ELECTORAL SYSTEMS AS A MECHANISM OF DEMOCRATIC GOVERNANCE – A SOUTH AFRICAN PERSPECTIVE

K. C. Makhetha

ELECTORAL SYSTEMS AS A MECHANISM OF DEMOCRATIC GOVERNANCE - A SOUTH AFRICAN PERSPECTIVE

by

K. C. Makhetha
(Student no: 1996749428)

Dissertation submitted in complete fulfilment of the requirements for the degree

DOCTOR OF PHILOSOPHY
FACULTY OF ECONOMIC AND MANAGEMENT SCIENCES
DEPARTMENT OF POLITICAL SCIENCE

at the

UNIVERSITY OF THE FREE STATE
BLOEMFONTEIN

Mentor: Prof. D. P. Wessels
30 May 2003

Electoral systems as a mechanism of democratic governance – a South African perspective

TABLE OF CONTENTS

CHAPTER 1: INTRODUCTION

CHAPTER 2: GENERAL ORIENTATION

CHAPTER 3: REPRESENTATION AND ELECTIONS – A THEORETICAL PERSPECTIVE

CHAPTER 4: THEORETICAL PERSPECTIVES ON THE ELECTORAL PRINCIPLE: ELECTIONS, VOTING AND ELECTORAL SYSTEMS

CHAPTER 5: LOCAL GOVERNMENT: A CONCEPTUALISATION AND CONTEXTUALISATION

CHAPTER 6: LOCAL GOVERNMENT ELECTIONS: December 2000

CHAPTER 7: EVALUATION OF THE STUDY

Acknowledgement:

FOREWORD

It is a joyous moment. A moment to celebrate and give thanks for, the time, the energy and good health, and the ability to absorb and share knowledge. This is one moment that needs to be recognised for its value.

I am thankful for the strong support system I had throughout this period. Two women I have been blessed with; my mother, Sejakhumo Pula and my daughter, Sejakhumo Makhetha. They have been my pillars of strength in their own unique ways.

I feel honoured to have had the best mentors and advisors throughout this challenging period and beyond. Prof. D. P. Wessels, who has been a mentor and a parent to me. A knowledgeable academic and scholar, willing to share his knowledge and still remained very humble. I thank him for being a guiding force of my career. I need to give thanks to my other mentor and pillar of strength, Prof. T. Verschoor, for the emotional support whenever I could not cope with challenges in the academic world. These two professors touched my life. They groomed and refined my skills and treated me like their daughter.

Prof. Benito Khotseng, is one other mentor and parent, who played a crucial role in my development. I thank him for the Andrew Mellon Fellowship, the exposure and personal development I gained during the period of study.

I need to say a special thanks to the IEC Provincial Office (Free State), for the kind of support they gave me. For a while I felt like part of the team and I really appreciate it.

Thanks to my friends for remaining friends even when I neglected them. I thank Paul Setati who has been my guardian angel throughout my academic life. For the past five years, he shared my vision and helped pave the way towards achieving it. I value him for having a positive outlook on life and for believing in me. I need to single out another friend, Louise Verster. A friend who was always there whenever I needed to ventilate. Thank you for listening, for keeping me sane and for travelling this lonely road with me.

I will always cherish the time I spent with other Mellon Fellows. We shared something special, a bond that will last a lifetime. Londi, Ntsikane and Barbara, thank you for being my friends when friends were scarce.

People came by and moved on. These people left 'footprints' in my life. Indeed, it takes a village of people to carve and shape an individual's life. May I have the strength to assist and empower those I meet along the way and give them hope in life, especially women and children. In Deo Sapientiae Lux!

LIST OF ABBREVIATIONS

AEB	- Afrikaner Eenheidsbeweging
AITUP	- Abolition of Income Tax and Usury Party
ANC	- African National Congress
ACDP	- African Christian Democratic Party
ADM	- African Democratic Movement
AMP	- African Moral Party
AVU	- Afrikaner Volksunie
AWB	- Afrikaner Weerstandsbeweging
AZAPO	- Azanian People's Organisation
AZT	- Anti-retroviral therapy
CAAA	- Comprehensive Anti-Apartheid Act
CEO	- Chief Executive Officer
CGE	- Commission of Gender Equity
CODESA	- Convention for a Democratic South Africa
CORE	- Co-operative for Research and Education
COSATU	- Congress of South African Trade Unions
CP	- Conservative Party
DA	- Democratic Alliance
DC	- District Council
DMA	- District Management Area
DP	- Democratic Party
EISA	- Electoral Institute of South Africa
FA	- Federal Alliance
FF	- Freedom Front
FPTP	- First-Past-The-Post
FS	- Free State
GEAR	- Growth, Equity and Redistribution
GNU	- Government of National Unity
GPGP	- Government by the People Green Party
HSRC	- Human Sciences Research Council
ICOSA	- Independent Civic Organisation of South Africa
ID	- Identity Document
IDASA	- Institute for Democracy in South Africa
IEC	- Independent Electoral Commission

