minimum standards of local government delivery and democracy and ensure that local government fulfils its constitutional mandate
 - o Restore a municipality to financial health or to ensure financial sustainability
 - o Promote accountability and public faith in local government institutions
 - o Prevent corruption and maladministration

At present powers of intervention are governed by Section 10G(2) of the Local Government Transition Act. The provisions of this Act will remain in force until 1999, after which the provisions of Section 139 of the Constitution - and any additional policy, procedures or legislation developed in terms of this section - will regulate the process of intervention.

The Local Government Transition Act gives the provincial MEC authority to take wide-ranging steps to restore the finances of municipalities which are in financial difficulty to a state of health.

In terms of Section 139 of the Constitution, provincial government has the power to intervene when a municipality cannot or does not fulfil an executive obligation in terms of legislation. Provincial government may take any appropriate steps to ensure that the municipality fulfils its obligation, including

- o Issuing a directive to the municipal Council, describing the extent of its failure to fulfil its obligations and stating any steps required to meet its obligations.
- o Assuming responsibility for the relevant obligation of that municipality to the extent required to maintain essential national standards or meet established minimum standards for the rendering of a service, to prevent that municipal Council from taking unreasonable action that is prejudicial to the interests of another municipality or to the province as a whole, and to maintain economic unity.

Where a provincial government assumes responsibility for a municipal function in terms of Section 139 (1) (b) of the Constitution:

- o The intervention must end unless approved by the MEC responsible for local government affairs within 14 days
- o Notice of the intervention must be tabled in the provincial legislature and in the NCOP within 14 days of their respective first sittings after the intervention began
- o The intervention must end unless it is approved by the NCOP within 30 days of its first sitting after the intervention began
- o The NCOP must review the intervention regularly, and make appropriate recommendations to the relevant provincial executive

The fair and even exercise of intervention powers requires a level of uniformity across the country. Predictability with respect to the exercise of intervention powers is also an important requirement for stabilising the relationship between municipalities and financial markets. For these reasons national guidelines on the process of intervention will be developed. In addition, a detailed legal framework which governs events when municipalities encounter significant financial difficulties needs to be put into place. This framework needs to cover matters such as debt default provisions, the bankruptcy process and measures which need to be taken in terms of such a process.

National guidelines will be based on the following principles:

- o Firstly, steps should be taken to remove the need for intervention. This includes ensuring that all municipalities have access to adequate training, capacity-building, funding and support systems to enable them to perform their functions and manage their administrations properly. Good monitoring and information systems are required to indicate potential problems before they become crises, so that municipalities are able to take their own corrective measures where problems arise.
- o Secondly, clear responsibility and financial liability for mismanagement, maladministration or fraud must be established, with rapid procedures for prosecuting offenders at both the political and administrative level.
- o Thirdly, national and provincial government should exercise the power given to them in terms of Section 155(7) of the Constitution, to regulate the executive authority of municipalities to ensure that municipalities perform their functions effectively. It is anticipated that, in most instances, the regulation of municipal executive authority will be sufficient to ensure that municipal functions are effectively performed, and intervention in terms of Section 139 of the Constitution will be a rare occurrence.
- o Where intervention is required, the level of intervention needs to be appropriate to the context, ranging from support and advice through issuing directives for specific actions, to the assumption of executive authority for a municipal function by another sphere of government.
- o The ultimate sanction against a municipal Council for persistent non-performance is the loss of executive power. This should occur only where all other mechanisms to improve the situation have failed and in a way which will lead to the re-establishment of the municipal Council's executive power as soon as possible.

Powers of intervention should be seen as a measure of last resort, where the problem cannot be resolved through ordinary intergovernmental processes. There is broad agreement that both national and provincial government are committed to ensuring the stabilisation of the local government environment to such an extent that interventions are exceptional and not regular occurrences.

The above list of roles and responsibilities indicates that national and provincial government are constitutionally required to take an active interest in ensuring the development of strong local government, capable of fulfilling its constitutional mandate.

In return, municipalities are required to work with provincial and national government in their respective areas of jurisdiction, and enhance the effectiveness of national and provincial programmes. Local government should maintain open, cooperative and constructive relations with both provincial and national government, seeing its operation as a component of the broader state structure.

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2. WORKING WITH LOCAL GOVERNMENT

2.1. National policies and programmes

Local government does not determine the sustainability of human settlements alone. Other spheres of government, either by independently conducting their own programmes in the same area as a municipality, or by regulating the operation of municipalities in line with their own sectoral objectives, also affect the overall shape of settlements and the livelihoods of people who live there.

The following is a summary of some national departments' programmes and policies as they relate to local government. The summary gives an indication that the national policy environment within which municipalities operate is rapidly becoming more complex. Local government is increasingly being seen as a point of integration and coordination for the programmes of other spheres of government.

Department of Health

The Department of Health has proposed decentralising significant functions to local government, and will potentially designate municipalities as district health authorities where they have the capacity to perform this function.

The department perceives a clear need to integrate services currently rendered by multiple authorities (e.g., where provincial and local governments operate separate clinics close to each other in the same area), and to coordinate those vertically split services which impact upon health quality (water supply, welfare, transport access, etc.). It sees a district health system which reintegrates and coordinates services at the local government level as the best way to achieve this.

District health authorities will be established across the country with boundaries coterminous with (aligned with) municipal boundaries where possible. In rural areas with smaller, more widely dispersed populations, a number of municipalities may together comprise a district health authority. In denser metropolitan areas, each metropolitan government may incorporate a number of district health authorities.

The proposed district health system will significantly improve health planning and bring real cost savings and improvements in service delivery. But it has major implications for local government which need to be considered. These include:

- Linking 'municipal health services' (an original power of local government in terms of the Constitution) to primary health care, which may have financial implications for local government.
- The alignment of boundaries to enable the effective delivery of municipal and district health authority services.
- The relationship between the employment conditions of district health authority staff and those of local government.

Department of Transport

The Department of Transport has proposed a Bill which envisages the designation of municipalities and/or combinations of municipalities as transport authorities. Transport authorities will have responsibilities for, among other things:

- The development of transport policies and plans based on national and provincial guidelines and visions.

- The implementation of plans and the operation, maintenance and management of transport programmes and systems established under these policies and plans, including public transport
- The administration of land transport authority funds
- The development, implementation and monitoring of environmental strategies with respect to land transport
- The regulation and enforcement of transport matters
- The promotion of security in public transport.

The Bill establishes national and provincial transport funds, as well as specific 'land transport funds' for each transport authority. Land transport funds will receive money from provincial and national budgets as well as grants from member municipalities, money allocated for the subsidisation of public transport, levies on transport infrastructure users approved by provincial MECs, loans approved by provincial legislatures, and from the exploitation of transport authority assets (bus fares, etc.).

The Bill makes allowances for municipalities to set up transport authorities which straddle provincial boundaries if this enables more effective planning and service provision.

The department also proposes the very gradual phasing out of transport subsidies for municipal public transport. In some areas of the country, notably areas of displaced urbanisation, this will have a great impact on settlement patterns and people's work opportunities.

Department of Trade and Industry (DTI)

The role of local government in boosting local economies, enhancing local competitiveness and promoting small scale enterprise will be enhanced by initiatives under the Department of Trade and Industry.

Local government has been actively drawn into small, medium and micro-sized enterprise (SMME) initiatives, via local service centres, and collaboration with *Ntsika** and *Khula** is encouraged. In addition, assistance with local economic development pilot projects is available both from the Department of Trade and Industry and the Department of Constitutional Development.

The *spatial development initiatives** managed by the Department of Trade and Industry offer major opportunities for municipalities to get involved in regional development programmes, and collaborate with other spheres of government and stakeholders to attract investment and boost local job creation. Due to the potential long term impact if these initiatives on local development, municipalities need to become more involved in the planning and implementation of spatial development initiatives.

Department of Arts and Culture

The Constitution lists culture as a concurrent competence. This means that provincial and local government have some responsibility in promoting and developing arts and culture in their areas. Internationally, municipalities are the biggest funders of arts and culture, and many cities have made the transition from industrial to post-industrial global centres through promoting the development of arts and culture locally.

Traditionally in South Africa, community arts centres and libraries are the responsibility of local government. As more of these centres and libraries are built, a legal framework will have to be developed to manage them.

Some other programmes relevant to municipalities are the cultural industries growth strategy, which aims to identify and maximise the economic potential of the cultural industries, and the Legacy Project, which is aimed at making the heritage sector (museums, historic monuments, etc.) more representative of our country's diversity.

Department of Safety and Security

The Department of Safety and Security's national crime prevention strategy has four pillars, namely:

- Re-engineering the criminal justice system
- Environmental design to promote safety and security
- Promoting public values and education.
- Transnational crime.

Local government will be expected to play a key role in the second and third of these pillars: strategising and implementing social crime prevention measures to promote healthy, prosperous and well informed communities in which criminal activity has little opportunity to flourish.

New legislation will enable municipalities to establish municipal police forces. Municipalities will be able to get support through training and access to police facilities.

The department also envisages an overhaul of the present system of community policing forums and their replacement with a system based on municipal public safety committees.

Department of Mineral and Energy Affairs

The Department of Mineral and Energy Affairs is overseeing a process of far reaching changes in the electricity industry. At present Eskom and municipalities both reticulate electricity to different parts of the country and sometimes different parts of the same municipality. Many municipalities are losing their licences to reticulate electricity because of their inability to pay their bulk electricity accounts. It is proposed that a system of regional electricity distributors be established which will combine Eskom and municipality electricity reticulation into autonomous structures.

The proposal will impact significantly on municipalities' revenues and cash flows. In some municipalities profits on electricity supply are used to cross-subsidise otherwise non-viable services within municipal accounts, but many municipalities operate their electricity undertaking at a loss. Municipalities will be allowed to levy a tax on the sale of electricity which should in aggregate improve their income from electricity. However, the removal of electricity will affect the municipal asset base, and thereby impact on credit ratings and borrowing ability.

Many of the details related to establishing the regional electricity distributors, such as the exact levy municipalities may charge and the role of municipal representatives on regional electricity distributor governance structures, still have to be finalised. Local government will be an active participant in this discussion, and, via Salga or other mechanisms, must ensure that its interests are represented.

Department of Land Affairs

The Department of Land Affairs administers the Development Facilitation Act, which imposes a set of planning requirements on municipalities. The Local Government Transition Act (Second Amendment Act) also imposes certain planning requirements on local government. The Department of Constitutional Development and the Department of Land Affairs are working closely through the Forum for Effective Planning and Development to ensure that these requirements, as well as the sectoral plans which other national departments require from local government, are coordinated and streamlined into a single generic planning process - the integrated development planning process (see Section B, 2.2 and 3.1 for more on integrated development plans).

Local government also needs to work closely with the Department of Land Affairs to ensure that land reform and restitution processes are incorporated in municipal integrated development plans, and that the benefits of tenure reform are consolidated within municipal areas.

Department of Public Works

The Department of Public Works has a number of programmes which impact upon local economic development. These include a labour-intensity programme, a procurement reform programme within national and provincial government, and a programme for support to emerging contractors.

The department is investigating the possibility of extending the procurement reform programme to local government, and of working closely with municipalities around the other programmes.

Department of Housing

In terms of the new Housing Bill, municipalities are required to ensure that, within the frameworks of national and provincial legislation and policy, all inhabitants in their areas have access to adequate housing. This is to be achieved through the setting of housing delivery goals, the coordination of housing development and the identification and development of appropriate land. It also requires coordination of the planning and provision of bulk and basic services with the planning and implementation of new housing projects.

The Bill allows for municipalities to participate directly in the national housing programme by either acting as a developer or an administrator of a national programme in which it contracts developers. If a municipality is accredited for the purposes of administering a national housing programme, it may receive allocations from the provincial housing development fund if the MEC deems this appropriate.

At present no person without formal legal title to land is able to qualify for a subsidy under the national housing programme. This has excluded people living on communal land in rural areas from accessing the subsidy. The Department of Housing is exploring a new instrument with the Department of Land Affairs which may allow people in rural areas to use existing access to a portion of land as a qualified title for the purposes of receiving a subsidy.

Department of Water Affairs and Forestry

In recent years the Department of Water Affairs and Forestry has pursued a multibillion rand programme of supplying water directly to communities. The programme is beginning to have a significant and positive impact on the quality of life of rural people. However, largely due to the transitional process in local government, this programme has often bypassed municipalities in the past. The

Department of Water Affairs and Forestry has committed itself to a systematic institution-building programme at the local government level to ensure local government involvement in the programme.

The Department of Water Affairs and Forestry has developed a White Paper on Water Supply and Sanitation, which will impact on municipalities with respect to the delivery of these services. The recently passed Water Services Act (No. 108 of 1997) requires that all municipalities draw up water services management and water resources development plans, specifying how the municipality plans to use and preserve water as a national resource.

The Department of Water Affairs and Forestry may also provide for the specific regulation of water tariffs for bulk purchases by, and reticulation within, municipalities. These regulations could have a significant impact on the way municipalities conceive the long-term development of their areas.

Department of Environmental Affairs and Tourism

In order to provide for thorough and uniform control of the environmental impact of development projects, the Minister of Environmental Affairs and Tourism published a provisional list of activities and draft regulations for environmental impact assessments. This is a significant step in formalising environmental impact assessment in South Africa, and facilitating the integration of environmental impact management with development processes. This will lead to more responsible and environmentally sensitive development. Provision has been made in the regulations for the relevant provincial authorities to identify municipalities that could be designated by the Minister to act as competent authorities.

Tourism is a concurrent competence, and requires good coordination and mutual support between spheres of government, particularly in view of the diverse nature of tourism. The White Paper on Tourism emphasises the important role of municipalities in developing tourism, and the extraordinary contribution this sector can make to socio-economic upliftment.

Disaster management

Effective disaster management requires that the resources and capacities of all spheres of government are coordinated to prevent disasters where possible, and deal with them effectively where they occur. Each municipality should proactively plan for the prevention and management of disasters. Municipalities should, through their planning and implementation processes, seek to minimise the vulnerability of communities and protect people who are at risk. The direct involvement of communities in planning and implementation is the most effective way to identify the possible hazards and risks faced by communities, and build a culture of risk reduction. Disaster prevention and preparedness should be an integral part of development policy.

The Department of Defence assists in the crime prevention function of disaster management and has various disaster management and civil aid capabilities. Local government will need to work together with the Department of Defence during times of crisis when this assistance is required.

2.2. Cooperative government in practice

It is clear that national government is increasingly looking to local government as a logical point of coordination and necessary vehicle for the implementation of policies and programmes. Provincial governments are also decentralising certain functions to local government. At the same time, local government is constitutionally obliged to participate in national and provincial development.

programmes

It is also clear that the policies and programmes of other spheres have wide-reaching implications for local government, and can potentially have a positive impact on municipal capacity and a strong synergy with municipal programmes. National and provincial government can build local government capacity through the way they execute their own programmes, and enhance the effectiveness of both. Some of the ways in which this can happen are:

- **Working with local government directly:** If national and provincial departments commit themselves to working through local government directly, substantial resources could be made available to municipalities to conduct their constitutionally assigned powers and functions. Depending on the nature of the funding, it may contribute significantly to local government institutional development, as well as general development and delivery programmes.

Municipalities often find themselves working in parallel with a range of local offices of government departments. The activities of these parallel structures are sometimes difficult to incorporate into integrated development plans, and may also undermine the authority of local government to govern within its area of jurisdiction. If local government is to govern effectively and play an integrating, coordinating role at the local level, some of the activities of these structures may need to be brought under local government authority.

- **Integrating programmes into municipal integrated development plans:** Municipalities are expected to develop local infrastructure investment plans on the basis of integrated development plans. However, national and provincial departments have major infrastructure programmes of their own, which are not always executed with the active and informed participation of municipalities. Some of these national and provincial investments may impose unforeseen future costs on municipalities. Integrated planning is needed to coordinate national, provincial and local investments in municipal areas of jurisdiction, to ensure that scarce resources are utilised for maximum impact.
- **Coordinated decentralisation and the assignment of powers:** National and provincial government are constitutionally permitted to devolve powers and functions to local government. While decentralisation is often desirable to improve the effectiveness of government as a whole, it is not without problems. The devolution of a new function to local government may occur without it being accompanied by the financial and administrative capacity required to sustain it - what is termed an unfunded mandate. Unfunded mandates strain local government's limited resources and, ultimately, result in a lack of delivery.

In order to ensure that the combination of decentralisation initiatives by different departments does not overwhelm local government, and that unfunded mandates are avoided, it is proposed that all legislation dealing with the decentralisation or assignment of powers to local government is referred to the local government MinMec for discussion and comment. In addition, provincial government should monitor the extent to which coordination of governmental activities within a municipal area is taking place through the relevant municipality, and report to MinMec in this regard.

The delegation of functions from a national level to local government should be the result of a cabinet decision, and should follow consultation with both provincial and local government. Similarly, delegations from provincial government to local government should be the result of a provincial Executive Council decision, and

should follow consultations with local government in the province. This approach will facilitate integrated decision-making by ensuring that decentralisation initiatives by different line function departments are considered in relation to one another, and their combined impact on local government.

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3. HORIZONTAL COOPERATION BETWEEN MUNICIPALITIES

Constructive and mutually beneficial relations between the three spheres of government are vital to the integrity and effectiveness of local government. However, horizontal cooperation between municipalities, whether formal or informal, is equally important.

3.1. Organised local government

The Constitution allows for municipalities to organise forms of municipal association. A national organisation, Salga, and nine provincial associations have been established.

For historical reasons the voice of local government has been weak in the development of national and provincial policies, even where these affect local government directly. Salga's key role is the effective representation of local government in the legislative processes of all spheres of government, and in intergovernmental executive processes. Salga represents local government interests in forums such as the National Council of Provinces, the Financial and Fiscal Commission, the new Budget Forum dealing with intergovernmental transfers, MinMec, and in the drafting of legislation that affects the status, institutions, powers and functions of municipalities. In order to fulfil this representative role effectively, Salga must develop its own policy formulation and advocacy capacity, as well as develop strong internal mandating and consultative processes.

Organised local government in South Africa is also an employers' organisation, and constitutes the employer component of the South African Local Government Bargaining Council. Labour relations is often a neglected area, and the importance of labour matters and their impact on the daily operations of local government is sometimes not fully recognised.

Salga has a key role to play, not only as an employer in the South African Local Government Bargaining Council, but also in building capacity in the area of labour relations among its membership, and maintaining open and constructive relationships with organised labour. The successful transformation of local government requires that the relations between employer bodies and municipal trade unions are reconstructed around a common commitment to a developmental role for local government. The negotiation of this partnership will require vision and leadership, as well as considerable expertise in labour relations, bargaining, conflict resolution and human resource management and development. The Department of Labour can play a role in supporting Salga and developing its capacity as an employer organisation.

Salga also has potential to make a strong contribution to the development of municipalities throughout the country, through, for example:

- The provision of specialised services to supplement and strengthen the capacity of municipalities.
- Research and information dissemination
- Facilitating shared learning between municipalities
- Human resource development
- Councillor training

Organised local government is primarily funded by and dependent on membership fees payable by municipalities. This keeps local government associations accountable to the municipalities that constitute it. However, the functions performed by organised local government require wide-ranging, high-level and specialised human resources. For organised local government to be effective, additional sources of funding will need to be accessed. National and provincial government are committed to assisting organised local government, and have made provision

for funding organised local government on a rand-for-rand basis out of the equitable share of national revenue to which local government is entitled

3.2. Informal and international relationships between municipalities

Municipalities need not relate to each other through formal associations only. Inter-municipal cooperation may take many varied forms, including exchange of learning experiences; sharing of staff, technology and equipment; joint investment projects, and collective purchasing.

Municipalities can also engage with municipalities in other countries, through a range of mechanisms from informal linkages to formal twinning arrangements and membership of international municipal institutions. Due to South Africa's historical isolation, very little attention was given to municipal international relations in the past. A process is currently underway to discuss areas where coordination may be required, such as visits to foreign countries initiated by municipalities or foreign governments; donor support to municipalities in South Africa; and the conclusion of agreements or contracts with foreign entities in cases where such agreements can create rights and/or obligations for the municipality, or impact on the country's foreign policy.

International linkages may provide numerous benefits to South African municipalities, including facilitating the sharing of international expertise and best practice experience. The Department of Constitutional Development, in consultation with the Department of Foreign Affairs and Salga, will develop and publish a policy on municipal international relations in 1998.

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4. CONCLUDING COMMENT

Strong and capacitated local government can play a critical role in enhancing the success of national and provincial policies and programmes, and building sustainable human settlements for the nation. In a spirit of cooperative governance, national and provincial government should seek to support and enhance the developmental role of local government.

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SECTION E: POLITICAL SYSTEMS

In this section:

This chapter looks at political systems. It discusses the importance of strong political leadership for developmental local government and examines political and electoral systems for the new local government system.

1. [Political Leadership](#)
2. [Political Systems](#)
3. [Municipal Elections](#)
4. [Concluding Comments](#)

1. POLITICAL LEADERSHIP

Both urban and rural localities are becoming increasingly complex units to govern. The local area is not an island unto itself, a closed society. Rather, local areas are increasingly part of a web of social, economic and political transactions that transcend their boundaries. The actions of a wide range of civil and corporate players impact on the local economy and society. Resources and capacity are dispersed across different sectors and deployed for a variety of purposes.

In this context of complexity, developmental municipalities will need to be guided by strong political leadership, able to make difficult policy judgements, work with a range of players and guide the actions of the administration to promote the social and economic well-being of local communities.