IFP	- Inkatha Freedom Party
KLA	- Kaizer Family Foundation
LGNF	- Local Government Negotiating Forum
LGTA	- Local Government Transitional Act
LGTP	- Local Government Transformation Programme
MEC	- Member of the Executive Council
MEO	- Municipal Election Officer
MF	- Minority Front
NCOP	- National Council of Provinces
NDI	- National Democratic Institute
	(International Affairs)
NGO	- Non-Governmental Organisation
NNP	- New National Party
NP	- National Party
OAU	- Organisation of African Unity
PAC	- Pan-Africanist Congress of Azania
PEO	- Provincial Electoral Officer
PR	- Proportional Representation
RDP	- Reconstruction and Development Programme
SABC	- South African Broadcasting Corporation
SACSOC	- South African Civil Society Observation Coalition
SACP	- South African Communist Party
SALGA	- South African Local Government Association
TBVC	- Transkei, Bophuthatswana, Venda, and Ciskei
	(Homelands)
TEC	- Transitional Executive Council
TLC	- Transitional Local Council
TMC	- Transitional Metropolitan Council
TMS	- Transitional Metropolitan Substructures
TRC	- Transitional Rural Council
UCDP	- United Christian Democratic Party
UDF	- United Democratic Front
UK	- United Kingdom
USA	- United States of America
XPP	- Ximoko Progressive Party

LIST OF TABLES AND DIAGRAMS

CHAPTER 1

INTRODUCTION

1.1   MOTIVATION

South Africa has come a long way to where it is today. When South Africa and its people made a commitment to negotiate their future between 1990 and 1993, they had a vision of a democratic, non-racial and non-sexist country. For that to happen, the constitution had to be rewritten to accommodate democratic principles and from then onwards, the process of transformation and democratisation began to unfold. It was the end of an era, and the beginning of another, with its own new challenges.

The challenge of the "new" South Africa is to promote and create a conducive climate in order for democratic governance to prevail.

The decision to study electoral systems as a mechanism for democratic governance, was based on the influence electoral systems have on elections, voting and eventually representation in governments. It is necessary that democratic principles be adhered to, in order to enhance governance in new democracies such as South Africa.

Elections are the main institutional mechanism by which representatives are elected, and they give expression to the most basic demand of democracy; a democratic government, that is, representation.

Represention implies that elections should be free according to the demands of democracy (Wessels, 1996:4). Free elections would mean, that the views and opinions of all stakeholders would be represented and that they would be free to express their choices.

Elections offer a multiplicity of choices and the most important choices, are made by the citizens (Bogdanor and Butler, 1983:20). Choices made by the citizens are regarded as most important because they are the ones who authorise the elected representatives, to represent their interests.

Representation encompasses other elements such as sovereignty, political equality and consultation. By popular sovereignty, the basic decision-making of government should be vested in all the members of society and not one group or one person. Political equality

requires that every member of society should have an equal opportunity to participate in the country's political decision-making process. As for popular consultation, public officials should be able to determine which policy is preferred by the people and whatever their convictions, the officials must execute such policies (De Ville and Steytler, 1996:4).

Democracy is concerned with bringing government closer to the people, to involve the people in matters that concern and affect them; giving consultation a fair chance. There is also interest in the participation of political parties, as well as candidates from wards; their campaign strategies, manifestos and also a strong level of commitment to the promises made at the time of the political transformation in 1994.

Another consideration would be political parties forming alliances with the aim of strengthening opposition against the ruling party, which might lead South Africa into a two-party state. Elections should be highly competitive; they should offer the electorate a variety to choose from, as people's belief systems, principles and interests are diverse.

Elections, particularly, local government elections are very important because that is where the real power is; the government closest to the people. Local government elections have only been held twice since the new dispensation. The first five years were regarded as a period of learning and they served as a transitional period. The term 2000-2005 has been an opportunity for improvement and a commitment of government to democratic governance. It has been a challenge on issues of representation, since the new system of local government has come into full operation. All representatives have been required to play their roles as expected by the constituencies.

The study's focus is on the theoretical emphasis of democratic governance in relation to electoral systems, with an applied focus on the local government elections of December 2000.

1.2   Research Problem

According to Mouton (2001:48) a research problem is a clear and unambiguous statement of the object of the study and the research objectives.

The purpose of this study is to determine whether democratic governance has been structurally and functionally established; and in particular, whether local government has been fixed as an autonomous sphere of government.

A bit of historical background is necessary so as to identify the problem.

In the past, South African constitutions said very little about local government.

The South African Act of 1909, in terms of which the Union of South Africa was established, contained one sentence in Section 85(vi) enabling the four provincial councils of the time, to make ordinances in relation to "Municipal institutions, divisional councils and other local institutions" (Municipal Demarcation Board, 1999:1).

It was therefore left to the provincial councils, through the enactment of Municipal ordinances to deal with the establishment of municipal structures.

The 1961 Constitution, which created the Republic of South Africa, similarly in Section 84(1)(f), merely authorised provincial councils to legislate on municipal institutions (Municipal Demarcation Board, 1999:1).

Unlike these previous South African constitutions, which contained very little about local government, the present constitution (Act 108 of 1996) contains a large number of fundamental principles, which are important guidelines for local government reform.

Following the first democratic national elections on 27 April 1994, the then new President, Nelson Mandela, signed a proclamation in July 1994, which allowed the nine provincial Premiers to implement the provisions of the Local Government Transition Act of 1993 (Camay and Gordon, 1996:17).

Speaking at the Local Government Election Summit of 14 March 1995, President Nelson Mandela said that South Africa needed legitimate local government structures working together with civil society to address the pressing needs of the community and so pledged to "… have local government elections on Wednesday 1 November 1995. There will be elections …" (Camay and Gordon, 1996:17).

This speech expressed the necessity for representation and how important it is to work with the people, towards a common aim. Former president Nelson Mandela had a clear picture of what he was referring to when he spoke at that summit; a government, which would co-operate with society in societal matters.

Democratic governance is necessary in order to sustain democracy in South Africa, and through electoral systems, it can be achieved.

As mentioned earlier, local government has been undergoing a process of transformation and democratisation and the elections held on 5 December 2000, actually completed the process.

The following sketch shows the transformation from the previous system to the new system:
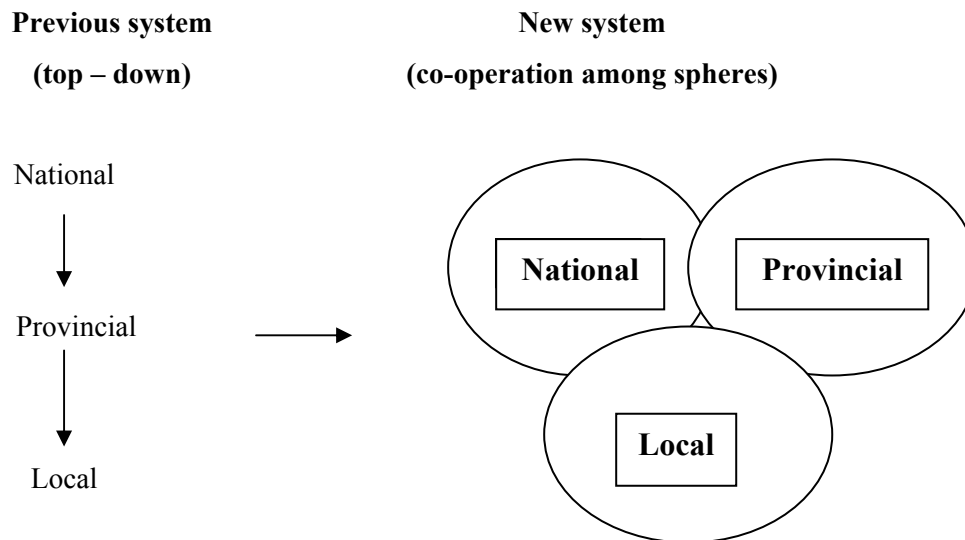
(Municipal Demarcation Board, 1999:4)

The new system includes co-operation among the various spheres of governance, which also includes more interaction among them, yet, each is autonomous within the limits prescribed by the constitution. The old system was more of a top-down system with only one way of communication, as shown above. Legislation would be passed from the top to be executed by other, lower levels of government.

Local government is currently in a phase of transformation; and it ensures co-operation among spheres (levels) of government. This process also required the redrawing of municipal boundaries to redefine the local government landscape of South Africa. The Free State has been demarcated for this study.

As the municipal outer boundaries have been redrawn and the new ward boundaries determined, the Independent Electoral Commission (IEC) had to align its voting district boundaries with the new boundaries. The process had to be completed before municipal elections could begin in earnest (Delimitation Guide, 2000:5).

1.3   Hypothesis

A hypothesis is, according to Bless and Higson (1995:11), a temporary solution to a problem that is yet to be tested. A tentative explanation for certain facts, and will become part of a theory as soon as it is confirmed by sufficient evidence.

Yes, it is true that democratic governance has been structurally and functionally established. Local government in particular, has been fixed as an autonomous sphere of government.