Developmental local government requires a political leadership which:

- **Provides community-wide leadership and vision.** Local communities are often diverse and contain a multiplicity of diverging interests. By putting forward a vision for the local area, building coalitions of common interest and encouraging the development of a vibrant civil society, local political leadership can enhance the capacity of diverse groups of people to act together around shared goals.
- **Constantly builds its capacity to make policy judgements.** Governing is about making choices, from the prioritisation of a range of demands to the allocation of limited resources. Local political leaders can actively strengthen their ability to make policy judgements through deepening their understanding of the dynamics in the local area, anticipating changes and learning from past practice.
- **Is accountable and transparent.** Accountability means being willing to account for one's decisions and actions. Developmental local government requires a political leadership which creates opportunities to account to the community over and above regular elections. Increased accountability ensures that the actions of the Council reflect the aspirations of the community, increases the legitimacy of the Council and deepens local democracy.
- **Builds partnerships and coalitions.** The challenge of meeting the needs and aspirations of local communities requires a political leadership able to build partnerships with communities, business, labour and other public agencies. A political leadership that engages in ongoing dialogue with a wide range of local actors will be able to identify and act on opportunities to build partnerships between sectors. In this way, human and financial resources and capacity can be mobilised to achieve developmental goals.
- **Represents the diversity of interests.** Municipal Councils which represent the diversity of interests within the local community are best able to provide credible and effective leadership. Municipalities should take active steps to

ensure that representatives from groups which tend to be marginalised (such as women, people with disabilities and the poor) are encouraged to stand for elections. One way to achieve this is through running candidate support programmes, which provide information to prospective candidates on issues such as electoral systems and processes, and the functions and operations of local government; and build skills in areas such as public speaking, organising public meetings, fundraising and so forth.

- **Demonstrates value for money.** Local political leadership is responsible for ensuring that local taxes are utilised to the maximum benefit of the local community. Local political leadership should therefore be concerned with the efficiency and effectiveness of the local administration, and constantly seek to enhance performance and service quality.

Various support mechanisms are required to enable dynamic local political leadership, including capacity-building programmes for councillors, support for the policy formulation process and information systems.

Changes to the current local government system may also be required. For example:

- The ability of political leaders to ensure value for money and quality services requires a system of performance management which allows councillors to assess the performance of their own administration as well as that of other service providers (see also Section B: Developmental Local Government, 3.2).
- The development of partnerships requires a framework of support and regulation to enable various types of partnership.
- Building a community-wide vision requires strong support for ward councillors to engage local communities, and planning and budgeting processes which are participative and open.

These systems, although they are closely linked to the support and development of strong political leadership, are discussed elsewhere in this paper. The rest of this section is concerned with the systems and structures which directly shape the roles and operations of local political leaders, namely, political and electoral systems.

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2. POLITICAL SYSTEMS

- 2.1 The delegation of executive powers
- 2.2 Committee systems
- 2.3 Municipal types

2.1. The delegation of executive powers**2.1.1. Constitutional framework**

The Constitution specifies that municipal Councils should make decisions concerning the exercise of all powers and the performance of all functions of the municipality. It obliges the Council to elect a chairperson, and allows the Council, subject to national legislation, to elect an Executive Committee.

National legislation may provide criteria for determining the size of a municipal Council, whether municipal Councils may elect an Executive Committee or any other committee, and the size of the Executive Committee or any other committee of a municipal Council.

Why delegate executive powers?

The first issue which requires attention is whether there should be a delegation of executive powers at the local level. In other words, should municipal Councils elect an executive?

The delegation of executive powers is common to most government systems. Generally, it has advantages in terms of both accountability and efficiency, particularly in larger Councils.

- **Efficiency** A small executive has the ability to act more quickly, efficiently and responsively than a large legislature. However, the legislature acts as a check on the powers of the executive, and is able to ensure that the executive act in a manner consistent with its mandate.
- **Accountability** An independent legislature can call both the executive and administration to account and is able to stimulate debate on policy issues and probe the implementation process.

These advantages may be minimised where the municipal Council is very small. It is common experience that discussions in large forums tend to be broader, and result in decisions more slowly, than those in small focused forums. A small Council with, for example, less than 12 members, may be able to take decisions as efficiently in plenary as through the establishment of a separate executive. Similarly, the number of members in Council may not be sufficient to stimulate wide debate in the legislature if a separate executive is formed.

While municipal Councils with more than twelve members should elect an executive, this does not undermine the role of non-executive members of Council. Both the executive and legislature have important, although distinct, roles to play in enhancing local democracy and accountability and steering the municipality towards developmental outcomes.

2.1.2. Individual and collective executives

There are a number of ways in which the executive can be structured. One of the key decisions is whether the executive should be a collective (a committee) or an individual.

An individual executive is most commonly the Mayor. This may be misleading in the South African context, where the Mayor has historically played a ceremonial as opposed to executive role. In this paper "Mayor" refers to an executive Mayor with a role different to the previous role of Mayors.

An individual executive Mayor may be an appropriate form of political leadership for many Councils. It has the advantage of "giving a face" to local government, and creating a strong focal point for local politics. However, the executive functions of large Councils may demand additional political capacity (technical capacity should be provided to any form of municipal executive). There are two broad options here:

- The first is to allow the Mayor to constitute a "cabinet" by appointing a limited number of members of Council to serve on her/his cabinet. The Mayor could delegate responsibilities to members of cabinet as required, but would remain accountable to Council for the executive functions of the municipality.
- The second is to create a collective executive, or "Executive Committee". This differs from the above option in that the Executive Committee is elected by the whole Council, and not appointed by the Mayor. Executive powers

are vested in the Executive Committee through delegation from Council. Although the Mayor would be the chairperson of the Executive Committee, he or she would be unable to take executive decisions as an individual. In this system executive powers would be exercised collectively, i.e. a certain quorum of members of the Executive Committee would be required to take decisions.

The first option retains the advantages of an individual executive such as decisiveness and increased public visibility. However, the collective Executive Committee may also have distinct advantages: by spreading responsibility for executive functions across a number of councillors this structure can act as an effective method for building the capacity of emerging political leadership.

It is proposed that both individual and collective executive options are allowed for in future legislation. In other words, municipal Councils could have either:

- An executive Mayor, elected from and by the members of the municipal Council. The municipal Council would delegate executive powers to the Mayor. The Mayor could be allowed to appoint a limited number of Council members to his/her cabinet, depending on the size of the Council, or
- An Executive Committee, elected from and by the members of the municipal Council. The Mayor would be the chairperson of the Executive Committee. The municipal Council would delegate executive powers to the Executive Committee.

In both options the municipal Council would also elect a chairperson. The chairperson would preside over meetings of Council. The Council chairperson would play a separate and distinct role from that of the Mayor.

2.1.3. The extent of delegation

Each municipal Council must decide on which powers should be delegated to the executive Mayor or the Executive Committee.

Section 160(2) of the Constitution states that the following powers may not be delegated but must be exercised directly by the Council:

- The passing of by-laws
- The approval of budgets
- The imposition of rates and other taxes, levies and duties
- The raising of loans

In addition, national legislation may prohibit the delegation of other functions, such as the approval of municipal integrated development plans.

Municipal Councils should delegate executive powers in a manner which facilitates timely and efficient decision-making, and allows for the sound management and oversight of the municipal administration.

The delegation of powers and functions to other Council committees may also enhance decision-making processes within the Council.

2.2. Committee systems

Municipal committees can have either delegated powers (to take decisions within their terms of reference) or advisory powers (to advise the executive on issues which fall within their terms of reference) or a combination of both.

Council committees can play a number of roles

- **Management and supervision of a municipal function** Committees, established to oversee the workings of the administration, tend to operate best when they have distinct areas of competence and are aligned to the administrative departments/clusters/units which they supervise. However, there is a danger that only having committees structured along departmental lines will lead to fragmented decision-making
- **Management and supervision within part of a municipal area** Municipal Councils with large areas of jurisdiction may wish to delegate managerial or supervisory powers to area-based committees whose areas of jurisdiction correspond to decentralised administrative units. Area-based committees can assist with the coordination of municipal service delivery within a particular area, and should have delegated or advisory powers over (aspects of) a number of functions within their area of jurisdiction
- **Policy-formulation** Committees established to formulate policy (or manage a participative policy formulation process) may operate best where the focus of the committee crosses departmental boundaries (for example, poverty alleviation or inner city regeneration as opposed simply to housing or parks and recreation)

All municipalities will be required to establish an *Audit Committee** and a *Tender Committee** to enhance municipal accountability, with the exception of very small municipalities, which will be required to establish an audit and tender function

The kind of committee system that will best enable a municipality to fulfil its functions depends on local requirements, needs and policy priorities

Within any committee system it is critical that councillors are provided with sound information as a basis for decision-making. The committee system has traditionally been driven by reports generated by the administration. While this is usually sufficient for supervisory functions, committees with a policy focus require a broad base of information sources. In such cases, other options should be considered, including

- The establishment of policy research units
- Contracting in policy research capacity
- Joint research initiatives between municipalities
- The establishment of a relevant database

2.3. Municipal types

Section 155 of the Constitution obliges national government to define the different types of municipality that may be established within each category of municipality, and provincial governments to determine the different types of municipality to be established in the province

In referring to types, the Constitution clearly envisages some differentiation between municipalities in addition to the different categories of municipalities provided for (A, B or C). In other words, municipalities belonging to the same category might differ from each other in terms of their political systems. Municipal political systems provide a basis for such differentiation, and for the development of municipal types.

Municipal types could include variables such as:

- Whether a municipal Council has an Executive Committee, an individual Executive (such as an executive Mayor), or no delegation of executive powers
- The number of members of the Executive Committee, or the number of members that an Executive Mayor may appoint to constitute his or her cabinet
- The number of committees that a municipal Council may establish

National legislation will define a number of municipal types, and specify guidelines for the application of types. For example, to ensure that decision-making is streamlined and efficient, a maximum number of committees and committee members may be determined in relation to the category of municipality and size of the municipal Council. This maximum number will not include ad hoc committees (such as issue-specific committees established for a limited time period) or other committees which municipalities may be required to establish by legislation

Provincial legislation will determine which municipal types will be applied in each province. In addition, Ward Committees and Metropolitan Substructures may be committees of a Metropolitan Council and hence the choice between systems of metropolitan government is a choice of municipal type, which must be determined by provincial legislation

- Each municipality will determine which committees it will establish, the membership of its committees, and the powers to be delegated to each committee.

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3. MUNICIPAL ELECTIONS

3.1. Electoral systems

The present municipal electoral system consists of:

- 40% *proportional representation**
- 60% *first-past-the-post ward candidature**

This system has two excellent features, namely, an element of representivity (the proportional matching of Council seats with votes cast), and an element of accountability (the identification of individual councillors to particular wards). Both these valuable features should be retained in any future system

The issue of representivity does not only refer to party proportionality, but extends to wider questions of representivity, such as the gender balance within municipal Councils. Although women constitute more than 50% of the population, only 20% of municipal councillors are women. International research has shown that a proportional representation system is most likely to result in an increased proportion of women councillors. This is substantiated by the results of the 1995 local government elections in South Africa, where 29% of the councillors elected to proportional representation seats were women, compared to 11% of women elected to wards

While a proportional representation system is most favorable in terms of gender representivity, the increased accountability offered by a ward component should not be lost. The enhanced accountability which will result from strengthening the role of ward councillors will benefit all groups within the community, including women. A new electoral system should therefore retain both a proportional representation and ward component. The present ratio of 40% proportional

representation to 60% ward seats will be retained

The present system is a *parallel system** in which both components operate separately. The effect of this is that distortions on party representivity produced by the high first-past-the-post ward component are not necessarily adjusted by the proportional component. This could be substantially corrected in the South African situation, while still retaining the advantages of wards, by applying a *mixed system** in which the proportional component is deliberately geared to adjust distortions.

In the proposed mixed system, ward candidates would be elected in single-member wards according to the system of first-past-the-post. In addition, party votes would be counted either on the basis of the political affiliation of the ward candidates, or on a second party vote. The total party votes would determine the overall number of seats in the municipal Council to which each party is entitled, calculated proportionally according to the present *droop quota** and the *largest remainder method**. Thus, if a municipal council has 20 seats and a party wins 70% of the party votes in the election, it will qualify for 70%, or 14 seats. If it has won six ward seats, it will therefore receive an additional eight proportional representation seats, allocated as at present from its closed party list. The number of proportional representation seats is determined by subtracting the ward seats from the total allocation given by the proportional representation count. No seats would be deducted where a party wins more ward seats than those allocated to it by virtue of its party votes.

The existing gender inequities in municipal government could be addressed through the introduction of a *quota** system in the proportional representation component by political parties. This would be an interim mechanism required by current circumstances. Prolonged use of a quota system may have an adverse effect, and defeat the objective of empowering women to stand as candidates for municipal Councils and compete against male candidates on an equal footing. Political parties are encouraged to ensure that at least half of the candidates on party lists in the next three municipal elections are women, and that party lists are drawn up so that the first candidate on the list, and every second candidate thereafter, is a woman.

A mixed electoral system may be unnecessarily complex for small urban municipalities with around 1500 or fewer voters. In these cases only the proportional representation component should be applied.

3.1.1. Ward delimitation

Ward delimitation is the responsibility of the Electoral Commission.

The delimitation of wards should take into account the following criteria:

- An approximately equal number of registered voters between wards, with not more than 10% variation from the norm
- Availability and location of a suitable place for voting (and counting if appropriate), taking into consideration:
 - Communications and access to and from that place
 - Density of population
 - Topography and physical characteristics
 - Safety and security of voters and the integrity of the voting process
- Suburban identity.
- Number of voters who can be accommodated within the required time frame.

3.1.2. Number of councillors

At present there are some 11 300 municipal councillors in the country. Many municipalities have more councillors than is necessary or affordable. Municipal Councils which are too large obstruct meaningful representation and effective decision-making, as Council meetings become extended and indecisive, committees grow in size and number, and administration fragments. Currently, many councillors are part-time appointments, and must juggle their time to accommodate work, family and civic commitments. Ward councillors in particular struggle to manage their work commitments and to remain responsive to community needs.

A more community-oriented political system could be built through reducing the overall number of councillors, and using the financial resources allocated to councillors to enable the appointment of an increased proportion of councillors on a full-time basis.

It is proposed that the number of councillors is determined by setting an upper limit (which should be the maximum size of a municipal Council which facilitates effective decision-making) and a lower limit, and determining a range between these two limits. In general, an appropriate upper limit or maximum size for municipal Councils is approximately 45 members of Council, and an appropriate lower limit is three members of Council. In large metropolitan areas additional Council seats may be required to ensure adequate representation. While this approach will result in different councillor : constituent ratios in different parts of the country, it will ensure that every municipal Council is scaled to enable effective decision-making within its area of jurisdiction.

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4. CONCLUDING COMMENT

Democratic and developmental local government requires dynamic political leadership, regular and free elections, and appropriate political structures and systems.

To enable a community-oriented and dynamic political leadership, it is proposed that the number of municipal councillors be reduced, and the support provided to councillors increased.

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SECTION G: MUNICIPAL FINANCE

In this section:

This section deals with municipal finance. It outlines the current situation and proposes a framework for a new municipal financial system, including local revenue instruments and policies, intergovernmental transfers and leveraging additional investment in municipal infrastructure.

A new framework for municipal finance which supports the developmental role of local government should:

- Address the root causes of the financial problems that face municipalities
- Balance programmes for poverty eradication and equity with strategies to enhance growth, job creation and competitiveness
- Empower municipalities to fulfil their constitutional mandate

A new framework must also recognise and accommodate the differences between municipalities. Urban and rural municipalities, and even those in different metropolitan areas, are in very different financial circumstances, with very different prospects for providing adequate services at reasonable costs. Some municipalities, particularly those in rural areas, do not have adequate tax bases to fund the delivery of even a minimum level of basic services.

The underlying problems with the existing municipal finance system relate both to shortcomings in policy, and to poor implementation of the current system, such as inadequacies in financial management and service delivery. Interventions to improve the system should therefore include changes to both policy, and capacity-building initiatives.

1. The Current Situation
2. A Framework for a New Municipal Financial System
3. Leveraging additional investment in the Municipal Sector
4. Budgeting, Accounting, Financial Reporting and Management
5. Concluding Comment

1. CURRENT SITUATION**1.1. Basic features**

The aggregate size of the municipal budget in South Africa is substantial. In the 1996-97 financial year, municipalities budgeted for total expenditure of more than R48bn. This represents about 7.5% of South Africa's total gross domestic product, and is equivalent to 20.97% of the country's total public sector budget. Within this, municipal budgets vary enormously, from metropolitan areas with budgets of several billions, to small rural councils with negligible revenues.

Most local government revenue is generated by trading services (electricity, water and sanitation). In aggregate, revenue from trading services accounts for over 60% of local government revenue. Electricity, for example, constitutes the largest revenue source for many municipalities. While the surplus derived from the sale of electricity (i.e., the difference between revenue and total expenditure) is not large, it remains an important source of income for many municipalities. Alternative income from levies on electricity sales will be generated once restructuring within the electricity sector results in municipalities no longer playing a direct service provision role.

The major source of tax revenue for municipalities is property rates. These generate around 20% of total revenue. The Regional Service Council and Joint Services Board

levies levied by District and Metropolitan Councils bring in an additional 5%.

The total amount budgeted for intergovernmental transfers from the central fiscus to municipalities in 1996-97 equalled more than R5.2bn, of which about R1.2bn was for agency payments, R1.2bn was for capital grants (excluding any receipts from the housing subsidy programme), and R2.2bn was for explicitly (cash) operating subsidies. The balance consisted mainly of implicit (non-cash) subsidies from national departments to the local level. In 1997-98 this total - excluding *rollover funds** - rose to R5.9bn.

1.2. The Constitution

A restructured system of municipal finance needs to be founded on the Constitution.

Sections 229 and 230 of the Constitution grant municipalities considerable taxation and borrowing powers, but subject these powers to national legislation and regulation. Municipal taxation powers are also limited in that they cannot "unreasonably prejudice" national economic policies and economic activities. Borrowing powers are limited by the requirement that borrowings do not fund budget deficits. This means that the Constitution effectively prohibits deficit budgeting at the local sphere.

The Constitution addresses intergovernmental fiscal relations in two broad respects:

- o **Intergovernmental transfers:** Section 227 entitles the local sphere to an "equitable share" of nationally raised revenue in order that it may "provide basic services and perform the functions allocated to it". Municipalities may also receive additional grants from national or provincial government on a conditional or unconditional basis.
- o **Oversight and regulation of the financial affairs of municipalities:** Sections 139 (1)(a) and (b) and 155 (7) give national and provincial government executive and legislative authority to oversee the performance of municipalities with regard to their functions. Sections 229 (1)(b), (2)(b), 230 (1) provide for national regulation over the fiscal powers of a municipality. In addition, sections 215 and 216 and other provisions of Chapter 13 grant powers to the national Treasury to regulate the financial affairs of municipalities.

The proposed Treasury Control Act required under Section 216 of the Constitution will set financial controls for all spheres of government, and impose responsibilities and penalties on accounting officers and chief executive officers, as well as their political heads. Intervention in the event of gross financial mismanagement is also allowed in terms of Sections 100 and 139 of the Constitution. Sections 229 and 230 also provide for national regulation over the fiscal (i.e., taxing and borrowing) powers of municipalities.

1.3. Policy objectives

In order to meet the objectives of Constitution, the system of municipal finance will need to be restructured in line with a number of basic policy principles.

Principles for the new system

- o **Revenue adequacy and certainty:** Municipalities need to have access to adequate sources of revenue - either own resources or intergovernmental transfers - to enable them to carry out the functions that have been assigned to them. Municipalities should be encouraged to fully exploit these sources of revenue to meet their developmental objectives. Municipalities should have reasonable certainty of revenue to allow for realistic planning.
- o **Sustainability:** Financial sustainability requires that municipalities ensure that their budgets are balanced (income should cover expenditure). Given revenue constraints, this involves ensuring that services are provided at levels which are affordable, and that municipalities are able to recover the costs of service delivery. No bailout will be provided to a municipality that overspends its budget and/or fails

to put in place proper financial management controls. It is the responsibility of the political leaders to ensure that they set realistic budgets. However, there is a need for subsidisation to ensure that poor households, who are unable to pay even a proportion of service costs, have access to basic services.

- o **Effective and efficient resource use:** Economic resources are scarce and should be used in the best possible way to reap the maximum benefit for local communities. However, there are no mechanisms available to ensure that municipal decisions will indeed lead to an effective allocation of resources. It is therefore important that local residents provide the necessary checks and balances. They can do this by participating in the budgeting process to ensure that resources are being put to their best use. Efficiencies in public spending and resource allocation will ultimately increase the access of the poor to basic services.
- o **Accountability, transparency and good governance:** Municipalities should be held responsible and accountable to local taxpayers for the use of public funds. Elected representatives should be required to justify their expenditure decisions and explain why and how the revenue necessary to sustain that expenditure is raised. The fiscal system should be designed to encourage accountability. Municipal budgeting and financial affairs should be open to public scrutiny, and communities should have a greater voice in ratifying decisions about how revenue is raised and spent. Community participation in budgeting should aim to incorporate those groups in the community, such as women, who face particular constraints in participating. It should also include a capacity-building component to ensure that people understand the process of prioritisation - why resources are allocated to one set of things rather than to another. Accounting and financial reporting procedures should minimise opportunities for corruption and malpractice.
- o **Equity and redistribution:** Municipalities must treat citizens equitably with regard to the provision of services. In turn, national and provincial government must treat municipalities equitably with regard to intergovernmental transfers. Local government cannot be solely responsible for redistribution, and national government has a critical role to play in this regard, particularly with respect to subsidising the provision of basic services. The "equitable share" of national revenue to which local government is entitled will be directed primarily at this purpose. In addition to targeted subsidies to poor households, funded from the "equitable share", municipalities can cross-subsidise between high and low-income consumers, both within particular services and between services. The extent of this cross-subsidy is a local choice that needs to be exercised carefully, within the framework of the municipal integrated development plan.
- o **Development and Investment:** Meeting basic needs in the context of existing service backlogs will require increased investment in municipal infrastructure. Public Private Partnerships such as leases and concessions, discussed in Section F: Administrative Systems, provide a mechanism for attracting private investment in municipal infrastructure.

Macroeconomic* management: Municipalities form an integral part of the public sector in South Africa, and their actions can substantially affect national policy. Municipalities need to operate within the national macroeconomic framework and their financial activities should not be such as to destabilise macroeconomic fiscal policy.

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2. A FRAMEWORK FOR A NEW MUNICIPAL FINANCIAL SYSTEM

- 2.1 Local revenue instruments and policies
- 2.2 Intergovernmental transfers

In order to achieve the objectives outlined above, the municipal fiscal and financial system needs to be restructured in four critical areas

- Local revenue instruments* and policies
- National-local intergovernmental transfers.
- Gearing in private investments.
- Budgeting, accounting and financial reporting systems

Government's broad policy directions in each of these areas are outlined below. In each case the specific measures that are taken will need to be formulated in the context of government's overall macroeconomic and fiscal policies.

2.1. Local revenue instruments and policies

The power to tax is essential to sustainable and accountable local government. There are four important areas of local decision-making with respect to taxation.

- The choice of tax to be imposed.
- The definition of the tax base*.
- The choice of the tax rate*.
- Tax administration.

The choice of tax rate is the most critical means of promoting the fiscal autonomy* of local government. The freedom of municipalities to vary the tax rate strengthens local accountability, and enables communities to challenge municipalities about the value-for-money of services provided.

Any local tax policy must be seen within the framework of the total tax system and the need for a coherent and transparent tax system. Further, taxation policy must take into account any adverse consequences on the productive economy. National legislation must provide a framework within which local taxation policy must fit. The impact of property taxes and Regional Service Council and Joint Services Board levies must be assessed in terms of this framework and national macroeconomic objectives like job creation and the need for competitiveness.

Municipalities require access to adequate resources and budgetary powers to fulfil their assigned functions. On average, municipalities have sufficient revenue raising powers to fund the bulk of their expenditure, and finance 90% of their recurrent expenditure* out of own revenues. Own revenues include rates (19.89%) and trading services such as electricity (41.4%), water (11.8%); and sewage and refuse removal (8.22%).

These aggregate figures hide the fact there are great variations between municipalities across the country, and rural municipalities fund far less of their expenditure from own revenues than urban municipalities do. In fact, many municipal services are provided by national and provincial departments in rural areas. A more accurate picture will only emerge when rural local government becomes functional and assumes responsibility for the provision of these services.

2.1.1. Property taxation

The major source of local taxation is the property tax (rates). This is currently levied only in urban areas. The owners of property in municipal areas have to pay a tax based on a valuation of their properties in order to finance municipal services. While this tax is by no means the sole source of municipal revenue, it is an

important source of *discretionary own revenue** for local government and enables it to function effectively

Rating in the country has historically been done differently in the various provinces. Each of the former four provinces had its own legislation in this regard. This legislation was never coordinated, despite the fact that the relevant circumstances in the former provinces did not differ much. The present system of property rating in South Africa is cumbersome, and a simpler and uniform system of valuation must be found.

Section 229(2) of the Constitution, which came into effect on 1 January 1998, states that the power of the municipality to impose rates on property may be regulated by national legislation. The provincial ordinances currently regulating property rating will, therefore, remain in force until they are replaced by national legislation in this regard.

Government will need to address four main issues with regard to property tax

- First, the issue of bringing currently untaxed areas into the tax net. The newly amalgamated urban municipalities (which bring formerly black and white areas into one municipality) have decided in principle to extend the tax base to previously unrated areas. However, some of the former black areas remain outside the property tax net. Effective measures to integrate these areas into the property tax net need to be determined and implemented. Currently, property rates are still not being uniformly applied, and property valuations are often disputed.
- Second, there is the issue of variation in the rating system with regard to the tax base. The property (assessment) rates levied should be based on the market value of the property. The optimal method of valuation applicable to the South African situation should be determined. Possible rating systems that need to be reviewed are
 - Site rating, or the valuation of land only
 - The combined rating of land and buildings
 - Differential or composite rating, where both land and buildings are rated together but at different rate levels, and where the rate levied on land is higher than that on improvements
 - A rating system where a uniform rate is used for areas which were not previously rated, irrespective of the value of the property. (This is often called "flat-rating" in South Africa). The rate is usually lower than the actual value of the property.

The key decision that needs to be taken is whether there should be a uniform national system, or whether there should continue to be local choice in this matter.

- Third, the issue of valuation periods needs to be addressed. In many areas, properties are not valued regularly. A process of regular assessments of property values needs to be entrenched. Again, the question of national versus local choice in valuation periods needs to be determined.
- Fourth, there is a need to develop the criteria for evaluating alternative property valuation systems, within the framework of alleviating and addressing poverty. A municipality needs to develop a clear policy and set of procedures regarding the full or partial relief to those who are genuinely too poor to pay for rates. Any rebates or *grants-in-aid** allowed on property tax (as prescribed in the relevant provincial/national legislation) should be clearly indicated in a transparent and consistent manner in the budget of a municipality.

It is important to note that local government should have the latitude to make

certain decisions concerning the nature of the property tax in their area of jurisdiction, which reflect their unique circumstances and local economic objectives.

2.1.2. Regional Service Council and Joint Services Board levies

The Regional Service Council and Joint Services Board levies, are a source of revenue for Metropolitan and District Councils. Since their inception, the Regional Service Council and Joint Services Board levies have been controversial taxes.

The most serious problem with these levies is in the administrative costs of collection. They are collected by municipalities themselves rather than by a national collecting agency like the SA Revenue Services, and the scope for evasion is high. A second and even more serious problem is that the levy is a tax on staff or labour. This reinforces the bias against labour-intensive firms.

Despite these problems, these taxes are an important source of municipal revenue, and will need to be retained, at least until such time as a suitable alternative, yielding the same net revenue, is introduced.

The effectiveness of regional and establishment levies as engines of development will be assisted by the development of clear rules about the uses to which municipalities can put these funds. It is proposed that District and Metropolitan Councils should utilise the levies for the development and maintenance of infrastructure linked to the needs of the community.

The uncontrolled use and increase of regional and establishment levies could lead to sharp increases in the effective taxation of commerce and industry. Vastly differing levy rates could cause negative inter-jurisdictional spillover effects. However, as long as these levies are restricted to low levels and are ultimately subject to national control, these potential negative effects can be minimised. National oversight with regard to the determination as well as utilisation of these levies is therefore required to ensure an optimal system of Regional Service Council and Joint Services Board levies.

2.1.3. Fuel levy

Schedule 5 (Part B) of the Constitution determines that municipal roads are a functional responsibility of the local government sphere. In this context, consideration will be given to assigning a percentage of the fuel levy to local government. The fuel levy represents a potentially important source of revenue for local government due to its ability to grow, and the ease with which it is administered.

The issue of a local government fuel tax needs to be seen within the context of the national fuel levy. National government will develop a set of principles that will provide a framework within which these funds will be spent. One such principle is that fuel taxes are best suited for recovering the maintenance costs of roads.

2.1.4. User charges

An important source of local own revenue are charges which are directly related to the provision of public services. The majority of these are public utility charges - such as electricity and water - which have contributed significantly to the growth of revenue of municipalities.

*Cost recovery** is an essential part of sustainable service delivery. However, municipalities will not be able to meet all the costs associated with addressing backlogs. National government has therefore provided a capital grant package, the

Consolidated Municipal Infrastructure Programme to assist municipalities in meeting the capital costs of bulk and connector infrastructure. The new system of intergovernmental transfers is aimed at subsidising the operating costs of basic services to indigent and low-income households.

Government and stakeholders have agreed on a set of principles to guide tariff policy.

- **Payment in proportion to the amount consumed:** As far as is practically possible, consumers should pay in proportion to the amount of service consumed.
- **Full payment of service costs:** All households, with the exception of the indigent, should pay the full costs of the services consumed.
- **Ability to pay:** Municipalities should develop a system of targeted subsidies to ensure that poor households have access to at least a minimum level of basic services.
- **Fairness:** Tariff policies should be fair in that all people should be treated equitably.
- **Transparency:** Tariff policy should be transparent to all consumers and any subsidies and concessions which exist must be visible and understood by all consumers.
- **Local determination of tariff levels:** Municipalities should have the flexibility to develop their own tariffs in keeping with the above principles.
- **Consistent tariff enforcement:** A consistent policy for dealing with non-payment of tariffs needs to be developed. This must be targeted and enforced with sensitivity to local conditions.
- **Ensure local economies are competitive:** Local tariffs must not unduly burden local business through higher tariffs, as these costs affect the sustainability and competitiveness of such businesses and firms.

Municipalities need to develop a clear tariff policy, including a policy to ensure that indigent households have access to basic services. Tariff enforcement needs to be linked to improved credit control mechanisms.

2.1.5. Credit control

It is vital to the long-term financial viability of any municipality that it collects the revenues due to it for services rendered. This means that appropriate credit control mechanism must be established.

As a first step, municipalities need to be able to measure the amount of services that households consume. This means that metering of services such as water and electricity must take place efficiently.

Secondly, households need to receive regular and accurate bills for the services they use, in a format which is easy to understand. In some areas special arrangements may be required to ensure that households receive bills regularly.

Thirdly, credit control measures will only be successful if targeted relief is available for those households who cannot afford to pay for services. Municipalities must establish accessible mechanisms to enable poor households to apply for a rebate on service charges.

Fourthly, municipalities need to take strong measures to deal with those households who can afford to pay for services but are not doing so. This means that municipalities must keep a proper record of outstanding debtors, and must take action against them after a given notice period. Such action can include

cutting off services or court action to recover debts. It is fundamentally important that local government is able to retain the power to cut off electricity to consumers as a credit control measure, and amendments to the Electricity Act will be promulgated in this regard.

2.1.6. Financing municipalities in rural areas

Measures to improve the financial viability and revenue base of rural local government are required. A substantial portion of the share of the national fiscus reserved for local government will be directed at rural municipalities. In addition, the institutional restructuring of existing municipalities will result in increased financial viability. Directing sectoral funding for housing, water infrastructure and so forth via rural municipalities will also strengthen local capacity. However, other mechanisms to improve the financial viability of rural local government are required.

One option is the extension of the property tax to rural areas. Because property is immobile and allocation thereof cannot be distorted, property tax is an ideal local tax. The acceptability of extending property taxes to rural areas would be increased if the revenue raised is spent in the area where it is raised, with visible benefits for local communities. Revenue generated from property tax could be used primarily (but not necessarily exclusively) for rural infrastructure purposes, e.g. road infrastructure and maintenance of roads in rural areas. Although a property tax could be an important source of revenue for rural municipalities, the total amount raised would be limited.

The rate at which the property tax is extended should be approached cautiously. The rate should either be equal or less than the *average rental return on land value*. The rate should also be high enough to cover the costs of administering the tax, and ensure that a reasonable return is yielded. When considering the applicable tax rate, the relation between the rural property tax and other local taxes (e.g., Regional Service Council and Joint Services Board levies) will have to be considered.

A combination of revenue-generating options, including betterment taxes, will need to be explored further to secure the financial viability of rural local government.

In addition to the above categories of revenue (property tax, metropolitan and district levies, user charges, and fuel tax) municipalities derive revenues from capital grants as well as intergovernmental grants for operating expenditure. Given local government's pivotal role in delivery and development, further consideration should be given to adding to the revenue-raising powers of local government.

2.2. Intergovernmental transfers

Intergovernmental transfers are important to the fiscal relationship between national and local government. There are three basic types of transfer:

- Agency payments paid by provincial governments to municipalities for services rendered by the latter on behalf of the former.
- Grants to subsidise the capital costs of investment in municipal infrastructure.
- Grants to support the operating budgets of municipalities.

2.2.1. Agency payments

Agency payments are fees rather than grants and there is no necessity for any change to this aspect of the transfer system. However, it is imperative that

municipalities ensure that payments received from provinces are sufficient to cover the full cost of the services which municipalities deliver on their behalf

2.2.2. Capital transfers

During 1996-97 a process of rationalising the various capital grants flowing to municipalities into a single funding channel, the Consolidated Municipal Infrastructure Programme, was initiated. Some further rationalisation of capital transfers flowing to municipalities - particularly those in rural areas - is required. In general, however, the Consolidated Municipal Infrastructure Programme has successfully begun to deal with the problems of fragmentation and duplication that characterised the capital grant programmes of the past. It is therefore not anticipated that there will be any major changes to this programme in the foreseeable future.

2.2.3. Transfers to fund operating costs

The current system of operating transfers, however, is highly problematic and requires urgent policy attention. In general, the current problems include:

- The grant system is inconsistent and inequitable
- Grants are unpredictable - there is no certainty as to what any municipality will receive in any given year
- The grants are not based on objective, rational policy criteria
- The incentives in the current system sometimes encourage poor financial management behaviour by municipalities

In order to address these problems, and so as to comply with Section 214 of the Constitution, government will fundamentally restructure the system of operating transfers to municipalities and - in so doing - will introduce an "equitable share" of national revenue for local government, beginning in the 1998-99 fiscal year.

The new system of intergovernmental transfers will need to address two key issues: the "vertical division" of revenue - the total share of revenue going to local government, and the "horizontal division" of this revenue - how the total amount is divided between municipalities.

The vertical split will be decided via the national budgeting (medium-term expenditure framework) process, taking into account the factors put forward in Section 214 (2) of the Constitution.

It should be noted that the "equitable share" covers only those transfers to fund the operating costs of municipalities. Capital transfers, for example, are classified as "additional conditional grants" in terms of the Constitution. The "equitable share" in other words should not be confused with the total amount of national revenue flowing to municipalities. The amount of the "equitable share" component of national-local flows can only be properly determined with due regard to the other transfers to municipalities. As certain subsidies to municipalities are phased out, the equitable share will need to expand.

The horizontal division of the equitable share between municipalities will need to be driven by five key objectives:

- Equity
- Efficiency
- Ensuring a basic level of administrative capacity in the most resource-poor municipalities.

- Predictability.
- Incentives for proper financial management at the local level.

In order to achieve this a transparent, formula-based system will be phased in over a period of four years for urban municipalities and seven years for rural municipalities. The dominant principle underlying this system will be equity - it should enable all municipalities to provide a basic level of services to low-income households in their areas of jurisdiction at affordable cost. A secondary principle will be effective administrative infrastructure: the system should ensure that even the most resource-poor municipality is able to build a basic level of administrative infrastructure to allow it to govern its area effectively. Many municipalities are already in a position to provide this without financial assistance from the national fiscus. Therefore, this aspect of the formula will need to have an equalising dimension to it.

A formula-based approach by its nature removes discretion over the allocation of funds to municipalities. The funds will therefore best be allocated directly from the central fiscus to municipalities rather than via the provinces. In order to ensure certainty it is also important that transfers are allocated to those municipalities which have actual expenditure responsibilities in respect of service provision and governance.

2.2.4. Targeting intergovernmental transfers

One of the key goals of restructuring the systems of intergovernmental transfers is to assist the indigent to access services. When fully operational, the new system of intergovernmental transfers will enable all municipalities to deliver a package of basic services to all low-income and indigent households in their areas. This funding will be complemented by capital grant funding channelled via the Consolidated Municipal Infrastructure Programme.

With a few exceptions, it will be difficult to ensure that intergovernmental transfers effectively reach particular target groups, such as the poor. Intergovernmental transfers are primarily intended to subsidise the provision of local public services, and it is difficult to pinpoint which particular individuals and groups will utilise such services. Unless the entire geographic community happens to be members of the target group (e.g. a poor rural community), transfers are unlikely to benefit only the intended target group. Transfers from national government to municipalities are therefore a blunt instrument to reach the poor, unless the individual municipalities use these transfers to provide those local services that impact positively on the lives of the poor. The actual targeting of these intergovernmental transfers, and ensuring that only eligible households have access to subsidised services, will therefore be the responsibility of individual municipalities.

2.2.5. Local government participation

Given the monitoring and oversight powers of provincial governments with respect to local government, provincial MECs responsible for local government should also participate in forums and processes related to local government finance.

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3. LEVERAGING ADDITIONAL INVESTMENT IN THE MUNICIPAL SECTOR

3.1 Borrowing and investment powers of municipalities

3.2 Credit enhancement

3.3 Concessional loan finance

Previous government studies - such as the Municipal Infrastructure Investment Framework - show that in order to meet infrastructure backlogs and secure access for all to basic services, additional investment in municipal infrastructure from the private sector and public sector financial intermediaries is required. There are three key areas of municipal finance which support additional investment in the municipal sector, namely:

Borrowing and investment powers of municipalities

*Credit enhancement**

*Concessional loan finance**

Private sector investment can also be encouraged through the regulation of public private partnerships and the establishment of a system to monitor the financial position of municipalities, which are discussed in Section C: Cooperative Government and Section F: Administrative Systems

3.1. Borrowing and investment powers of municipalities

The Local Government Transition Act (Second Amendment Act) extended and introduced broad uniformity into the borrowing powers of municipalities. Consideration should be given to further expanding municipal borrowing powers. There is also a need to define the exact nature of the regulation of these powers by national legislation. The Second Amendment Act also liberalised the regulatory framework for municipal investment, and this trend may need to be extended.

Ultimately, a vibrant and innovative primary and secondary market for short and long term municipal debt should emerge. To achieve this, national government must clearly define the basic "rules of the game". Local government will need to establish its creditworthiness through proper budgeting and sound financial management, including establishing firm credit control measures and affordable infrastructure investment programmes. Finally, a growth in the quantum, scope and activities of underwriters and market facilitators (such as credit-rating agencies and bond insurers) will be required.

If private investment is to be encouraged, greater clarity needs to be achieved with respect to the security of loan investments. This will be facilitated by the development of a framework for monitoring the financial position of municipalities, building on current laws and practices (such as Project Viability). National government's approach emphasises the importance of achieving financial discipline through decentralised market relationships (between borrower and lender), rather than the direct, centralised control of local government. This is in line with the fiscally decentralised orientation of the Constitution.

The rules governing intervention in the event that municipalities experience financial difficulties need to be clearly defined and transparently and consistently applied. It is critical that municipalities, investors, as well as national and provincial government, have a clear understanding of the character of their respective risks. Risks should not be unduly transferred to national or provincial government.

3.2. Credit enhancement

Measures to enhance credit

National government will not provide sovereign guarantees of municipal debt. However, there are a range of other mechanisms which can be considered to enhance the credit of municipalities, including:

*Municipal bond insurance**

*Treasury trusts**

*Interception of intergovernmental transfers**

*Debt syndication**

*Bond banking**

Other measures which may indirectly enhance the credit of municipalities include introducing better municipal accounting systems, the provision of relevant and reliable information, a clear framework for supervision by other spheres of government, procedures for intervention when failure occurs, establishing fiscal certainty (grant flows, ownership of local tax bases, etc.) and clarifying the role of concessional loan finance.

3.3. Concessional loan finance

Although municipalities have fairly extensive borrowing powers, current conditions at local level and in the capital market effectively constrain the ability of municipalities to raise loans. Concessional loan finance - offered through a public sector financial intermediary - can play an important role in enabling municipalities that cannot gain access to credit from the capital market to borrow at an affordable price.

Specialised institutions for providing concessional loan finances to municipalities are not intended to replace the existing commercial financial institutions, but rather to complement them. Commercial and public sector financial institutions should play complementary roles.

Objectives of concessional loan finance

Public sector financial intermediaries are designed to achieve a range of objectives, including to:

Make credit accessible: One of the major obstacles facing municipalities is securing loans on the private capital market, and financial intermediaries have the potential to provide municipalities with access to credit.

Mobilise additional resources: Financial intermediaries can be granted sufficient powers to enable them to pool funds from various sources - including the domestic capital market - and then on-lend these funds to the various municipalities.

Provide technical assistance: Apart from the primary goal of ensuring municipalities have access to long-term capital financing, financial intermediaries can promote municipal capacity in order to improve the use of resources.

Financial intermediaries generally provide long-term credit financing for municipal investments, and could potentially play a critical role in funding municipal infrastructure.

It should be noted that

Where public sector financial intermediaries are involved, care must be taken to ensure that government does not subsidise the borrower in a manner which is not transparent or clearly quantified so that the subsidy is not absolutely clear

Public sector financial intermediaries should not "crowd out" or discourage private sector investment. In fact, they are key agents to support the development of an effective market for municipal debt and to enhance the overall level of investment in the municipal sector. Within the framework of the RDP, public sector financial intermediaries should actively support financial markets and endeavor to engage the private sector in these markets.

Concessional finance sources could introduce the discipline of loan finance to municipal institutions which find it difficult to access private markets. This discipline in the way municipalities conduct their financial affairs should be a basic principle of concessional loan finance so that, in the long term, such municipalities will be able to satisfy the requirement of the markets and so gain access to private sector investment.

Public sector financial intermediaries clearly have an important role to play in making loan finance available to municipalities. The role of such institutions should be constantly monitored, refined and streamlined in relation to the private sector's role in the municipal sector. Through targeted loans and technical assistance they can support the development of a municipal debt financing system.

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4. BUDGET, ACCOUNTING, FINANCIAL REPORTING AND MANAGEMENT

Municipal budgets are a critical tool for re-focusing the resources and capacity of the municipality behind developmental goals. To this end, budgets must be developed in relation to the policies and programmes put forward in municipal integrated development plans.

Given that resources are scarce, community participation in the development of both integrated development plans and municipal budgets is essential. Participation provides an opportunity for community groups to present their needs and concerns. It enables them to be involved in the process of prioritisation, and to understand and accept the trade-offs which need to be made between competing demands for resources.

Current budgeting, accounting, financial reporting and financial management practices of municipalities suffer from a number of weaknesses. These weaknesses may act as disincentives to community participation and to private investment. In some municipalities these weaknesses include:

- Unrealistic budgeting
- Poor credit control
- A lack of budgetary and financial discipline
- A lack of user-friendly and accessible information on the budget process

Addressing these problems requires local political will and improved management efficiency. It also requires a number of national changes to systems.

4.1. Generally accepted accounting practice for municipalities

Much progress has been made in recent years in defining and introducing generally accepted accounting practice standards for local government. Only minor changes are now required, except in the case of accounting for *fixed assets*. Applying accounting principles specifically tailored for municipalities will promote

transparency. It will enable the content and presentation of financial statement information to be consistent and so enable informed decision-making on risk and returns.

4.1.1. Reserves, provisions and funds

Current accounting principles and disclosure of the internal financing of fixed assets is complex. This does not promote transparency. It does not enable councillors, management and the public to gain an understanding of the true financial position of the municipality. For example, the extent to which funds or reserves have been used to finance fixed assets or make temporary advances to the operating account cannot be easily determined.

In order to address this - and to prevent excessive taxation before there is a need - there needs to be a limitation on the number of reserves permitted. However, all municipalities should establish a working capital reserve, which should be based on debtor balances and take into account the possible non-recovery of income included in the annual budget.

Existing funds should also be consolidated as far as possible and the accounting entries relating to the internal financing of the fixed assets simplified. This should enable external users, particularly financial institutions, to obtain a clearer understanding of the financial position of the municipality concerned.

4.1.2. Capital accounting

A fundamental difference between existing municipal accounting principles and generally accepted accounting practices relates to accounting for fixed assets. At present, fixed assets are recorded at historic cost (their original purchase cost). No account is taken of wear and tear incurred in the provision of the services. As a result, there is some risk that the true cost of rendering services is understated. This has a negative impact on proper price and tariff setting. More realistic fixed asset values will facilitate more accurate decision-making in a range of areas, including the valuing of services for public-private partnerships, relating maintenance expenditure to replacement costs, and providing for sustainability and replacement costs through depreciation.

4.1.3. Internal reporting

The lack of minimum internal reporting standards in the past limited the effectiveness of senior management and councillors - key financial information was not presented on a regular basis or in a clear and easy-to-understand format. As a result, it was difficult for management and councillors to react proactively to a change in the financial position of the municipality. The recently promulgated regulations on financial reporting by municipalities under the Local Government Transition Act will in future regulate such reporting. Further guidelines on the content and frequency of internal reports need to be formulated to improve financial management.

4.1.4. External reporting

An important policy principle in ensuring accountability in municipal finances is the submission of annual financial statements to an external body such as the Auditor General. LGTA spells out the chief executive officer's responsibilities with respect to the compilation and submission of annual financial statements to the Auditor General. Annual financial statements need to portray financial viability and enable an accurate assessment of the risk to be undertaken if the use of private sector funding, in whichever form, is to be undertaken.

In respect of reporting to the community, there is a perceived lack of transparency as municipalities often do not understand the information needs of the community. It is unlikely that there will be significant demand for audited annual financial statements. Therefore municipalities need to consider preparing Mayoral budget addresses and annual reports as a way to present information which is credible and understandable, and allows citizens and communities to assess municipal expenditure against the municipal integrated development plan.

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5. CONCLUDING COMMENT

The restructuring of local government in South Africa has caused the newly formed municipalities to experience a variety of financial challenges. These have included:

- Dramatically increased services responsibilities.
- Increased administrative costs.
- Upward pressure on salaries.
- Cuts in operating subsidies.
- Reductions in experienced personnel, especially in the financial sector.

These challenges have placed significant pressure on municipalities' cash flows and have led to a reduction of their financial resources. Although various actions have been taken by government to address the current crisis situation in municipalities in the short to medium-term, long-term solutions are required to restore financial discipline, eliminate outstanding debts and generate the necessary cash flows.

Moreover, it is vital that provincial and national government assist municipalities and councillors in this process. They need to communicate to municipalities the importance of making affordable choices up front. They also need to communicate the total commitment of government to building a financially independent and viable system of local government in the long-term.

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SECTION H: THE TRANSFORMATION PROCESS

In this section:

This section provides an outline of the transformation process. The process aims to create the space for municipalities to work with local communities to fulfil their developmental role in a sustainable manner.

1. Building on the past five years
2. Establishing a stable framework
3. Support mechanisms for municipal transformation

1. BUILDING ON THE PAST FIVE YEARS

The legislation which follows this White Paper will mark the end of the transitional system of local government, and the establishment of a new, democratic and non-racial local government system. This is a historic moment. However, policies and laws alone cannot bring about developmental local government. This will depend on the actions of the new municipalities themselves. As they engage with transformation, they will - step by step - give real content to their developmental role.

Over the past five years of transitional local government, municipalities and communities have built up capacity. In the process of negotiating changes in their local areas, they have acquired skills to:

- o Engage with different opinions
- o Promote change
- o Negotiate and mediate
- o Innovate
- o Collectively find solutions to challenges

Participants in the transition process have had to look at their own living environments through the eyes of people from different and unknown "worlds" just a few kilometres away from their homes. They have had to come to an understanding of what local government is, and what it can do - the impact it can have on the everyday lives of citizens.

These skills - which could not have been acquired in formal training - will be invaluable to the new municipalities as they tackle the changes that lie ahead. They will form the basis of the new local government system. And the continued engagement between councillors, officials, citizens and community groups will shape and sustain the new developmental role.

Within each municipality the political leadership will need to harness the resources at its disposal: the skills and capacity of workers, the energy of the community, and the resources of the public, civil and private sectors. They will have to develop strategies for change which meet local needs.

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2. ESTABLISHING A STABLE FRAMEWORK

While transformation ultimately rests with each municipality, there are a number of ways in which national government will enable and support the transformation process. National government will prepare the way for the important nation-wide municipal elections which will usher in the new system of local government. National government will also create an enabling legal framework - laws and policies which will promote the establishment of new developmental local government.

The introduction of the new local government system requires nation-wide municipal elections. In terms of the Constitution, elections must take place by November 1999 in seven of the nine provinces, and by June 2000 in KwaZulu-Natal and the metropolitan area of the Western Cape (where elections for the transitional system were postponed). On this date the term of office of the existing transitional Councils will expire, and a new system of local government will take its place.

In order to prepare for these elections, national government will pass legislation to:

- "Fast-track" the establishment of the Municipal Demarcation Board, and so enable the re-demarcation of municipal boundaries
- Enable the demarcation of wards and preparation for elections
- Create a framework for the establishment of new local government.

On this basis, provincial legislation will formally establish new municipalities in each of the nine provinces.

The time frame in which municipal elections must occur allows a limited period for the demarcation of new municipal boundaries. It may therefore be necessary to phase the demarcation to allow for a review of municipal boundaries to continue after municipal elections have been held.

The municipal elections and the establishment of new municipal institutions is a vital point in the transformation process - an essential step in creating a stable environment to enable good local governance.

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3. SUPPORT MECHANISM FOR MUNICIPAL TRANSFORMATION

In addition to creating the enabling legal framework described above, national government will facilitate the establishment of mechanisms to support municipal transformation. These include:

- Increasing local government's voice through
 - o Securing local governments' constitutional rights as a sphere of government
 - o Supporting Salga as the representative voice of local government
 - o Ongoing consultation during policy and legislative processes
- The coordinated decentralisation of powers and functions to local government. This will be achieved through
 - o Avoiding unfunded mandates
 - o Working through and with local government
 - o Aligning sectoral service delivery boundaries with municipal boundaries wherever possible
- A coherent planning framework for integrated development planning. The integrated development planning process will
 - o Enable planning around needs prioritised in consultation with community groups

- o Facilitate vertical integration with national and provincial policies and programmes
 - o Gear municipal resources and capacity to meet the objectives identified in integrated development plans.
- Support for improved service delivery This will be achieved through
 - o Capacity-building
 - o Capital funding from the Consolidated Municipal Infrastructure Programme
 - o "Hands-on" assistance for the transformation of service delivery systems
- Developing performance management systems These systems will be developed in partnership with local government and will have the following aims
 - o To enable realistic planning
 - o To allow municipalities to assess the impact of their administrative reorganisation processes and development strategies
 - o To enhance local government accountability
- Training and capacity-building This will be achieved through
 - o The reorganisation of the local government training system
 - o Targeted assistance for improved financial and budgeting processes
 - o Working with Salga to develop and implement councillor training programmes.
 - o Working with provincial governments to develop ongoing capacitation programmes
- Increasing financial certainty This will be achieved through
 - o Streamlining intergovernmental grants
 - o Ensuring that municipal demarcation results in financially viable jurisdictions.
 - o Introducing the equitable share of the national fiscus to which local government is constitutionally entitled
- Ongoing institutional development This will be achieved through
 - o Facilitating shared learning between municipalities
 - o Supporting provincial institutional development initiatives
 - o Funding pilot programmes
 - o Working with the full range of stakeholders who can contribute to building municipal sustainability through all of the above initiatives

An intensive support programme including all the elements listed above will be required to develop municipal capacity for delivery and development. The process of establishing the new local government system is likely to result in extraordinary costs, and a special transformation fund may be required to assist municipalities to manage the transformation process. A transformation fund could include capacity-building funds and additional resources from aid agencies. It should be structured to support the capacitation and development of local government. Care must be taken to ensure that this fund is not used to "bail out" municipalities who misallocate their own revenue, as this would be an incentive for poor financial management. Rather, a transformation fund should be targeted at developing appropriate support and capacity-building mechanisms for the implementation of the new system of local government.

The development of the systems required to support municipal transformation should be managed in partnership with local government. This will both build the capacity of local government and result in effective systems which municipalities can use to lever change in their operations and in their approaches to meeting community needs.

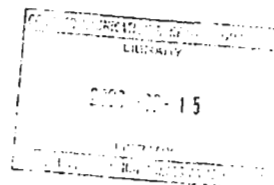
Given the scale of need in local communities, it is essential that skills, resources and capacities from a number of institutions and sectors are harnessed behind the vision of developmental local government and contribute actively to making this vision a reality.

Following the publication of this White Paper, a process involving all spheres of government and affected stakeholders will be initiated to design a detailed support programme for the implementation of the White Paper.

However, successful transformation ultimately rests in the hands of each municipality. Transformation is not a choice - it is an obligation placed on each municipality to fulfil its constitutional mandate and play a role in the development of the nation. Unless the capacities built through years of struggle for democratic rights and a decent quality of life for all are mobilised within each local area, we will lose what we have struggled for. Local government has a critical role to play in consolidating our new democracy, and each councillor, each official, and each citizen is tasked with making their contribution in the areas where they live.

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REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

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CAPE TOWN, 31 FEBRUARY 2000

No. 20852

OFFICE OF THE PRESIDENCY

No. 95

3 February 2000

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 2 of 2000: Promotion of Access to Information Act, 2000.

2 No. 20852

GOVERNMENT GAZETTE 3 FEBRUARY 2000

Act No. 2, 2000

PROMOTION OF ACCESS TO INFORMATION ACT, 2000

*(English text signed by the President)
(Assented to 2 February 2000.)*

ACT

To give effect to the constitutional right of access to any information held by the State and any information that is held by another person and that is required for the exercise or protection of any rights; and to provide for matters connected therewith.

PREAMBLE

RECOGNIZING THAT—

- the system of government in South Africa before 27 April 1994, amongst others, resulted in a secretive and unresponsive culture in public and private bodies which often led to an abuse of power and human rights violations;
- section 8 of the Constitution provides for the horizontal application of the rights in the Bill of Rights to juristic persons to the extent required by the nature of the rights and the nature of those juristic persons;
- section 32(1)(a) of the Constitution provides that everyone has the right of access to any information held by the State;
- section 32(1)(b) of the Constitution provides for the horizontal application of the right of access to information held by another person to everyone when that information is required for the exercise or protection of any rights;
- and national legislation must be enacted to give effect to this right in section 32 of the Constitution.

AND BEARING IN MIND THAT—

- the State must respect, protect, promote and fulfil, at least, all the rights in the Bill of Rights which is the cornerstone of democracy in South Africa;
- the right of access to any information held by a public or private body may be limited to the extent that the limitations are reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom as contemplated in section 36 of the Constitution;
- reasonable legislative measures may, in terms of section 32(2) of the Constitution, be provided to alleviate the administrative and financial burden on the State in giving effect to its obligation to promote and fulfil the right of access to information;

AND IN ORDER TO—

- foster a culture of transparency and accountability in public and private bodies by giving effect to the right of access to information;
- actively promote a society in which the people of South Africa have effective access to information to enable them to more fully exercise and protect all of their rights.

B E IT IS HEREBY ENACTED by the Parliament of the Republic of South Africa, as follows:—

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SCHEDULE

PART I
 INTRODUCTORY PROVISIONS

CHAPTER 1
 DEFINITIONS AND INTERPRETATION

Definitions

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1. In this Act, unless the context otherwise indicates—
 "access fee" means a fee prescribed for the purposes of section 22(6) or 54(6), as the case may be;
 "application" means an application to a court in terms of section 78;
 "constitution" means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);
 "court" means—
 (a) the Constitutional Court acting in terms of section 167(6)(a) of the Constitution; or
 (b) (i) a High Court or another court of similar status; or
 (ii) a Magistrate's Court, either generally or in respect of a specified class of decisions in terms of this Act, designated by the Minister, by notice in the *Gazette*, and presided over by a magistrate designated in writing by the Minister, after consultation with the Magistrates' Commission, within whose area of jurisdiction—
 (aa) the decision of the information officer or relevant authority of a public body or the head of a private body has been taken;
 (bb) the public body or private body concerned has its principal place of administration or business; or
 (cc) the requester or third party concerned is domiciled or ordinarily resident;
 "evaluative material" means an evaluation or opinion prepared for the purpose of determining—
 (a) the suitability, eligibility or qualifications of the person to whom or which the evaluation or opinion relates—
 (i) for employment or for appointment to office;
 (ii) for promotion in employment or office or for continuance in employment or office;
 (iii) for removal from employment or office; or
 (iv) for the awarding of a scholarship, award, bursary, honour or similar benefit; or
 (b) whether any scholarship, award, bursary, honour or similar benefit should be continued, modified, cancelled or renewed;
 "head" of, or in relation to, a private body means—
 (a) in the case of a natural person, that natural person or any person duly authorised by that natural person;
 (b) in the case of a partnership, any partner of the partnership or any person duly authorised by the partnership;
 (c) in the case of a juristic person—
 (i) the chief executive officer or equivalent officer of the juristic person or any person duly authorised by that officer; or
 (ii) the person who is acting as such or any person duly authorised by such acting person;
 "health practitioner" means an individual who carries on, and is registered in terms of legislation to carry on, an occupation which involves the provision of care or treatment for the physical or mental health or for the well being of individuals;
 "Human Rights Commission" means the South African Human Rights Commission referred to in section 181(1)(b) of the Constitution;
 "individual's next of kin" means—
 (a) an individual to whom the individual was married immediately before the individual's death;
 (b) an individual with whom the individual lived as if they were married immediately before the individual's death;
 (c) a parent, child, brother or sister of the individual; or
 (d) if—

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- (i) there is no next of kin referred to in paragraphs (a), (b) and (c); or
 (ii) the requester concerned took all reasonable steps to locate such next of kin, but was unsuccessful,
 an individual who is related to the individual in the second degree of *affinity* or *consanguinity*;
- "Information officer"** of, or in relation to, a public body—
 (a) in the case of a national department, provincial administration or organisational component—
 (i) mentioned in Column 1 of Schedule 1 or 3 to the Public Service Act, 1994 (Proclamation No. 103 of 1994), means the officer who is the incumbent of the post bearing the designation mentioned in Column 2 of the said Schedule 1 or 3 opposite the name of the relevant national department, provincial administration or organisational component or the person who is acting as such; or
 (ii) not so mentioned, means the Director-General, head, executive director or equivalent officer, respectively, of that national department, provincial administration or organisational component, respectively;
 (b) in the case of a municipality, means the municipal manager appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), or the person who is acting as such; or
 (c) in the case of any other public body, means the chief executive officer, or equivalent officer, of that public body or the person who is acting as such;
"internal appeal" means an internal appeal to the relevant authority in terms of section 74;
"International organisation" means an international organisation—
 (a) of states; or
 (b) established by the governments of states;
"Minister" means the Cabinet member responsible for the administration of justice;
"notice" means notice in writing, and "notify" and "notified" have corresponding meanings;
"objects of this Act" means the objects of this Act referred to in section 9;
"official", in relation to a public or private body, means—
 (a) any person in the employ (permanently or temporarily and full-time or part-time) of the public or private body, as the case may be, including the head of the body, in his or her capacity as such; or
 (b) a member of the public or private body, in his or her capacity as such;
"person" means a natural person or a juristic person;
"personal information" means information about an identifiable individual, including, but not limited to—
 (a) information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the individual;
 (b) information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;
 (c) any identifying number, symbol or other particular assigned to the individual;
 (d) the address, fingerprints or blood type of the individual;
 (e) the personal opinions, views or preferences of the individual, except where they are about another individual or about a proposal for a grant, an award or a prize to be made to another individual;
 (f) correspondence sent by the individual that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
 (g) the views or opinions of another individual about the individual;
 (h) the views or opinions of another individual about a proposal for a grant, an award or a prize to be made to the individual, but excluding the name of the other individual where it appears with the views or opinions of the other individual; and
 (i) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual;

- but excludes information about an individual who has been dead for more than 20 years;
"personal requester" means a requester seeking access to a record containing personal information about the requester;
"prescribed" means prescribed by regulation in terms of section 92;
"private body" means—
 (a) a natural person who carries or has carried on any trade, business or profession, but only in such capacity;
 (b) a partnership which carries or has carried on any trade, business or profession; or
 (c) any former or existing juristic person, but excludes a public body;
"public safety or environmental risk" means harm or risk to the environment or the public (including individuals in their workplace) associated with—
 (a) a product or service which is available to the public;
 (b) a substance released into the environment, including, but not limited to, the workplace;
 (c) a substance intended for human or animal consumption;
 (d) a means of public transport; or
 (e) an installation or manufacturing process or substance which is used in that installation or process;
"public body" means—
 (a) any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government; or
 (b) any other *functionary* or institution when—
 (i) exercising a power or performing a duty in terms of the Constitution or a provincial constitution; or
 (ii) exercising a public power or performing a public function in terms of any legislation;
"record" of, or in relation to, a public or private body, means any recorded information—
 (a) regardless of form or medium;
 (b) in the possession or under the control of that public or private body, respectively; and
 (c) whether or not it was created by that public or private body, respectively;
"relevant authority", in relation to—
 (a) a public body referred to in paragraph (a) of the definition of "public body" in the national sphere of government, means—
 (i) in the case of the Office of the Presidency, the person designated in writing by the President; or
 (ii) in any other case, the Minister responsible for that public body or the person designated in writing by that Minister;
 (b) a public body referred to in paragraph (a) of the definition of "public body" in the provincial sphere of government, means—
 (i) in the case of the Office of a Premier, the person designated in writing by the Premier; or
 (ii) in any other case, the member of the Executive Council responsible for that public body or the person designated in writing by that member, or
 (c) a municipality, means—
 (i) the mayor; or
 (ii) the speaker; or
 (iii) any other person, designated in writing by the Municipal Council of that municipality;
"request for access", in relation to—
 (a) a public body, means a request for access to a record of a public body in terms of section 11; or
 (b) a private body, means a request for access to a record of a private body in terms of section 50;
"requester", in relation to—
 (a) a public body, means—
 (i) any person (other than a public body contemplated in paragraph (a) or (b)(i) of the definition of "public body", or an official thereof) making a request for access to a record of that public body; or

(ii) a person acting on behalf of the person referred to in subparagraph (i);
(b) a private body, means—
(i) any person, including, but not limited to a public body or an official thereof, making a request for access to a record of that private body; or
(ii) a person acting on behalf of the person contemplated in subparagraph (i); 5
"subversive or hostile activities" means—
(a) aggression against the Republic;
(b) sabotage or terrorism aimed at the people of the Republic or a strategic asset of the Republic, whether inside or outside the Republic;
(c) an activity aimed at changing the constitutional order of the Republic by the use of force or violence; or
(d) a foreign or hostile intelligence operation;
"third party", in relation to a request for access to—
(a) a record of a public body, means any person (including, but not limited to, the government of a foreign state, an international organisation or an organ of that 15 government or organisation) other than—
(i) the requester concerned; and
(ii) a public body; or
(b) a record of a private body, means any person (including, but not limited to, a public body) other than the requester,
but, for the purposes of sections 34 and 63, the reference to "person" in paragraphs 20
(i) and (b) must be construed as a reference to "natural person";
"this Act" includes any regulation made and in force in terms of section 92;
"transfer", in relation to a record, means transfer in terms of section 20(1) or (2), 25
and "transferred" has a corresponding meaning;
"working days" means any days other than Saturdays, Sundays or public holidays, as defined in section 1 of the Public Holidays Act, 1994 (Act No. 36 of 1994)

Interpretation of Act

2. (1) When interpreting a provision of this Act, every court must prefer any 30 reasonable interpretation of the provision that is consistent with the objects of this Act over any alternative interpretation that is inconsistent with those objects
(2) Section 12 must not be construed as excluding—
(a) the Cabinet and its committees; or
(b) an individual member of Parliament or of a provincial legislature,
from the operation of the definition of "requester" in relation to a private body in section 1, section 49 and all other provisions of this Act related thereto 35
(3) For the purposes of this Act, the South African Revenue Service, established by section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997), and referred to in section 35(1), is a public body 40

CHAPTER 2
GENERAL APPLICATION PROVISIONS

Act applies to record whenever it came into existence

3. This Act applies to—
(a) a record of a public body; and
(b) a record of a private body,
regardless of when the record came into existence 45

Records held by official or independent contractor of public or private body

4. For the purposes of this Act, but subject to section 12, a record in the possession or under the control of—
(a) an official of a public body or private body in his or her capacity as such; or
(b) an independent contractor engaged by a public body or private body in the capacity as such contractor,
is regarded as being a record of that public body or private body, respectively 50

Application of other legislation prohibiting or restricting disclosure

5. This Act applies to the exclusion of any provision of other legislation that — 55

(a) prohibits or restricts the disclosure of a record of a public body or private body; and
(b) is materially inconsistent with an object or a specific provision of this Act
Application of other legislation providing for access

6. Nothing in this Act prevents the giving of access to—
(a) a record of a public body in terms of any legislation referred to in Part 1 of the Schedule; or
(b) a record of a private body in terms of any legislation referred to in Part 2 of the Schedule 5

Act not applying to records required for criminal or civil proceedings after 10 commencement of proceedings

7. (1) This Act does not apply to a record of a public body or a private body if—
(a) that record is requested for the purpose of criminal or civil proceedings;
(b) it is requested after the commencement of such criminal or civil proceedings, as the case may be; and
(c) the production of or access to that record for the purpose referred to in paragraph (a) is provided for in any other law
(2) Any record obtained in a manner that contravenes subsection (1) is not admissible as evidence in the criminal or civil proceedings referred to in that subsection unless the exclusion of such record by the court in question would, in its opinion, be detrimental to 20 the interests of justice

Part applicable when performing functions as public or private body

8. (1) For the purposes of this Act, a public body referred to in paragraph (b)(ii) of the definition of "public body" in section 1, or a private body—
(a) may be either a public body or a private body in relation to a record of that 25 body; and
(b) may in one instance be a public body and in another instance be a private body, depending on whether that record relates to the exercise of a power or performance of a function as a public body or as a private body
(2) A request for access to a record held for the purpose or with regard to the exercise 30 of a power or the performance of a function—
(a) as a public body, must be made in terms of section 11; or
(b) as a private body, must be made in terms of section 50
(3) The provisions of Parts 1, 2, 4, 5, 6 and 7 apply to a request for access to a record that relates to a power or function exercised or performed as a public body 35
(4) The provisions of Parts 1, 3, 4, 5, 6 and 7 apply to a request for access to a record that relates to a power or function exercised or performed as a private body

CHAPTER 3
GENERAL INTRODUCTORY PROVISIONS

Objects of Act 40

9. The objects of this Act are—

- (a) to give effect to the constitutional right of access to—
(i) any information held by the State; and
(ii) any information that is held by another person and that is required or the exercise or protection of any rights; 45
- (b) to give effect to that right—
(i) subject to justifiable limitations, including, but not limited to, limitations aimed at the reasonable protection of privacy, commercial confidentiality and effective, efficient and good governance; and
(ii) in a manner which balances that right with any other rights, including the 50 rights in the Bill of Rights in Chapter 2 of the Constitution;
- (c) to give effect to the constitutional obligations of the State of promoting a human rights culture and social justice, by including public bodies in the definition of "requester", allowing them, amongst others, to access informa-

- tion from private bodies upon compliance with the four requirements in this Act, including an additional obligation for certain public bodies in certain instances to act in the public interest;
- (d) to establish voluntary and mandatory mechanisms or procedures to give effect to that right in a manner which enables persons to obtain access to records of 5 public and private bodies as swiftly, inexpensively and effortlessly as reasonably possible; and
- (e) generally, to promote transparency, accountability and effective governance of all public and private bodies by, including, but not limited to, empowering and educating everyone — 10
- (i) to understand their rights in terms of this Act in order to exercise their rights in relation to public and private bodies;
- (ii) to understand the functions and operation of public bodies; and
- (iii) to effectively scrutinise, and participate in, decision-making by public bodies that affects their rights. 15

Guide on how to use Act

10. (1) The Human Rights Commission must, within 18 months after the commencement of this section, compile in each official language a guide containing such information, in an easily comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right contemplated in this Act. 20
- (2) The guide must, without limiting the generality of subsection (1), include a description of—
- (a) the objects of this Act;
- (b) the postal and street address, phone and fax number and, if available, electronic mail address of— 25
- (i) the information officer of every public body; and
- (ii) every deputy information officer of every public body appointed in terms of section 17(1);
- (c) such particulars of every private body as are practicable;
- (d) the manner and form of a request for— 30
- (i) access to a record of a public body contemplated in section 11; and
- (ii) access to a record of a private body contemplated in section 50;
- (e) the assistance available from the information officer of a public body in terms of this Act;
- (f) the assistance available from the Human Rights Commission in terms of this 35 Act;
- (g) all remedies in law available regarding an act or failure to act in respect of a right or duty conferred or imposed by this Act, including the manner of lodging— 40
- (i) an internal appeal; and
- (ii) an application with a court against a decision by the information officer of a public body, a decision on internal appeal or a decision of the head of a private body;
- (h) the provisions of sections 14 and 51 requiring a public body and private body, respectively, to compile a manual, and how to obtain access to a manual; 45
- (i) the provisions of sections 15 and 52 providing for the voluntary disclosure of categories of records by a public body and private body, respectively;
- (j) the notices issued in terms of sections 22 and 54 regarding fees to be paid in relation to requests for access; and
- (k) the regulations made in terms of section 92. 50
- (3) The Human Rights Commission must, if necessary, update and publish the guide at intervals of not more than two years.
- (4) The guide must be made available as prescribed.

PART 2

ACCESS TO RECORDS OF PUBLIC BODIES 55

CHAPTER 1

RIGHT OF ACCESS AND SPECIFIC APPLICATION PROVISIONS

Right of access to records of public bodies

11. (1) A requester must be given access to a record of a public body if—

- (a) that requester complies with all the procedural requirements in this Act relating to a request for access to that record; and
- (b) access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of this Part.
- (2) A request contemplated in subsection (1) includes a request for access to a record 5 containing personal information about the requester.
- (3) A requester's right of access contemplated in subsection (1) is, subject to this Act, not affected by—
- (a) any reasons the requester gives for requesting access; or
- (b) the information officer's belief as to what the requester's reasons are for 10 requesting access.

Act not applying to certain public bodies or officials thereof

12. This Act does not apply to a record of—
- (a) the Cabinet and its committees; 15
- (b) the judicial functions of—
- (i) a court referred to in section 166 of the Constitution;
- (ii) a Special Tribunal established in terms of section 2 of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996); or
- (iii) a judicial officer of such court or Special Tribunal; or 20
- (c) an individual member of Parliament or of a provincial legislature in that capacity.

Body determined to be part of another public body

13. For the purpose of this Act, the Minister may, on his or her own accord or on the request of the relevant public body or bodies or a body referred to in paragraph (c), in the 25 prescribed manner and by notice in the *Gazette*—
- (a) determine that a public body is to be regarded as part of another public body;
- (b) determine that a category of public bodies is to be regarded as one public body with such information officer as the Minister designates; and
- (c) if there is doubt as to whether a body is a separate public body or forms part 30 of a public body, determine that the body—
- (i) is a separate public body; or
- (ii) forms part of a public body.

CHAPTER 2

PUBLICATION AND AVAILABILITY OF CERTAIN RECORDS 35

Manual on functions of, and index of records held by, public body

14. (1) Within six months after the commencement of this section or the coming into existence of a public body, the information officer of the public body concerned must compile in at least three official languages a manual containing—
- (a) a description of its structure and functions; 40
- (b) the postal and street address, phone and fax number and, if available, electronic mail address of the information officer of the body and of every deputy information officer of the body appointed in terms of section 17(1);
- (c) a description of the guide referred to in section 10, if available, and how to obtain access to it; 45
- (d) sufficient detail to facilitate a request for access to a record of the body, a description of the subjects on which the body holds records and the categories of records held on each subject;
- (e) the latest notice, in terms of section 15(2), if any, regarding the categories of records of the body which are available without a person having to request 50 access in terms of this Act;
- (f) a description of the services available to members of the public from the body and how to gain access to those services;
- (g) a description of any arrangement or provision for a person (other than a public body referred to in paragraph (a) or (b)) of the definition of "public body" 55

- in section 1) by consultation, making representations or otherwise, to participate in or influence—
 (i) the formulation of policy; or
 (ii) the exercise of powers or performance of duties,
 by the body;
 (h) a description of all remedies available in respect of an act or a failure to act by the body; and
 (i) such other information as may be prescribed
 (2) A public body must, if necessary, update and publish its manual referred to in subsection (1) at intervals of not more than one year
 (3) Each manual must be made available as prescribed.
 (4)(a) If the functions of two or more public bodies are closely connected, the Minister may on request or of his or her own accord determine that the two or more bodies compile one manual only.
 (b) The public bodies in question must share the cost of the compilation and making available of such manual as the Minister determines
 (5) For security, administrative or financial reasons, the Minister may, on request or of his or her own accord by notice in the *Gazette*, exempt any public body or category of public bodies from any provision of this section for such period as the Minister thinks fit

Voluntary disclosure and automatic availability of certain records

15. (1) The information officer of a public body, referred to in paragraph (a) or (b)(i) of the definition of "public body" in section 1, must, on a periodic basis not less frequently than once each year, submit to the Minister a description of—
 (a) the categories of records of the public body that are automatically available without a person having to request access in terms of this Act, including such categories available—
 (i) for inspection in terms of legislation other than this Act;
 (ii) for purchase or copying from the body; and
 (iii) from the body free of charge; and
 (b) how to obtain access to such records.
 (2) On a periodic basis not less frequently than once each year and at the cost of the relevant public body, the Minister must, by notice in the *Gazette*—
 (a) publish every description submitted in terms of subsection (1); or
 (b) update every description so published
 as the case may be.
 (3) The only fee payable (if any) for access to a record included in a notice in terms of subsection (2) is a prescribed fee for reproduction.
 (4) The information officer of a public body may delete any part of a record contemplated in subsection (1)(a) which, on a request for access, may or must be refused in terms of Chapter 4 of this Part.
 (5) Section 11 and any other provisions in this Act related to that section do not apply to any category of records included in a notice in terms of subsection (2)

Information in telephone directory

16. The Director-General of the national department responsible for government communications and information services must at that department's cost ensure the publication of the postal and street address, phone and fax number and, if available, electronic mail address of the information officer of every public body in every telephone directory issued for general use by the public as are prescribed

CHAPTER 3 MANNER OF ACCESS

Designation of deputy information officers, and delegation

17. (1) For the purposes of this Act, each public body must, subject to legislation governing the employment of personnel of the public body concerned, designate such number of persons as deputy information officers as are necessary to render the public body as accessible as reasonably possible for requesters of its records

- (2) The information officer of a public body has direction and control over every deputy information officer of that body.
 (3) The information officer of a public body may delegate a power or duty conferred or imposed on that information officer by this Act to a deputy information officer of that public body.
 (4) In deciding whether to delegate a power or duty in terms of subsection (3), the information officer must give due consideration to the need to render the public body as accessible as reasonably possible for requesters of its records.
 (5) Any power or duty delegated in terms of subsection (3) must be exercised or performed subject to such conditions as the person who made the delegation considers necessary.
 (6) Any delegation in terms of subsection (3)—
 (a) must be in writing;
 (b) does not prohibit the person who made the delegation from exercising the power concerned or performing the duty concerned himself or herself; and
 (c) may at any time be withdrawn or amended in writing by that person.
 (7) Any right or privilege acquired, or any obligation or liability incurred, as a result of a decision in terms of a delegation in terms of subsection (3) is not affected by any subsequent withdrawal or amendment of that decision

Form of requests

18. (1) A request for access must be made in the prescribed form to the information officer of the public body concerned at his or her address or fax number or electronic mail address.
 (2) The form for a request of access prescribed for the purposes of subsection (1) must at least require the requester concerned—
 (a) to provide sufficient particulars to enable an official of the public body concerned to identify—
 (i) the record or records requested; and
 (ii) the requester;
 (b) to indicate which applicable form of access referred to in section 29(2) is required;
 (c) to state whether the record concerned is preferred in a particular language;
 (d) to specify a postal address or fax number of the requester in the Republic;
 (e) if, in addition to a written reply, the requester wishes to be informed of the decision on the request in any other manner, to state that manner and the necessary particulars to be so informed; and
 (f) if the request is made on behalf of a person, to submit proof of the capacity in which the requester is making the request, to the reasonable satisfaction of the information officer.
 (3)(a) An individual who because of illiteracy or a disability is unable to make a request for access to a record of a public body in accordance with subsection (1), may make that request orally.
 (b) The information officer of that body must reduce that oral request to writing in the prescribed form and provide a copy thereof to the requester

Duty to assist requesters

19. (1) If a requester informs the information officer of—
 (a) a public body that he or she wishes to make a request for access to a record of that public body; or
 (b) a public body (other than a public body referred to in paragraph (a) or (b)(i) of the definition of "public body" in section 1) that he or she wishes to make a request for access to a record of another public body,
 the information officer must render such reasonable assistance, free of charge, as is necessary to enable that requester to comply with section 18(1).
 (2) If a requester has made a request for access that does not comply with section 18(1), the information officer concerned may not refuse the request because of that non-compliance unless the information officer has—
 (a) notified that requester of an intention to refuse the request and stated in the notice—
 (i) the reasons for the contemplated refusal, and

- (ii) that the information officer or another official identified by the information officer would assist that requester in order to make the request in a form that would remove the grounds for refusal;
- (b) given the requester a reasonable opportunity to seek such assistance;
- (c) as far as reasonably possible, furnished the requester with any information 5 (including information about the records, other than information on the basis of which a request for access may or must be refused in terms of any provision of Chapter 4 of this Part, held by the body which are relevant to the request) that would assist the making of the request in that form; and
- (d) given the requester a reasonable opportunity to confirm the request or alter it 10 to comply with section 18(1).

(3) When computing any period referred to in section 25(1), the period commencing on the date on which notice is given in terms of subsection (2) and ending on the date on which the person confirms or alters the request for access concerned must be disregarded 15

(4) If it is apparent on receipt of a request for access that it should have been made to another public body, the information officer of the public body concerned must—

- (a) render such assistance as is necessary to enable the person to make the request, to the information officer of the appropriate public body; or
- (b) transfer the request in accordance with section 20 to the last-mentioned 20 information officer

whichever will result in the request being dealt with earlier

Transfer of requests

20. (1) If a request for access is made to the information officer of a public body in respect of which— 25

- (a) the record is not in the possession or under the control of that body but is in the possession of another public body;
- (b) the record's subject matter is more closely connected with the functions of another public body than those of the public body of the information officer to whom the request is made; or
- (c) the record contains commercial information contemplated in section 42 in which any other public body has a greater commercial interest, 30 the information officer to whom the request is made must as soon as reasonably possible, but in any event within 14 days after the request is received—
- (i) transfer the request to the information officer of the other public body or, if 35 there is in the case of paragraph (c) more than one other public body having a commercial interest, the other public body with the greatest commercial interest; and
- (ii) if the public body of the information officer to whom the request is made is in possession of the record and considers it helpful to do so to enable the 40 information officer of the other public body to deal with the request, send the record or a copy of the record to that information officer.

(2) If a request for access is made to the information officer of a public body in respect of which—

- (a) the record is not in the possession or under the control of the public body of 45 that information officer and the information officer does not know which public body has possession or control of the record;
- (b) the record's subject matter is not closely connected to the functions of the public body of that information officer and the information officer does not know whether the record is more closely connected with the functions of 50 another public body than those of the public body of the information officer to whom the request is made; and
- (c) the record—
- (i) was created by or for another public body; or
- (ii) was not so created by or for any public body but was received first by 55 another public body,

the information officer to whom the request is made, must as soon as reasonably possible, but in any event within 14 days after the request is received, transfer the request to the information officer of the public body by or for which the record was created or which received it first, as the case may be 60

(3) Subject to subsection (1), the information officer to whom a request for access is transferred, must give priority to that request in relation to other requests as if it were received by him or her on the date it was received by the information officer who transferred the request.

(4) If a request for access is transferred, any period referred to in section 25(1) must 5 be computed from the date the request is received by the information officer to whom the request is transferred.

(5) Upon the transfer of a request for access, the information officer making the transfer must immediately notify the requester of—

- (a) the transfer;
- (b) the reasons for the transfer; and
- (c) the period within which the request must be dealt with. 10

Preservation of records until final decision on request

21. If the information officer of a public body has received a request for access to a record of the body, that information officer must take the steps that are reasonably 15 necessary to preserve the record, without deleting any information contained in it, until the information officer has notified the requester concerned of his or her decision in terms of section 25 and—

- (a) the periods for lodging an internal appeal, an application with a court or an appeal against a decision of that court have expired; or
- (b) that internal appeal, application or appeal against a decision of that court or other legal proceedings in connection with the request has been finally 20 determined, whichever is the later.

Fees

22. (1) The information officer of a public body to whom a request for access is made, must by notice require the requester, other than a personal requester, to pay the prescribed request fee (if any), before further processing the request.

(2) If—

- (a) the search for a record of a public body in respect of which a request for access 30 by a requester, other than a personal requester, has been made; and
- (b) the preparation of the record for disclosure (including any arrangements contemplated in section 29(2)(a) and (b)(i) and (ii)(aa)), would, in the opinion of the information officer of the body, require more than the hours prescribed for this purpose for requesters, the information officer must by notice require 35 the requester, other than a personal requester, to pay as a deposit the prescribed portion (being not more than one third) of the access fee which would be payable if the request is granted.

(3) The notice referred to in subsection (1) or (2) must state—

- (a) the amount of the deposit payable in terms of subsection (2), if applicable; 40
- (b) that the requester may lodge an internal appeal or an application with a court, as the case may be, against the tender or payment of the request fee in terms of subsection (1), or the tender or payment of a deposit in terms of subsection (2), as the case may be; and
- (c) the procedure (including the period) for lodging the internal appeal or 45 application, as the case may be.

(4) If a deposit has been paid in respect of a request for access which is refused, the information officer concerned must repay the deposit to the requester.

(5) The information officer of a public body must withhold a record until the requester concerned has paid the applicable fees (if any) 50

(6) A requester whose request for access to a record of a public body has been granted must pay an access fee for reproduction and for search and preparation contemplated in subsection (7)(a) and (b), respectively, for any time reasonably required in excess of the prescribed hours to search for and prepare (including making any arrangements 55 contemplated in section 29(2)(a) and (b)(i) and (ii)(aa)) the record for disclosure.

(7) Access fees prescribed for the purposes of subsection (6) must provide for a reasonable access fee for—

- (a) the cost of making a copy of a record, or of a transcription of the content of a

- record, as contemplated in section 29(2)(ii) and (b)(i), (ii)(bb), (iii) and (iv) and, if applicable, the postal fee; and
- (b) the time reasonably required to search for the record and prepare (including making any arrangements contemplated in section 29(2)(a) and (b)(i) and (ii)(aa)) the record for disclosure to the requester.

(8) The Minister may, by notice in the *Gazette*—

- (a) exempt any person or category of persons from paying any fee referred to in this section;
- (b) determine that any fee referred to in this section is not to exceed a certain maximum amount;
- (c) determine the manner in which any fee referred to in this section is to be calculated;
- (d) determine that any fee referred to in this section does not apply to a category of records;
- (e) exempt any person or record or category of persons or records for a stipulated period from any fee referred to in subsection (6); and
- (f) determine that where the cost of collecting any fee referred to in this section exceeds the amount charged, such fee does not apply.

Records that cannot be found or do not exist

23. (1) If—

- (a) all reasonable steps have been taken to find a record requested; and
- (b) there are reasonable grounds for believing that the record—
- (i) is in the public body's possession but cannot be found; or
- (ii) does not exist,

the information officer of a public body must, by way of affidavit or affirmation, notify the requester that it is not possible to give access to that record.

(2) The affidavit or affirmation referred to in subsection (1) must give a full account of all steps taken to find the record in question or to determine whether the record exists, as the case may be, including all communications with every person who conducted the search on behalf of the information officer.

(3) For the purposes of this Act, the notice in terms of subsection (1) is to be regarded as a decision to refuse a request for access to the record.

(4) If, after notice is given in terms of subsection (1), the record in question is found, the requester concerned must be given access to the record unless access is refused on a ground for refusal contemplated in Chapter 4 of this Part.

Deferral of access

24. (1) If the information officer of a public body decides to grant a request for access to a record, but that record—

- (a) is to be published within 90 days after the receipt or transfer of the request or such further period as is reasonably necessary for printing and translating the record for the purpose of publishing it;
- (b) is required by law to be published but is yet to be published; or
- (c) has been prepared for submission to any legislature or a particular person but is yet to be submitted,

the information officer may defer giving access to the record for a reasonable period.

(2) If access to a record is deferred in terms of subsection (1), the information officer must notify the requester concerned—

- (a) that the requester may, within 30 days after that notice is given, make representations to the information officer why the record is required before such publication or submission; and
- (b) of the likely period for which access is to be deferred.

(3) If a requester makes representations in terms of subsection (2)(a), the information officer must, after due consideration of those representations, grant the request for access only if there are reasonable grounds for believing that the requester will suffer substantial prejudice if access to the record is deferred for the likely period referred to in subsection (2)(b).

Decision on request and notice thereof

25. (1) The information officer to whom a request for access is made or transferred, must, subject to section 26 and Chapter 5 of this Part, as soon as reasonably possible, but in any event within 30 days, after the request is received—

- (a) decide in accordance with this Act whether to grant the request; and
- (b) notify the requester of the decision and, if the requester stated, as contemplated in section 18(2)(c), that he or she wishes to be informed of the decision in any other manner, inform him or her in that manner if it is reasonably possible.

(2) If the request for access is granted, the notice in terms of subsection (1)(b) must state—

- (a) the access fee (if any) to be paid upon access;
- (b) the form in which access will be given; and
- (c) that the requester may lodge an internal appeal or an application with a court, as the case may be, against the access fee to be paid or the form of access granted, and the procedure (including the period) for lodging the internal appeal or application, as the case may be.

(3) If the request for access is refused, the notice in terms of subsection (1)(b) must—

- (a) state adequate reasons for the refusal, including the provisions of this Act relied upon;
- (b) exclude, from such reasons, any reference to the content of the record; and
- (c) state that the requester may lodge an internal appeal or an application with a court, as the case may be, against the refusal of the request, and the procedure (including the period) for lodging the internal appeal or application, as the case may be.

Extension of period to deal with request

26. (1) The information officer to whom a request for access has been made or transferred, may extend the period of 30 days referred to in section 25(1) (in this section referred to as the "original period") once for a further period of not more than 30 days, if—

- (a) the request is for a large number of records or requires a search through a large number of records and compliance with the original period would unreasonably interfere with the activities of the public body concerned;
- (b) the request requires a search for records in, or collection thereof from, an office of the public body not situated in the same town or city as the office of the information officer that cannot reasonably be completed within the original period;
- (c) consultation among divisions of the public body or with another public body is necessary or desirable to decide upon the request that cannot reasonably be completed within the original period;
- (d) more than one of the circumstances contemplated in paragraphs (a), (b) and (c) exist in respect of the request making compliance with the original period not reasonably possible; or
- (e) the requester consents in writing to such extension.

(2) If a period is extended in terms of subsection (1), the information officer must, as soon as reasonably possible, but in any event within 30 days, after the request is received or transferred, notify the requester of that extension.

(3) The notice in terms of subsection (2) must state—

- (a) the period of the extension;
- (b) adequate reasons for the extension, including the provisions of this Act relied upon; and
- (c) that the requester may lodge an internal appeal or an application with a court, as the case may be, against the extension, and the procedure (including the period) for lodging the internal appeal or application, as the case may be.

Deemed refusal of request

27. If an information officer fails to give the decision on a request for access to the requester concerned within the period contemplated in section 25(1), the information officer is, for the purposes of this Act, regarded as having refused the request.

Severability

28. (1) If a request for access is made to a record of a public body containing information which may or must be refused in terms of any provision of Chapter 3 of this Part every part of the record which—

- (a) does not contain; and
 - (b) can reasonably be severed from any part that contains,
- any such information must, despite any other provision of this Act, be disclosed

(2) If a request for access to—

- (a) a part of a record is granted; and
 - (b) the other part of the record is refused,
- as contemplated in subsection (1), the provisions of section 25(2), apply to paragraph (a) of this section and the provisions of section 25(3) to paragraph (b) of this section.

Access and forms of access

29. (1) If a requester has been given notice in terms of section 25(1) that his or her request for access has been granted, that requester must, subject to subsections (3) and (9) and section 31—

- (a) if an access fee is payable, upon payment of that fee; or
 - (b) if no access fee is payable, immediately,
- be given access in the applicable forms referred to in subsection (2) as the requester indicated in the request, and in the language contemplated in section 31.
- (2) The forms of access to a record in respect of which a request of access has been granted, are the following:

- (a) If the record is in written or printed form, by supplying a copy of the record or by making arrangements for the inspection of the record;
- (b) if the record is not in written or printed form—
 - (i) in the case of a record from which visual images or printed transcriptions of those images are capable of being reproduced by means of equipment which is ordinarily available to the public body concerned, by making arrangements to view those images or be supplied with copies or transcriptions of them;
 - (ii) in the case of a record in which words or information are recorded in such manner that they are capable of being reproduced in the form of sound by equipment which is ordinarily available to the public body concerned—
 - (aa) by making arrangements to hear those sounds; or
 - (bb) if the public body is capable of producing a written or printed transcription of those sounds by the use of equipment which is ordinarily available to it, by supplying such a transcription;
 - (iii) in the case of a record which is held on computer, or in electronic or machine-readable form, and from which the public body concerned is capable of producing a printed copy of—
 - (aa) the record, or a part of it; or
 - (bb) information derived from the record,
- (c) by using computer equipment and expertise ordinarily available to the public body, by supplying such a copy;
- (iv) in the case of a record available or capable of being made available in computer readable form, by supplying a copy in that form; or
- (v) in any other case, by supplying a copy of the record.

(3) If a requester has requested access in a particular form, access must, subject to section 28, be given in that form, unless to do so would—

- (a) interfere unreasonably with the effective administration of the public body concerned;
- (b) be detrimental to the preservation of the record; or
- (c) amount to an infringement of copyright not owned by the State or the public body concerned.

(4) If a requester has requested access in a particular form and for a reason referred to in subsection (3) access in that form is refused but access is given in another form, the fee charged may not exceed what would have been charged if that requester had been given access in the form requested.

(5) If a requester with a disability is prevented by that disability from reading, viewing or listening to the record concerned in the form in which it is held by the public body

concerned, the information officer of the body must, if that requester so requests, take reasonable steps to make the record available in a form in which it is capable of being read, viewed or heard by the requester.

(6) If a record is made available in accordance with subsection (5), the requester may not be required to pay an access fee which is more than the fee which he or she would have been required to pay but for the disability.

(7) If a record is made available in terms of this section to a requester for inspection, viewing or hearing, the requester may make copies of or transcribe the record using the requester's equipment, unless to do so would—

- (a) interfere unreasonably with the effective administration of the public body concerned;
- (b) be detrimental to the preservation of the record; or
- (c) amount to an infringement of copyright not owned by the State or the public body concerned.

(8) If the supply to a requester of a copy of a record is required by this section, the copy must, if so requested, be supplied by posting it to him or her.

(9) If an internal appeal or an application to a court, as the case may be, is lodged against the granting of a request for access to a record, access to the record may be given only when the decision to grant the request is finally confirmed.

Access to health or other records

30. (1) If the information officer who grants, in terms of section 11, a request for access to a record provided by a health practitioner in his or her capacity as such about the physical or mental health, or well-being—

- (a) of the requester; or
- (b) if the request has been made on behalf of the person to whom the record relates, of that person,

(in this section, the requester and person referred to paragraphs (a) and (b), respectively, are referred to as the "relevant person"), is of the opinion that the disclosure of the record to the relevant person might cause serious harm to his or her physical or mental health, or well-being, the information officer may, before giving access in terms of section 29, consult with a health practitioner who, subject to subsection (2), has been nominated by the relevant person.

(2) If the relevant person is—

- (a) under the age of 16 years, a person having parental responsibilities for the relevant person must make the nomination contemplated in subsection (1); or
- (b) incapable of managing his or her affairs, a person appointed by the court to manage those affairs must make that nomination.

(3)(a) If, after being given access to the record concerned, the health practitioner consulted in terms of subsection (1) is of the opinion that the disclosure of the record to the relevant person would be likely to cause serious harm to his or her physical or mental health, or well-being, the information officer may only give access to the record if the requester proves to the satisfaction of the information officer that adequate provision is made for such counseling or arrangements as are reasonably practicable before, during or after the disclosure of the record to limit, alleviate or avoid such harm to the relevant person.

(b) Before access to the record is so given to the requester, the person responsible for such counseling or arrangements must be given access to the record.

Language of access

31. A requester whose request for access to a record of a public body has been granted must, if the record—

- (a) exists in the language that the requester prefers, be given access in that language; or
- (b) does not exist in the language so preferred or the requester has no preference or has not indicated a preference, be given access in any language the record exists in.

Reports to Human Rights Commission

32. The information officer of each public body must annually submit to the Human Rights Commission a report stating in relation to the public body—

- (a) the number of requests for access received;
- (b) the number of requests for access granted in full;
- (c) the number of requests for access granted in terms of section 46;
- (d) the number of requests for access refused in full and refused partially and the number of times each provision of this Act was relied on to refuse access in full or partial;
- (e) the number of cases in which the periods stipulated in section 25(1) were 10 extended in terms of section 26(1);
- (f) the number of internal appeals lodged with the relevant authority and the number of cases in which, as a result of an internal appeal, access was given to a record;
- (g) the number of internal appeals which were lodged on the ground that a request 15 for access was regarded as having been refused in terms of section 27;
- (h) the number of applications to a court which were lodged on the ground that an internal appeal was regarded as having been dismissed in terms of section 27(7); and
- (i) such other matters as may be prescribed 20

CHAPTER 4
GROUNDWORK FOR REFUSAL OF ACCESS TO RECORDS

Interpretation

33. (1) The information officer of a public body—

- (a) must refuse a request for access to a record contemplated in section 34(1), 25 35(1), 36(1), 37(1)(a), 48(a), 49(1)(u), 40 or 43(1); or
 - (b) may refuse a request for access to a record contemplated in section 37(1)(b), 38(b), 39(1)(b), 41(1)(a) or (b), 42(1) or (3), 43(2), 44(1) or (2) or 45, unless the provisions of section 46 apply
- (2) A provision of this Chapter in terms of which a request for access to a record must 30 or may or may not be refused, may not be construed as—
- (a) limited in its application in any way by any other provision of this Chapter in terms of which a request for access to a record must or may or may not be refused; and
 - (b) not applying to a particular record by reason that another provision of this 35 Chapter in terms of which a request for access to a record must or may or may not be refused, also applies to that record.

Mandatory protection of privacy of third party who is natural person

34. (1) Subject to subsection (2), the information officer of a public body must refuse a request for access to a record of the body if its disclosure would involve the 40 unreasonable disclosure of personal information about a third party, including a deceased individual.

(2) A record may not be refused in terms of subsection (1) insofar as it consists of information—

- (a) about an individual who has consented in terms of section 48 or otherwise in 45 writing to its disclosure to the requester concerned;
- (b) that was given to the public body by the individual to whom it relates and the individual was informed by or on behalf of the public body, before it is given, that the information belongs to a class of information that would or might be made available to the public; 50
- (c) already publicly available;
- (d) about an individual's physical or mental health, or well-being, who is under the care of the requester and who is—
 - (i) under the age of 18 years; or
 - (ii) incapable of understanding the nature of the request, 55 and if giving access would be in the individual's best interests;
- (e) about an individual who is deceased and the requester is—

- (i) the individual's next of kin; or
- (ii) making the request with the written consent of the individual's next of kin; or
- (f) about an individual who is or was an official of a public body and which relates to the position or functions of the individual, including, but not limited to 5
 - (i) the fact that the individual is or was an official of that public body;
 - (ii) the title, work address, work phone number and other similar particulars of the individual;
 - (iii) the classification, salary scale or remuneration and responsibilities of the 10 position held or services performed by the individual; and
 - (iv) the name of the individual on a record prepared by the individual in the course of employment

Mandatory protection of certain records of South African Revenue Service

35. (1) Subject to subsection (2), the information officer of the South African Revenue 15 Service, referred to in section 2(3), must refuse a request for access to a record of that Service if it contains information which was obtained or is held by that Service for the purposes of enforcing legislation concerning the collection of revenue as defined in section 1 of the South African Revenue Service Act, 1997 (Act No. 31 of 1997).

(2) A record may not be refused in terms of subsection (1) insofar as it consists of 20 information about the requester or the person on whose behalf the request is made.

Mandatory protection of commercial information of third party

36. (1) Subject to subsection (2), the information officer of a public body must refuse a request for access to a record of the body if the record contains—

- (a) trade secrets of a third party; 25
 - (b) financial, commercial, scientific or technical information, other than trade secrets, of a third party, the disclosure of which would be likely to cause harm to the commercial or financial interests of that third party; or
 - (c) information supplied in confidence by a third party the disclosure of which could reasonably be expected— 30
 - (i) to put that third party at a disadvantage in contractual or other negotiations; or
 - (ii) to prejudice that third party in commercial competition
- (2) A record may "not be refused in terms of subsection (1) insofar as it consists of 35 information—
- (a) already publicly available;
 - (b) about a third party who has consented in terms of section 48 or otherwise in writing to its disclosure to the requester concerned; or
 - (c) about the results of any product or environmental testing or other investigation supplied by, earned out by or on behalf of a third party and its disclosure 40 would reveal a serious public safety or environmental risk.
- (3) For the purposes of subsection (2)(c), the results of any product or environmental testing or other investigation do not include the results of preliminary testing or other investigation conducted for the purpose of developing methods of testing or other 45 investigation

Mandatory protection of certain confidential information, and protection of certain other confidential information, of third party

37. (1) Subject to subsection (2), the information officer of a public body—

- (a) must refuse a request for access to a record of the body if the disclosure of the record would constitute an action for breach of a duty of confidence owed to 50 a third party in terms of an agreement; or
- (b) may refuse a request for access to a record of the body if the record consists of information that was supplied in confidence by a third party—
 - (i) the disclosure of which could reasonably be expected to prejudice the future supply of similar information, or information from the same 55 source; and
 - (ii) if it is in the public interest that similar information or information from the same source, should continue to be supplied

(2) A record may not be refused in terms of subsection (1) insofar as it consists of information—

- (a) already publicly available; or
- (b) about the third party concerned that has consented in terms of section 48 or otherwise in writing to its disclosure to the requester concerned

Mandatory protection of safety of individuals, and protection of property

38. The information officer of a public body—

- (a) must refuse a request for access to a record of the body if its disclosure could reasonably be expected to endanger the life or physical safety of an individual; or
- (b) may refuse a request for access to a record of the body if its disclosure would be likely to prejudice or impair—
 - (i) the security of—
 - (aa) a building, structure or system, including, but not limited to, a computer or communication system;
 - (bb) a means of transport; or
 - (cc) any other property; or
 - (ii) methods, systems, plans or procedures for the protection of—
 - (aa) an individual in accordance with a witness protection scheme;
 - (bb) the safety of the public, or any part of the public; or
 - (cc) the security of property contemplated in subparagraph (i)(aa), (bb) or (cc).

Mandatory protection of police dockets in bail proceedings, and protection of law enforcement and legal proceedings

39. (1) The information officer of a public body—

- (a) must refuse a request for access to a record of the body if access to that record is prohibited in terms of section 60(14) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977); or
- (b) may refuse a request for access to a record of the body if—
 - (i) the record contains methods, techniques, procedures or guidelines for—
 - (aa) the prevention, detection, curtailment or investigation of a contravention or possible contravention of the law; or
 - (bb) the prosecution of alleged offenders.
 and the disclosure of those methods, techniques, procedures or guidelines could reasonably be expected to prejudice the effectiveness of those methods, techniques, procedures or guidelines or lead to the circumvention of the law or facilitate the commission of an offence;
 - (ii) the prosecution of an alleged offender is being prepared or about to commence or pending and the disclosure of the record could reasonably be expected—
 - (aa) to impede that prosecution; or
 - (bb) to result in a miscarriage of justice in that prosecution; or
 - (iii) the disclosure of the record could reasonably be expected—
 - (aa) to prejudice the investigation of a contravention or possible contravention of the law which is about to commence or is in progress or, if it has been suspended or terminated, is likely to be resumed;
 - (bb) to reveal, or enable a person to ascertain, the identity of a confidential source of information in relation to the enforcement or administration of the law;
 - (cc) to result in the intimidation or coercion of a witness, or a person who might be or has been called as a witness, in criminal proceedings or other proceedings to enforce the law;
 - (dd) to facilitate the commission of a contravention of the law, including, but not limited to, subject to subsection (2), escape from lawful detention; or
 - (ee) to prejudice or impair the fairness of a trial or the impartiality of an adjudication.

(2) A record may not be refused in terms of subsection (1)(b)(iii)(dd) insofar as it consists of information about the general conditions of detention of persons in custody.

(3)(a) If a request for access to a record of a public body must or may be refused in terms of subsection (1)(a) or (b), or could, if it existed, be so refused, and the disclosure of the existence or non-existence of the record would be likely to cause the harm contemplated in subsection (1)(a) or (b), the information officer concerned may refuse to confirm or deny the existence or non-existence of the record.

(b) If the information officer so refuses to confirm or deny the existence or non-existence of the record, the notice referred to in section 25(3) must—

- (i) state that fact;
- (ii) identify the provision of subsection (1)(a) or (b) in terms of which access would have been refused if the record had existed;
- (iii) state adequate reasons for the refusal, as required by section 25(3), in so far as they can be given without causing the harm contemplated in any provision of subsection (1)(a) or (b); and
- (iv) state that the requester concerned may lodge an internal appeal or an application with a court, as the case may be, against the refusal as required by section 25(3).

Mandatory protection of records privileged from production in legal proceedings

40. The information officer of a public body must refuse a request for access to a record of the body if the record is privileged from production in legal proceedings unless the person entitled to the privilege has waived the privilege.

Defence, security and international relations of Republic

41. (1) The information officer of a public body may refuse a request for access to a record of the body if its disclosure—

- (a) could reasonably be expected to cause prejudice to—
 - (i) the defence of the Republic;
 - (ii) the security of the Republic; or
 - (iii) subject to subsection (3), the international relations of the Republic; or
- (b) would reveal information—
 - (i) supplied in confidence by or on behalf of another state or an international organisation;
 - (ii) supplied by or on behalf of the Republic to another state or an international organisation in terms of an arrangement or international agreement, contemplated in section 231 of the Constitution, with that state or organisation which requires the information to be held in confidence; or
 - (iii) required to be held in confidence by an international agreement or customary international law contemplated in section 231 or 232, respectively, of the Constitution.

(2) A record contemplated in subsection (1), without limiting the generality of that subsection, includes a record containing information—

- (a) relating to military tactics or strategy or military exercises or operations undertaken in preparation of hostilities or in connection with the detection, prevention, suppression or curtailment of subversive or hostile activities;
- (b) relating to the quantity, characteristics, capabilities, vulnerabilities or deployment of—
 - (i) weapons or any other equipment used for the detection, prevention, suppression or curtailment of subversive or hostile activities; or
 - (ii) anything being designed, developed, produced or considered for use as weapons or such other equipment;
- (c) relating to the characteristics, capabilities, vulnerabilities, performance, potential, deployment or functions of—
 - (i) any military force, unit or personnel; or
 - (ii) any body or person responsible for the detection, prevention, suppression or curtailment of subversive or hostile activities;
- (d) held for the purpose of intelligence relating to—
 - (i) the defence of the Republic;
 - (ii) the detection, prevention, suppression or curtailment of subversive or hostile activities; or
 - (iii) another state or an international organisation used by or on behalf of the Republic in the process of deliberation and consultation in the conduct of 60 international affairs;

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- (e) on methods of, and scientific or technical equipment for, collecting, assessing or handling information referred to in paragraph (d);
- (f) on the identity of a confidential source and any other source of information referred to in paragraph (d);
- (g) on the positions adopted or to be adopted by the Republic, another state or an international organisation for the purpose of present or future international negotiations; or
- (h) that constitutes diplomatic correspondence exchanged with another state or an international organisation or official correspondence exchanged with diplomatic missions or consular posts of the Republic.
- (3) A record may not be refused in terms of subsection (1)(a)(iii) if it came into existence more than 20 years before the request.
- (4)(a) If a request for access to a record of a public body may be refused in terms of subsection (1), or could, if it existed, be so refused, and the disclosure of the existence or non-existence of the record would be likely to cause the harm contemplated in any provision of subsection (1), the information officer concerned may refuse to confirm or deny the existence or non-existence of the record.
- (b) If the information officer so refuses to confirm or deny the existence or non-existence of the record, the notice referred to in section 25(3) must—
- state that fact;
 - identify the provision of subsection (1) in terms of which access would have been refused if the record had existed;
 - state adequate reasons for the refusal, as required by section 25(3) in so far as they can be given without causing the harm contemplated in subsection (1); and
 - state that the requester may lodge an internal appeal or an application with a court, as the case may be, against the refusal as required by section 25(3).

Economic interests and financial welfare of Republic and commercial activities of public bodies

42. (1) The information officer of a public body may refuse a request for access to a record of the body if its disclosure would be likely to materially jeopardise the economic interests or financial welfare of the Republic or the ability of the government to manage the economy of the Republic effectively in the best interests of the Republic.
- (2) The information referred to in subsection (1) includes, without limiting the generality of that subsection, information about—
- a contemplated change in, or maintenance of, a policy substantially affecting the currency, exchange, legal tender, exchange rates or foreign investment;
 - a contemplated change in or decision not to change—
 - credit or interest rates;
 - customs or excise duties, taxes or any other source of revenue;
 - the regulation or supervision of financial institutions;
 - government borrowing; or
 - the regulation of prices of goods or services, rents or wages, salaries or other incomes; or
 - a contemplated—
 - sale or acquisition of immovable or movable property; or
 - international trade agreement
- (3) Subject to subsection (5), the information officer of a public body may refuse a request for access to a record of the body if the record—
- contains trade secrets of the State or a public body;
 - contains financial, commercial, scientific or technical information, other than trade secrets, the disclosure of which would be likely to cause harm to the commercial or financial interests of the State or a public body;
 - contains information, the disclosure of which could reasonably be expected—
 - to put a public body at a disadvantage in contractual or other negotiations; or
 - to prejudice a public body in commercial competition; or
 - is a computer program, as defined in section 1(1) of the Copyright Act, 1978 (Act No. 96 of 1978), owned by the State or a public body, except insofar as it is required to give access to a record to which access is granted in terms of this Act.

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(1) The information referred to in subsection (2)(c)(i) includes, without limiting the generality of that subsection, information about an agreement, or contemplated agreement, to transfer any interest in or right to shares in the capital of a public body to any person which is not a public body referred to in paragraph (a) or (b)(i) of the definition of "public body".

(5) A record may not be refused in terms of subsection (3) insofar as it consists of information—

- already publicly available;
 - about or owned by a public body, other than the public body to which the request is made, which has consented in writing to its disclosure to the requester concerned; or
 - about the results of any product or environmental testing or other investigation supplied by, carried out by or on behalf of a public body, and its disclosure would reveal a serious public safety or environmental risk.
- (6) I or the purposes of subsection (5)(c), the results of any product or environmental testing or other investigation do not include the results of preliminary testing or other investigation conducted for the purpose of developing methods of testing or other investigation.
- (7) If a request for access to a record contemplated in subsection (5)(c) is granted and the testing or other investigation was carried out by or on behalf of the public body from 20 which the record is requested, the information officer must at the same time as access to the record is given, provide the requester with a written explanation of the methods used in conducting the testing or other investigation.

Mandatory protection of research information of third party, and protection of research information of public body

43. (1) The information officer of a public body must refuse a request for access to a record of the body if the record contains information about research being or to be carried out by or on behalf of a third party, the disclosure of which would be likely to expose—

- the third party;
 - a person that is or will be carrying out the research on behalf of the third party; or
 - the subject matter of the research,
- to serious disadvantage.
- (2) The information officer of a public body may refuse a request for access to a record of the body if the record contains information about research being or to be carried out by or on behalf of a public body, the disclosure of which would be likely to expose—
- the public body;
 - a person that is or will be carrying out the research on behalf of the public body; or
 - the subject matter of the research,
- to serious disadvantage.

Operations of public bodies

44. (1) Subject to subsections (3) and (4), the information officer of a public body may refuse a request for access to a record of the body—
- if the record contains—
 - an opinion, advice, report or recommendation obtained or prepared; or
 - an account of a consultation, discussion or deliberation that has occurred, including, but not limited to, minutes of a meeting,
- for the purpose of assisting to formulate a policy or take a decision in the exercise of a power or performance of a duty conferred or imposed by law; or
- if—
 - the disclosure of the record could reasonably be expected to frustrate the deliberative process in a public body or between public bodies by inhibiting the candid—
 - communication of an opinion, advice, report or recommendation; or
 - conduct of a consultation, discussion or deliberation; or

- (ii) the disclosure of the record could, by premature disclosure of a policy or contemplated policy, reasonably be expected to frustrate the success of that policy
- (2) Subject to subsection (4), the information officer of a public body may refuse a request for access to a record of the body if—
- (a) the disclosure of the record could reasonably be expected to jeopardise the effectiveness of a testing, examining or auditing procedure or method used by a public body;
- (b) the record contains evaluative material, whether or not the person who supplied it is identified in the record, and the disclosure of the material would breach an express or implied promise which was—
- (i) made to the person who supplied the material; and
- (ii) to the effect that the material or the identity of the person who supplied it, or both, would be held in confidence; or
- (c) the record contains a preliminary, working or other draft of an official of a public body
- (3) A record may not be refused in terms of subsection (1) if the record came into existence more than 20 years before the request concerned
- (4) A record may not be refused in terms of subsection (1) or (2) insofar as it consists of an account of, or a statement of reasons required to be given in accordance with 20 section 5 of the Promotion of Administrative Justice Act, 2000

Manifestly frivolous or vexatious requests, or substantial and unreasonable diversion of resources

45. The information officer of a public body may refuse a request for access to a record of the body if—
- (a) the request is manifestly frivolous or vexatious; or
- (b) the work involved in processing the request would substantially and unreasonably divert the resources of the public body

Mandatory disclosure in public interest

46. Despite any other provision of this Chapter, the information officer of a public body must grant a request for access to a record of the body contemplated in section 34(1), 36(1), 37(b)(a) or (b), 38(a) or (b), 39(1)(a) or (b), 40, 41(b)(a) or (b), 42(1) or (3), 43(1) or (2), 44(1) or (2) or 45, if—
- (a) the disclosure of the record would reveal evidence of—
- (i) a substantial contravention of, or failure to comply with the law; or
- (ii) an imminent and serious public safety or environmental risk; and
- (b) the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question

CHAPTER 5

THIRD PART: NOTIFICATION AND INTERVENTION

Notice to third parties

47. (1) The information officer of a public body considering a request for access to a record that might be a record contemplated in section 34(1), 35(1), 36(1), 37(1) or 43(1) must take all reasonable steps to inform a third party to whom or which the record relates of the request
- (2) The information officer must inform a third party in terms of subsection (1) —
- (a) as soon as reasonably possible, but in any event, within 21 days after that request is received or transferred; and
- (b) by the fastest means reasonably possible.
- (3) When informing a third party in terms of subsection (1), the information officer must —
- (a) state that he or she is considering a request for access to a record that might be a record contemplated in section 34(1), 35(1), 36(1), 37(1) or 43(1), as the case may be, and describe the content of the record;
- (b) furnish the name of the requester;

- (c) describe the provisions of section 34(1), 35(1), 36(1), 37(1) or 43(1) as the case may be;
- (d) in any case where the information officer believes that the provisions of section 46 might apply, describe those provisions, specify which of the circumstances referred to in section 46(a) in the opinion of the information officer might apply and state the reasons why he or she is of the opinion that section 46 might apply; and
- (e) state that the third party may, within 21 days after the third party is informed —
- (i) make written or oral representations to the information officer why the request for access should be refused; or
- (ii) give written consent for the disclosure of the record to the requester.
- (3) If a third party is not informed orally of a request for access in terms of subsection (1), the information officer must give a written notice stating the matters referred to in subsection (3) to the third party.

Representations and consent by third parties

48. (1) A third party that is informed in terms of section 47(1) of a request for access, may, within 21 days after the third party has been informed —
- (a) make written or oral representations to the information officer concerned why the request should be refused; or
- (b) give written consent for the disclosure of the record to the requester
- (2) A third party that obtains knowledge about a request for access other than in terms of section 47(1) may —
- (a) make written or oral representations to the information officer concerned why the request should be refused; or
- (b) give written consent for the disclosure of the record to the requester

Decision on representations for refusal and notice thereof

49. (1) The information officer of a public body must, as soon as reasonably possible, but in any event within 30 days after every third party is informed as required by section 47 —
- (a) decide, after giving due regard to any representations made by a third party in terms of section 48, whether to grant the request for access; and
- (b) notify the third party so informed and a third party not informed in terms of section 47(1), but that made representations in terms of section 48 or is located before the decision is taken, of the decision.
- (2) If, after all reasonable steps have been taken as required by section 47(1), a third party is not informed of the request in question and the third party did not make any representations in terms of section 48, any decision whether to grant the request for access must be made with due regard to the fact that the third party did not have the opportunity to make representations in terms of section 48 why the request should be refused
- (3) If the request for access is granted, the notice in terms of subsection (1)(b) must state —
- (a) adequate reasons for granting the request, including the provisions of this Act relied upon;
- (b) that the third party may lodge an internal appeal or an application, as the case may be, against the decision within 30 days after notice is given, and the procedure for lodging the internal appeal or application, as the case may be; and
- (c) that the requester will be given access to the record after the expiry of the applicable period contemplated in paragraph (b), unless such internal appeal or application with a court is lodged within that period
- (4) If the information officer of a public body decides in terms of subsection (1) to grant the request for access concerned, he or she must give the requester access to the record concerned after the expiry of 30 days after notice is given in terms of subsection (1)(b), unless an internal appeal or an application with a court, as the case may be, is lodged against the decision within that period.

PART 3 ACCESS TO RECORDS OF PRIVATE BODIES

CHAPTER 1 RIGHT OF ACCESS

Right of access to records of private bodies

50. (1) A requester must be given access to any record of a private body if—
 (a) that record is required for the exercise or protection of any rights;
 (b) that person complies with the procedural requirements in this Act relating to a request for access to that record; and
 (c) access to that record is not refused in terms of any ground for refusal 10 contemplated in Chapter 4 of this Part.
- (2) In addition to the requirements referred to in subsection (1), when a public body referred to in paragraph (a) or (b)(i) of the definition of "public body" in section 1, requests access to a record of a private body for the exercise or protection of any rights other than its rights, it must be acting in the public interest. 15
- (3) A request contemplated in subsection (1) includes a request for access to a record containing personal information about the requester or the person on whose behalf the request is made.

CHAPTER 2 PUBLICATION AND AVAILABILITY OF CERTAIN RECORDS 20

Manual

51. (1) Within six months after the commencement of this section or the coming into existence of the private body concerned, the head of a private body must compile a manual containing—
- (a) the postal and street address, phone and fax number and if available 25 electronic mail address of the head of the body;
 - (b) a description of the guide referred to in section 10, if available, and how to obtain access to it;
 - (c) the latest notice in terms of section 52(2), if any, regarding the categories of record of the body which are available without a person having to request 30 access in terms of this Act;
 - (d) a description of the records of the body which are available in accordance with any other legislation;
 - (e) sufficient detail to facilitate a request for access to a record of the body, a description of the subjects on which the body holds records and the categories 35 of records held on each subject; and
 - (f) such other information as maybe prescribed.
- (2) The head of a private body must on a regular basis update the manual referred to in subsection (1).
- (3) Each manual must be made available as prescribed. 40
 - (4) For security, administrative or financial reasons, the Minister may, on request or of his or her own accord, by notice in the Gazette, exempt any private body or category of private bodies from any provision of this section for such period as the Minister thinks fit.

Voluntary disclosure and automatic availability of certain records 45

52. (1) The head of a private body may, on a voluntary and periodic basis, submit to the Minister a description of—
- (a) the categories of records of the private body that are automatically available without a person having to request access in terms of this Act, including such categories available— 50
 - (i) for inspection in terms of legislation other than this Act;
 - (ii) for purchase or copying from the private body;
 - (iii) from the private body free of charge; and
 - (b) how to obtain access to such records.
- (2) If appropriate the Minister must, on a periodic basis and by notice in the Gazette 55
- (a) publish any description so submitted; and

- (b) update any description so published.
- (3) The only fee payable (if any) for access to a record described in a list so published is a prescribed fee for reproduction.
- (4) The head of a private body may delete any part of a record contemplated in subsection (1)(a) which, on a request for access, may or must be refused in terms of 5 Chapter 4 of this Part.
- (5) Section 50 and any other provisions in this Act related to that section do not apply to any category of records included in a notice in terms of subsection (2).

CHAPTER 3 MANNER OF ACCESS 10

Form of request

53. (1) A request for access to a record of a private body must be made in the prescribed form to the private body concerned at its address, fax number or electronic mail address.
- (2) The form for a request for access prescribed for the purposes of subsection (1) 15 must at least require the requester concerned—
- (a) to provide sufficient particulars to enable the head of the private body concerned to identify—
 - (i) the record or records requested; and 20
 - (ii) the requester;
 - (b) to indicate which form of access is required;
 - (c) to specify a postal address or fax number of the requester in the Republic;
 - (d) to identify the right the requester is seeking to exercise or protect and provide an explanation of why the requested record is required for the exercise or 25 protection of that right;
 - (e) if, in addition to a written reply, the requester wishes to be informed of the decision on the request in any other manner, to state that manner and the necessary particulars to be so informed; and
 - (f) if the request is made on behalf of a person, to submit proof of the capacity in which the requester is making the request, to the reasonable satisfaction of the 30 head.

Fees

54. (1) The head of a private body to whom a request for access is made must by notice require the requester, other than a personal requester, to pay the prescribed request fee (if any), before further processing the request. 35
- (2) If—
- (a) the search for a record of a private body in respect of which a request for access by a requester, other than a personal requester, has been made; and
 - (b) the preparation of the record for disclosure (including any arrangements contemplated in section 29(2)(a) and (b)(i) and (ii)(aa)), 40
- would, in the opinion of the head of the private body concerned, require more than the hours prescribed for this purpose for requesters, the head must by notice require the requester, other than a personal requester, to pay as a deposit the prescribed portion (being not more than one third) of the access fee which would be payable if the request 45 is granted.
- (3) The notice referred to in subsection (1) or (2) must state—
- (a) the amount of the deposit payable in terms of subsection (2), if applicable;
 - (b) that the requester may lodge an application with a court against the tender or payment of the request fee in terms of subsection (1), or the tender or payment of a deposit in terms of subsection (2), as the case may be; and 50
 - (c) the procedure (including the period) for lodging the application.
- (4) If a deposit has been paid in respect of a request for access which is refused, the head of the private body concerned must repay the deposit to the requester.
- (5) The head of a private body may withhold a record until the requester concerned has paid the applicable fees (if any). 55
- (6) A requester whose request for access to a record of a private body has been granted must pay an access fee for reproduction and for search and preparation contemplated in subsection (7)(a) and (b), respectively, for any time reasonably required in excess of the

prescribed hours to search for and prepare (including making any arrangements contemplated in section 29(2)(a) and (b)(i) and (ii)(aa)) the record for disclosure.

(7) Access fees prescribed for the purposes of subsection (6) must provide for a reasonable access fee for—

(a) the cost of making a copy of a record, or of a transcription of the content of a record, as contemplated in section 29(2)(a) and (b)(i), (ii)(bb), (iii) and (v) and, if applicable, the postal fee; and

(b) the time reasonably required to search for the record and prepare (including making any arrangements contemplated in section 29(2)(a) and (b)(i) and (ii)(aa)) the record for disclosure to the requester

(8) The Minister may, by notice in the *Gazette*—

(a) exempt any person or category of persons from paying any fee referred to in this section;

(b) determine that any fee referred to in this section is not to exceed a certain maximum amount;

(c) determine the manner in which any fee referred to in this section is to be calculated;

(d) determine that any fee referred to in this section does not apply to a category of records;

(e) exempt any person or record or category of persons or records for a stipulated period from any fee referred to in subsection (6); and

(f) determine that where the cost of collecting any fee referred to in this section exceeds the amount charged, such fee does not apply.

Records that cannot be found or do not exist

55. (1) If—

(a) all reasonable steps have been taken to find a record requested; and

(b) there are reasonable grounds for believing that the record—

(i) is in the private body's possession but cannot be found; or

(ii) does not exist.

the head of a private body must, by way of affidavit or affirmation, notify the requester that it is not possible to give access to that record

(2) The affidavit or affirmation referred to in subsection (1) must give a full account of all steps taken to find the record in question or to determine whether the record exists, as the case may be, including all communications with every person who conducted the search on behalf of the head

(3) For the purposes of this Act, the notice in terms of subsection (1) is to be regarded as a decision to refuse a request for access to the record concerned.

(4) If, after notice is given in terms of subsection (1), the record in question is found, the requester concerned must be given access to the record unless access is refused on a ground for refusal contemplated in Chapter 4 of this Part.

Decision on request and notice thereof

56. (1) Subject to Chapter 5 of this Part, the head of the private body to whom the request is made must, as soon as reasonably possible, but in any event within 30 days, after the request has been received or after the particulars required in terms of section 53(2) have been received—

(a) decide in accordance with this Act whether to grant the request; and

(b) notify the requester of the decision and, if the requester stated, as contemplated in section 53(2)(e), that he or she wishes to be informed of the decision in any other manner, inform him or her in that manner if it is reasonably possible

(2) If the request for access is granted, the notice in terms of subsection (1)(b) must state—

(a) the access fee (if any) to be paid upon access;

(b) the form in which access will be given; and

(c) that the requester may lodge an application with a court against the access fee to be paid or the form of access granted, and the procedure for lodging the application.

(3) If the request for access is refused, the notice in terms of subsection (1)(b) must—

(a) state adequate reasons for the refusal, including the provisions of this Act relied on;

(b) exclude, from any such reasons, any reference to the content of the record; and
(c) state that the requester may lodge an application with a court against the refusal of the request, and the procedure (including the period) for lodging the application

Extension of period to deal with request

57. (1) The head of a private body to whom a request for access has been made, may extend the period of 30 days referred to in section 56(1) (in this section referred to as the "original period") once for a further period of not more than 30 days, if—

(a) the request is for a large number of records or requires a search through a large number of records and compliance with the original period would unreasonably interfere with the activities of the private body concerned;

(b) the request requires a search for records in, or collection thereof from, an office of the private body not situated in the same town or city as the office of the head that cannot reasonably be completed within the original period;

(c) consultation among divisions of the private body or with another private body is necessary or desirable to decide upon the request that cannot reasonably be completed within the original period;

(d) more than one of the circumstances contemplated in paragraphs (a), (b) and (c) exist in respect of the request making compliance with the original period not reasonably possible; or

(e) the requester consents in writing to such extension.

(2) If a period is extended in terms of subsection (1), the head of the private body must, as soon as reasonably possible, but in any event within 30 days, after the request is received, notify the requester of that extension, the period of the extension and the reasons for the extension.

(3) The notice in terms of subsection (2) must state—

(a) the period of the extension;

(b) adequate reasons for the extension, including the provisions of this Act relied upon; and

(c) that the requester may lodge an application with a court against the extension, and the procedure (including the period) for lodging the application.

Deemed refusal of request

58. If the head of a private body fails to give the decision on a request for access to the requester concerned within the period contemplated in section 56(1), the head of the private body is, for the purposes of this Act, regarded as having refused the request

Severability

59. (1) If a request for access is made to a record of a private body containing information which may or must be refused in terms of any provision of Chapter 4 of this Part, every part of the record which—

(a) does not contain; and

(b) can reasonably be severed from any part that contains, any such information must, despite any other provision of this Act, be disclosed.

(2) If a request for access to—

(a) a part of a record is granted; and

(b) the other part of the record is refused,

as contemplated in subsection (1), the provisions of section 56(2) apply to paragraph (a) of this section and the provisions of section 56(3) to paragraph (b) of this section.

Form of access

60. If access is granted to a record of a private body, the head of that body must, as soon as reasonably possible after notification in terms of section 56, but subject to section 57, give access in—

(a) such form as the requester reasonably requires; or

(b) if no specific form of access is required by the requester, such form as the head reasonably determines.

Access to health or other records

61. (1) If the head of a private body who grants, in terms of section 50, a request for access to a record provided by a health practitioner in his or her capacity as such about the physical or mental health, or well-being —

(a) of the requester; or

(b) if the request has been made on behalf of the person to whom the record relates, of that person,

(in this section, the requester and person referred to paragraphs (a) and (b), respectively, are referred to as the "relevant person"), is of the opinion that the disclosure of the record to the relevant person might cause serious harm to his or her physical or mental health, or well-being, the information officer may, before giving access in terms of section 60, consult with a health practitioner who, subject to subsection (2), has been nominated by the relevant person

(2) If the relevant person is—

(a) under the age of 16 years, a person having parental responsibilities for the relevant person must make the nomination contemplated in subsection (1); or

(b) incapable of managing his or her affairs, a person appointed by the court to manage those affairs must make that nomination.

(3)(a) If, after being given access to the record concerned, the health practitioner consulted in terms of subsection (1) is of the opinion that the disclosure of the record to the relevant person, would be likely to cause serious harm to his or her physical or mental health, or well-being, the head may only give access to the record if the requester proves to the satisfaction of the head that adequate provision is made for such counseling or arrangements as are reasonably practicable before, during or after the disclosure of the record to limit, alleviate or avoid such harm to the relevant person.

(b) Before access to the record is so given to the requester, the person responsible for such counseling or arrangements must be given access to the record.

CHAPTER 4**GROUND(S) FOR REFUSAL OF ACCESS TO RECORDS****Interpretation**

62. A provision of this Chapter in terms of which a request for access to a record must or may or may not be refused, must not be construed as—

(a) limited in its application in any way by any other provision of this Chapter in terms of which a request for access to a record must or may or may not be refused; and

(b) not applying to a particular record by reason that another provision of this Chapter in terms of which a request for access to a record must or may or may not be refused, also applies to that record.

Mandatory protection of privacy of third party who is natural person

63. (1) Subject to subsection (2), the head of a private body must refuse a request for access to a record of the body if its disclosure would involve the unreasonable disclosure of personal information about a third party, including a deceased individual

(2) A record may not be refused in terms of subsection (1) insofar as it consists of information—

(a) about an individual who has consented in terms of section 72 or otherwise in writing to its disclosure to the requester concerned;

(b) already publicly available;

(c) that was given to the private body by the individual to whom it relates and the individual was informed by or on behalf of the private body, before it is given, that the information belongs to a class of information that would or might be made available to the public;

(d) about an individual's physical or mental health, or well-being, who is under the care of the requester and who is—

(i) under the age of 18 years; or

(ii) incapable of understanding the nature of the request, and if giving access would be in the individual's best interests;

(e) about an individual who is deceased and the requester is —

(i) the individuals next of kin; or

(ii) making the request with the written consent of the individual's next of kin; or

(f) about an individual who is or was an official of a private body and which relates to the position or functions of the individual, including, but not limited to—

(i) the fact that the individual is or was an official of that private body;

(ii) the title, work address, work phone number and other similar particulars of the individual;

(iii) the classification, salary scale or remuneration and responsibilities of the position held or services performed by the individual; and

(iv) the name of the individual on a record prepared by the individual in the course of employment

Mandatory protection of commercial information of third party

64. (1) Subject to subsection (2), the head of a private body must refuse a request for access to a record of the body if the record contains—

(a) trade secrets of a third party;

(b) financial, commercial, scientific or technical information, other than trade secrets, of a third party, the disclosure of which would be likely to cause harm to the commercial or financial interests of that third party; or

(c) information supplied in confidence by a third party, the disclosure of which could reasonably be expected

(i) to put that third party at a disadvantage in contractual or other negotiations; or

(ii) to prejudice that third party in commercial competition.

(2) A record may not be refused in terms of subsection (1) insofar as it consists of information about—

(a) a third party who has consented in terms of section 72 or otherwise in writing to its disclosure to the requester concerned;

(b) the results of any product or environmental testing or other investigation supplied by, carried out by or on behalf of a third party and its disclosure would reveal a serious public safety or environmental risk.

(3) For the purposes of subsection (2)(b), the results of any product or environmental testing or other investigation do not include the results of preliminary testing or other investigation conducted for the purpose of developing methods of testing or other investigation

Mandatory protection of certain confidential information of third party

65. The head of a private body must refuse a request for access to a record of the body if its disclosure would constitute an action for breach of a duty of confidence owed to a third party in terms of an agreement.

Mandatory protection of safety of individuals, and protection of property

66. The head of a private body—

(a) must refuse a request for access to a record of the body if its disclosure could reasonably be expected to endanger the life or physical safety of an individual; or

(b) may refuse a request for access to a record of the body if its disclosure would be likely to prejudice or impair—

(i) the security of

(aa) a building, structure or system, including, but not limited to, a computer or communication system;

(bb) a means of transport; or

(cc) any other property; or

(ii) methods, systems, plans or procedures for the protection of—

(aa) an individual in accordance with a witness protection scheme;

(bb) the safety of the public, or any part of the public; or

(cc) the security of property contemplated in subparagraph (i)(aa), (bb) or (cc)

Mandatory protection of records privileged from production in legal proceedings

67 The head of a private body must refuse a request for access to a record of the body if the record is privileged from production in legal proceedings unless the person entitled to the privilege has waived the privilege.

Commercial information of private body

68. (1) Subject to subsection (2), the head of a private body may refuse a request for access to a record of the body if the record—
 (a) contains trade secrets of the private body;
 (b) contains financial, commercial, scientific or technical information, other than trade secrets, of the private body, the disclosure of which would be likely to cause harm to the commercial or financial interests of the body;
 (c) contains information, the disclosure of which could reasonably be expected—
 (i) to put the private body at a disadvantage in contractual or other negotiations; or
 (ii) to prejudice the body in commercial competition; or
 (d) is a computer program, as defined in section 1(1) of the Copyright Act, 1978 (Act No. 98 of 1978), owned by the private body, except insofar as it is required to give access to a record to which access is granted in terms of this Act

(2) A record may not be refused in terms of subsection (1) insofar as it consists of information about the results of any product or environmental testing or other investigation supplied by, carried out by or on behalf of the private body and its disclosure would reveal a serious public safety or environmental risk

(3) For the purposes of subsection (2), the results of any product or environmental testing or other investigation do not include the results of preliminary testing or other investigation conducted for the purpose of developing methods of testing or other investigation

Mandatory protection of research information of third party, and protection of research information of private body

69. (1) The head of a private body must refuse a request for access to a record of the body if the record contains information about research being or to be carried out by or on behalf of a third party, the disclosure of which would be likely to expose—
 (a) the third party;
 (b) a person that is or will be carrying out the research on behalf of the third party, or
 (c) the subject matter of the research, to serious disadvantage.

(2) The head of a private body may refuse a request for access to a record of the body if the record contains information about research being or to be carried out by or on behalf of the private body, the disclosure of which would be likely to expose—
 (a) the private body;
 (b) a person that is or will be carrying out the research on behalf of the private body; or
 (c) the subject matter of the research, to serious disadvantage.

Mandatory disclosure in public interest

70 Despite any other provision of this Chapter, the head of a private body must grant a request for access to a record of the body contemplated in section 63(1), 64(1), 65, 66(a) or (b), 67, 68(1) or 69(1) or (2) if—
 (a) the disclosure of the record would reveal evidence of—
 (i) a substantial contravention of, or failure to comply with, the law; or
 (ii) imminent and serious public safety or environmental risk; and
 (b) the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question.

CHAPTER 5 THIRD PARTY NOTIFICATION AND INTERVENTION

Notice to third parties

71. (1) The head of a private body considering a request for access to a record that might be a record contemplated in section 63(1), 64(1), 65 or 69(1), must take all reasonable steps to inform a third party to whom or which the record relates of the request

(2) The head must inform a third party in terms of subsection (1)—

(a) as soon as reasonably possible, but in any event within 21 days after that request is received; and

(b) by the fastest means reasonably possible

(3) When informing a third party in terms of subsection (1), the head must—

(a) state that he or she is considering a request for access to a record that might be a record contemplated in section 63(1), 64(1), 65 or 69(1), as the case may be, and describe the content of the record;

(b) furnish the name of the requester;

(c) describe the provisions of section 63(1), 64(1), 65 or 69(1), as the case may be;

(d) in any case where the head believes that the provisions of section 70 might apply, describe those provisions, specify which of the circumstances referred to in section 70(a) in the opinion of the head might apply and state the reasons why he or she is of the opinion that section 70 might apply; and
 (e) state that the third party may, within 21 days after the third party is informed—

(i) make written or oral representations to the head why the request for access should be refused; or

(ii) give written consent for the disclosure of the record to the requester

(4) If a third party is informed orally of a request for access in terms of subsection (1), the head must give a written notice stating the matters referred to in subsection (3) to the third party

Representations and consent by third parties

72. (1) A third party that is informed in terms of section 71(1) of a request for access, may, within 21 days after being so informed—

(a) make written or oral representations to the head concerned why the request should be refused; or

(b) give written consent for the disclosure of the record to the requester concerned

(2) A third party that obtains knowledge about a request for access other than in terms of section 71(1) may—

(a) make written or oral representations to the head concerned why the request should be refused; or

(b) give written consent for the disclosure of the record to the requester concerned

Decision on representations for refusal and notice thereof

73. (1) The head of a private body must, as soon as reasonably possible, but in any event within 30 days after every third party is informed as required by section 71—

(a) decide, after giving due regard to any representations made by a third party in terms of section 72, whether to grant the request for access; and

(b) notify the third party so informed and a third party not informed in terms of section 71, but that made representations in terms of section 72 or is located before the decision is taken, of the decision

(2) If, after all reasonable steps have been taken as required by section 71, a third party is not informed of a request, any decision whether to grant the request for access must be made with due regard to the fact that the third party did not have the opportunity to make representations in terms of section 72 why the request should be refused.

(3) If the request is granted, the notice in terms of subsection (1)(b) must state—

(a) adequate reasons for granting the request, including the provisions of this Act relied upon to justify the granting;

(b) that the third party may lodge an application with a court against the decision of the head within 30 days after notice is given, and the procedure for lodging the application; and

(c) that the requester will be given access to the record after the expiry of the applicable period contemplated in paragraph (b), unless an application with a court is lodged within that period.

(4) If the head of the private body decides in terms of subsection (1) to grant the request for access concerned, he or she must give the requester access to the record 10 concerned after the expiry of 30 days after notice is given in terms of subsection (1)(b), unless an application with a court is lodged against the decision within that period.

PART 4 APPEALS AGAINST DECISIONS

CHAPTER 1

INTERNAL APPEALS AGAINST DECISIONS OF INFORMATION OFFICERS OF CERTAIN PUBLIC BODIES

Right of internal appeal to relevant authority

74. (1) A requester may lodge an internal appeal against a decision of the Information officer of a public body referred to in paragraph (a) of the definition of "public body" in 20 section 1—

(a) to refuse a request for access; or

(b) taken in terms of section 22, 26(1) or 29(3), in relation to that requester with the relevant authority.

(2) A third party may lodge an internal appeal against a decision of the information 25 officer of a public body referred to in paragraph (a) of the definition of "public body" in section 1 to grant a request for access.

Manner of internal appeal, and appeal fees

75. (1) An internal appeal—

(a) must be lodged in the prescribed form—

(i) within 60 days;

(ii) if notice to a third party is required by section 49(1)(b), within 30 days after notice is given to the appellant of the decision appealed against or, if notice to the appellant is not required, after the decision was taken;

(b) must be delivered or sent to the information officer of the public body 35 concerned at his or her address, fax number or electronic mail address;

(c) must identify the subject of the internal appeal and state the reasons for the internal appeal and may include any other relevant information known to the appellant;

(d) if, in addition to a written reply, the appellant wishes to be informed of the 40 decision on the internal appeal in any other manner, must state that manner and provide the necessary particulars to be so informed;

(e) if applicable, must be accompanied by the prescribed appeal fee referred to in subsection (3); and

(f) must specify a postal address or fax number.

(2)(a) If an internal appeal is lodged after the expiry of the period referred to in subsection (1)(a), the relevant authority must, upon good cause shown, allow the late lodging of the internal appeal.

(b) If that relevant authority disallows the late lodging of the internal appeal, he or she must give notice of that decision to the person that lodged the internal appeal.

(3)(a) A requester lodging an internal appeal against the refusal of his or her request for access must pay the prescribed appeal fee (if any).

(b) If the prescribed appeal fee is payable in respect of an internal appeal, the decision on the internal appeal may be deferred until the fee is paid.

(4) As soon as reasonably possible, but in any event within 10 working days after 55 receipt of an internal appeal in accordance with subsection(1), the information officer of the public body concerned must submit to the relevant authority—

(a) the internal appeal together with his or her reasons for the decision concerned; and

(b) if the internal appeal is against the refusal or granting of a request for access, the name, postal address, phone and fax number and electronic mail address, whichever is available, of any third party that must be notified in terms of 5 section 47(1) of the request.

Notice to and representations by other interested persons

76. (1) If a relevant authority is considering an internal appeal against the refusal of a request for access to a record contemplated in section 34(1), 35(1), 36(1), 37(1) or 13(1), the authority must inform the third party to whom or which the record relates of the internal appeal, unless all necessary steps to locate the third party have been 10 unsuccessful.

(2) The relevant authority must inform a third party in terms of subsection (1) —

(a) as soon as reasonably possible, but in any event within 30 days after the receipt of the internal appeal; and

(b) by the fastest means reasonably possible.

(3) When informing a third party in terms of subsection (1), the relevant authority must—

(a) state that he or she is considering an internal appeal against the refusal of a request for access to a record contemplated in section 34(1), 35(1), 36(1), 37(1) or 43(1), as the case may be, and describe the content of the record and the provisions of section 34(1), 35(1), 36(1), 37(1) or 43(1), as the case may be;

(b) furnish the name of the appellant;

(c) in any case where that authority believes that the provisions of section 46 25 might apply, describe those provisions, specify which of the circumstances referred to in section 46(a) in the opinion of the head might apply and state the reasons why he or she is of the opinion that section 46 might apply; and

(d) state that the third party may, within 21 days after the third party is informed, make written representations to that authority why the request for access 30 should not be granted.

(4) If a third party is informed orally of an internal appeal in terms of subsection (1), the relevant authority must, on request, give a written notice stating the matters referred to in subsection (3) to the third party.

(5) A third party that is informed of an internal appeal in terms of subsection(1), may 35 within 21 days after the third party has been informed, make written representations to the relevant authority why the request for access should not be granted.

(6) A third party that obtains knowledge about an internal appeal other than in terms of subsection (1) may—

(a) make written or oral representations to the relevant authority why the request 40 for access should be refused; or

(b) give written consent for the disclosure of the record to the requester concerned.

(7) If the relevant authority is considering an internal appeal against the granting of a request for access, the authority must give notice of the internal appeal to the requester 45 concerned.

(8) The relevant authority must—

(a) notify the requester concerned in terms of subsection (7) as soon as reasonably possible, but in any event within 30 days after the receipt of the internal 50 appeal; and

(b) state in that notice that the third party may within 21 days after notice is given, make written representations to that authority why that request should be granted.

(9) A requester to whom or which notice is given in terms of subsection (7) may 55 within 21 days after that notice is given, make written representations to the relevant authority why the request for access should be granted.

Decision on internal appeal and notice thereof

77. (1) The decision on an internal appeal must be made with due regard to—

(a) the particulars stated in the internal appeal in terms of section 75(1)(c);

- (b) any reasons submitted by the information officer in terms of section 75(1)(a);
- (c) any representations made in terms of section 76(5), (6) or (9); and
- (d) if a third party cannot be located as contemplated in section 76(1), the fact that the third party did not have the opportunity to make representations in terms of section 76(5) why the internal appeal should be dismissed.
- (2) When deciding on the internal appeal the relevant authority may confirm the decision appealed against or substitute a new decision for it.
- (3) The relevant authority must decide on the internal appeal—
- (a) as soon as reasonably possible, but in any event within 30 days after the internal appeal is received by the information officer of the body;
- (b) if a third party is informed in terms of section 76(1), as soon as reasonably possible, but in any event within 30 days; or
- (c) if notice is given in terms of section 76(7)—
- (i) within five working days after the requester concerned has made written representations in terms of section 76(9); or
- (ii) in any other case within 30 days after notice is so given.
- (4) The relevant authority must, immediately after the decision on an internal appeal—
- (a) give notice of the decision to—
- (i) the appellant;
- (ii) every third party informed as required by section 76(1); and
- (iii) the requester notified as required by section 76(7); and
- (b) if reasonably possible, inform the appellant about the decision in any other manner stated in terms of section 75(1)(d).
- (5) The notice in terms of subsection (4)(a) must—
- (a) state adequate reasons for the decision, including the provision of this Act relied upon;
- (b) exclude, from such reasons, any reference to the content of the record;
- (c) state that the appellant, third party or requester, as the case may be, may lodge an application with a court against the decision on internal appeal—
- (i) within 60 days; or
- (ii) if notice to a third party is required by subsection (4)(a)(ii), within 30 days,
- after notice is given, and the procedure for lodging the application; and
- (d) if the relevant authority decides on internal appeal to grant a request for access and notice to a third party—
- (i) is not required by subsection (4)(a)(ii), that access to the record will forthwith be given; or
- (ii) is so required, that access to the record will be given after the expiry of the applicable period for lodging an application with a court against the decision on internal appeal referred to in paragraph (c), unless that application is lodged before the end of that applicable period.
- (6) If the relevant authority decides on internal appeal to grant a request for access and notice to a third party—
- (a) is not required by subsection (4)(a)(ii), the information officer of the body must forthwith give the requester concerned access to the record concerned; or
- (b) is so required, the information officer must, after the expiry of 30 days after the notice is given to every third party concerned, give the requester access to the record concerned, unless an application with a court is lodged against the decision on internal appeal before the end of the period contemplated in subsection (5)(c)(ii) for lodging that application.
- (7) If the relevant authority fails to give notice of the decision on an internal appeal to the appellant within the period contemplated in subsection (3), that authority is, for the purposes of this Act, regarded as having dismissed the internal appeal.

CHAPTER 2 APPLICATIONS TO COURT

Applications regarding decisions of information officers or relevant authorities of public bodies or heads of private bodies

78. (1) A requester or third party referred to in section 71 may only apply to a court for appropriate relief in terms of section 82 after that requester or third party has

exhausted the internal appeal procedure against a decision of the information officer of a public body provided for in section 74.

(2) A requester—

- (a) that has been unsuccessful in an internal appeal to the relevant authority of a public body;
- (b) aggrieved by a decision of the relevant authority of a public body to disallow the late lodging of an internal appeal in terms of section 75(2);
- (c) aggrieved by a decision of the information officer of a public body referred to in paragraph (b) of the definition of "public body" in section 1—
- (i) to refuse a request for access; or
- (ii) taken in terms of section 22, 26(1) or 29(3); or
- (d) aggrieved by a decision of the head of a private body—
- (i) to refuse a request for access; or
- (ii) taken in terms of section 54, 57(1) or 60,

may, by way of an application, within 30 days apply to a court for appropriate relief in 15 terms of section 82.

(3) A third party—

- (a) that has been unsuccessful in an internal appeal to the relevant authority of a public body;
- (b) aggrieved by a decision of the information officer of a public body referred to 20 in paragraph (b) of the definition of "public body" in section 1 to grant a request for access; or
- (c) aggrieved by a decision of the head of a private body in relation to a request for access to a record of that body,
- may, by way of an application, within 30 days apply to a court for appropriate relief in 25 terms of section 82.

Procedure

79. (1) The Rules Board for Courts of Law, established by section 2 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), must within 12 months after the commencement of this section, make and implement rules of procedure for 30

- (a) a court in respect of applications in terms of section 78; and
- (b) a court to receive representations *ex parte* referred to in section 80(3)(a).
- (2) Before the implementation of the rules of procedure in terms of subsection (1)(a), an application in terms of section 78 may only be lodged with a High Court or another court of similar status. 35

(3) Any rule made in terms of subsection (1) must, before publication in the *Gazette*, be approved by Parliament.

Disclosure of records to, and non-disclosure by, court

80. (1) Despite this Act and any other law, any court hearing an application, or an appeal against a decision on that application, may examine any record of a public or 40 private body to which this Act applies, and no such record may be withheld from the court on any grounds.

(2) Any court contemplated in subsection (1) may not disclose to any person, including the parties to the proceedings concerned, other than the public or private body referred to in subsection (1) — 45

- (a) any record of a public or private body which, on a request for access, may or must be refused in terms of this Act; or
- (b) if the information officer of a public body, or the relevant authority of that body on internal appeal, in refusing to grant access to a record in terms of section 39(3) or 41(4), refuses to confirm or deny the existence or 50 non-existence of the record, any information as to whether the record exists.

(3) Any court contemplated in subsection (1) may—

- (a) receive representations *ex parte*;
- (b) conduct hearings in camera; and
- (c) prohibit the publication of such information in relation to the proceedings as 55 the court determines, including information in relation to the parties to the proceedings and the contents of orders made by the court in the proceedings.

Proceedings are civil

81. (1) For the purposes of this Chapter proceedings on application in terms of section 78 are civil proceedings.

(2) The rules of evidence applicable in civil proceedings apply to proceedings on application in terms of section 78.

(3) The burden of establishing that—

- (a) the refusal of a request for access; or
- (b) any decision taken in terms of section 22, 26(1), 29(3), 54, 57(1) or 60, complies with the provisions of this Act rests on the party claiming that it so complies.

Decision on application

82. The court hearing an application may grant any order that is just and equitable, including orders—

- (a) confirming, amending or setting aside the decision which is the subject of the application concerned;
- (b) requiring from the information officer or relevant authority of a public body or 15 the head of a private body to take such action or to refrain from taking such action as the court considers necessary within a period mentioned in the order;
- (c) granting an interdict, interim or specific relief, a declaratory order or compensation; or
- (d) as to costs.

PART 5 HUMAN RIGHTS COMMISSION

Additional functions of Human Rights Commission

83. (1) The Human Rights Commission must—

- (a) compile and make available a guide on how to use this Act as contemplated in 25 section 10; and
- (b) submit reports to the National Assembly as contemplated in section 84.
- (2) The Human Rights Commission must, to the extent that financial and other resources are available—
- (a) develop and conduct educational programmes to advance the understanding 30 of the public, in particular of disadvantaged communities, of this Act and of how to exercise the rights contemplated in this Act;
- (b) encourage public and private bodies to participate in the development and conduct of programmes referred to in paragraph (a) and to undertake such programmes themselves; and
- (c) promote timely and effective dissemination of accurate information by public bodies about their activities.
- (3) The Human Rights Commission may—
- (a) make recommendations for—
- (i) the development, improvement, modernisation, reform or amendment of 40 this Act or other legislation or common law having a bearing on access to information held by public and private bodies, respectively; and
- (ii) procedures in terms of which public and private bodies make information electronically available;
- (b) monitor the implementation of this Act;
- (c) if reasonably possible, on request, assist any person wishing to exercise a right contemplated in this Act;
- (d) recommend to a public or private body that the body make such changes in the manner in which it administers this Act as the Commission considers 50 advisable;
- (e) train information officers of public bodies;
- (f) consult with and receive reports from public and private bodies on the problems encountered in complying with this Act;
- (g) obtain advice from, consult with, or receive and consider proposals or recommendations from, any public or private body, official of such a body or 55 member of the public in connection with the Commission's functions in terms of this Act;

(h) for the purposes of section 84(b)(x), request the Public Protector to submit to the Commission information with respect to—

- (i) the number of complaints lodged with the Public Protector in respect of a right conferred or duty imposed by this Act;
 - (ii) the nature and outcome of those complaints; and
 - (l) generally, inquire into any matter, including any legislation, the common law and any practice and procedure, connected with the objects of this Act.
- (4) For the purpose of the annual report referred to in section 84 and if so requested by the Human Rights Commission, the head of a private body may furnish to that Commission information about requests for access to records of the body.
- (5) If appropriate, and if financial and other resources are available, an official of a public body must afford the Human Rights Commission reasonable assistance for the effective performance of its functions in terms of this Act.

Report to National Assembly by Human Rights Commission

84. The Human Rights Commission must include in its annual report to the National Assembly referred to in section 181(5) of the Constitution—

- (a) any recommendation in terms of section 83(3)(a); and
- (b) in relation to each public body, particulars of—
- (i) the number of requests for access received;
- (ii) the number of requests for access granted in full;
- (iii) the number of requests for access granted in terms of section 46;
- (iv) the number of requests for access refused in full and refused partially and the number of times each provision of this Act was relied on to refuse access in full or partially;
- (v) the number of cases in which the periods stipulated in section 25(1) were 25 extended in terms of section 26(1);
- (vi) the number of internal appeals lodged with the relevant authority and the number of cases in which, as a result of an internal appeal, access was given to a record or a part thereof;
- (vii) the number of internal appeals which were lodged on the ground that a request for access was regarded as having been refused in terms of section 27;
- (viii) the number of applications made to every court and the outcome thereof and the number of decisions of every court appealed against and the outcome thereof;
- (ix) the number of applications to every court which were lodged on the ground that an internal appeal was regarded as having been dismissed in terms of section 77(7);
- (x) the number of complaints lodged with the Public Protector in respect of a right conferred or duty imposed by this Act and the nature and outcome thereof; and
- (xi) such other matters as may be prescribed.

Expenditure of Human Rights Commission in terms of Act

85. Any expenditure, in connection with the performance of the Human Rights Commission's functions in terms of this Act, must be defrayed from moneys appropriated by Parliament to that Commission for that purpose.

PART 6 TRANSITIONAL PROVISIONS

Application of other legislation providing for access

86. (1) The Minister must, within 12 months after the commencement of section 6, introduce a Bill in Parliament proposing the amendment of—

- (a) Part I of the Schedule to include the provisions *in italics* which provide for or promote access to a record of a public body; and
- (b) Part 2 of the Schedule to include the provisions of legislation which provide for or promote access to a record of a private body.

(2) Until the amendment of this Act contemplated in subsection (1) takes effect, any other legislation not referred to in the Schedule which provides for access to a record of

a public body or a private body in a manner which, including, but not limited to, the payment of fees, is not materially more onerous than the manner in which access may be obtained in terms of Part 2 or 3 of this Act, respectively, access may be given in terms of that legislation

Extended periods for dealing with requests during first two years

87. (1) For—

(a) 12 months from the date that Part 2 takes effect in respect of a public body the reference to—

(i) 30 days in section 25(1) and any other reference to that period in other provisions of this Act;

(ii) 30 days in section 49(1) and any other reference to that period in other provisions of this Act,

must be construed as a reference to 90 days in respect of that public body; and

(b) 12 months following the 12 months referred to in paragraph (a), the reference to—

(i) 30 days in section 25(1) and any other reference to that period in other provisions of this Act;

(ii) 30 days in section 49(1) and any other reference to that period in other provisions of this Act,

must be construed as a reference to 60 days in respect of the public body concerned

(2) The periods of 90 days and 60 days referred to in subsection (1)(a) and (b), respectively, may not be extended in terms of section 26

(3) Parliament must, after a period of 12 months, but within a period of 18 months, after the commencement of this section, review the operation of this section.

Correction of personal information

88. If no provision for the correction of personal information in a record of a public or private body exists, that public or private body must take reasonable steps to establish adequate and appropriate internal measures providing for such correction until legislation providing for such correction takes effect

PART 7 GENERAL PROVISIONS

Liability

89. No person is criminally or civilly liable for anything done in good faith in the exercise or performance or purported exercise or performance of any power or duty in terms of this Act.

Offences

90. A person who with intent to deny a right of access in terms of this Act—

(a) destroys, damages or alters a record;

(b) conceals a record; or

(c) falsifies a record or makes a false record,

commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years.

Amendment of Public Protector Act 23 of 1994

91. Section 6 of the Public Protector Act, 1994 (Act No. 23 of 1994), is hereby amended—

(a) by the substitution in paragraph (c) of subsection (1) for the expression "authority," of the expression "authority; and"; and

(b) by the addition to subsection (4) of the following paragraph:

"(d) on his or her own initiative, on receipt of a complaint or on request relating to the operation or administration of the Promotion of Access to Information Act, 2000, endeavour, in his or her sole discretion, to resolve any dispute by—

(i) mediation, conciliation or negotiation;

(ii) advising, where necessary, any complainant regarding appropriate remedies; or

(iii) any other means that may be expedient in the circumstances.

Regulations

92. (1) The Minister may, by notice in the *Gazette*, make regulations regarding—

(a) any matter which is required or permitted by this Act to be prescribed;

(b) any matter relating to the fees contemplated in sections 22 and 54;

(c) any notice required by this Act;

(d) uniform criteria to be applied by the information officer of a public body when deciding which categories of records are to be made available in terms of section 15; and

(e) any administrative or procedural matter necessary to give effect to the provisions of this Act.

(2) Any regulation in terms of subsection (1) must, before publication in the *Gazette*, be submitted to Parliament.

(3) Any regulation in terms of subsection (1) which—

(a) relates to fees; or

(b) may result in financial expenditure for the State,

must be made by the Minister acting in consultation with the Minister of Finance,

Short title and commencement

93. (1) This Act is the Promotion of Access to Information Act, 2000, and takes effect on a date determined by the President by proclamation in the *Gazette*.

(2) Different dates may be so determined in respect of—

(a) different provisions of this Act;

(b) different categories of public bodies, including, but not limited to, different public bodies contemplated in—

(i) paragraph (a);

(ii) paragraph (b)(i); and

(iii) paragraph (b)(ii),

of the definition of "public body" in section 1; and

(c) different categories of private bodies.

SCHEDULE

Part 1

(Section 6(a))

Number and year of law Act 107 of 1998	Short title National Environmental Management Act, 1998	Section Section 3(1.1)
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Part 2

(Section 6(b))

Number and year of law Act 107 of 1998	Short title National Environmental Management Act, 1998	Section Section 3(1.2)
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