Electoral systems are the key to democratic governance. Electoral systems give direction and legitimacy to elections and the outcome thereof. Electoral systems are the foundations on which governments are built and therefore crucial for governance to prevail.

Elections educate the electorate about the policies of different political parties and also about their rights and responsibilities, enabling them to take their rightful place in decision-making.

Local government elections give more power to the people. Local government elections in the Free State province, clearly showed the political parties with whom people really associated themselves; the trusted parties and individual candidates expected to be true representatives, who would be accountable to the voters for the decisions they were going to make on their behalf.

Candidates in elections like these should be people from within the local communities; people who understand the needs and problems of the area better; people, who identify with the values and interests of the people in that particular community; and who have committed themselves to making a difference in the living conditions of all the people.

Local government elections, should bring government closer to the people and bring hope for improved governance.

1.4   The Aim

The aim of this study is to describe and analyse the level of representation offered by electoral systems, in the running and management of elections, especially local government elections. The emphasis of this study is on promoting democratic governance through the

electoral systems, particularly proportional representation systems, since South Africa is already using the party list system of proportional representation.

To do this, it is necessary to carry out an in-depth study of the electoral systems of South Africa and to determine the relationship of variables such as democracy, elections, voting, representation and governance.

A case study of the electoral process of the Local Government Elections of 2000, in the Free State, from pre-election to the post-election period will be done. There will be more emphasis on checking whether democracy has come closer to the people and whether the elections run smoothly, allowing the voters to make informed choices and more importantly, whether the results are accepted.

Elections should be representative and competitive. South Africa should be seen to be successful at leading Sub-Saharan Africa by example; free and fair elections should be a matter of principle; a conviction to promote democratic principles.

To compile this research, the following design and method will be implemented.

1.5   Research Design and Methodology

This study is an empirical study, based on objectivity and validity.

This research is going to be descriptive in nature. The study will describe observations and give a critical analysis of research phenomena. The study will describe the views, beliefs, attitudes and values held by different groupings of people in the political arena, as well as other authors. This research will also contribute to a better understanding of electoral processes, as well as the electoral systems, and thereby enable the researcher to analyse the situation at hand.

Most of the work will be qualitative in nature, that is, it will use non-numerical data that is richer in meaning.

Personal involvement of the researcher in the process of these elections, as one of the official political analysts in the Free State, has also provided first-hand experience and an opportunity for informal interviews with delegates from different political parties.

Quantitative or numerical data will be used to convey election results, mainly because it makes observations more explicit and easier to aggregate and summarise the data (Babbie, 1998:36).

The research approach will be deductive: There will be an explicit conceptual framework, with concrete theoretical support. The hypothesis, as formulated in 1.3 above, will be tested. Conceptualisation and operationalisation of the data collected will be done, and finally the analysis and interpretation of the study will be given.

The layout of the research will be as follows:

1.6   Layout

The title of this study is "Electoral systems as a mechanism of democratic governance – a South African perspective". The focus is on electoral systems and how they affect and influence representation, and eventually how they influence democratic governance. For the purpose of this study, other concepts come into play, such as voting and voting behaviour, elections and democracy.

Chapter 2:   General Orientation, will give a general historical background of South Africa's transformation and democratisation process, which started with the Watershed speech of FW de Klerk, on 2 February 1990. The different phases of negotiation will be discussed, focusing on the most important meetings such as the Groote Schuur Minute and the Pretoria Minute, CODESA I, II and the Multi-party Negotiation Forum, and finally the drafting of the Interim Constitution.

Chapter 3:   Representation and Elections – a theoretical perspective. In this chapter, the research will concentrate on democracy and its theories. Representative democracy will be discussed in-depth, and then liberal democracy will be compared as its model.

Chapter 4:   Theoretical perspectives on the electoral principle – elections, voting and electoral systems. Elections and their functions will form part of the discussion, as well as voting and voting behaviour. Parties and party systems will also be discussed with the intention of identifying the role parties play in elections. Electoral systems will be the main

focus of this chapter. Electoral systems will be studied thoroughly because they serve as the mechanism for democratic governance. Therefore, the most suitable system will have to be identified for plural societies and new democracies such as South Africa.

Chapter 5:   **Local Government: A conceptualisation and contextualisation.** Local Government as a concept will be described, including its historical background.   Local Government, being the third sphere of government, is guided by legislation. The Constitution of the Republic of South Africa, Act 108 of 1996, stipulates clearly what its role and responsibilities are.   With regard to the elections, a new electoral system for the Local Government elections of 2000, had to be designed. Also, demarcation of the districts had to be done. Local Governance is also an important aspect of this discussion. The views of the main political parties have also been expressed on demarcation, governance, sustainability and subsidisation.

Chapter 6:   **Local Government Elections: December 2000.**   The whole electoral process of the local government elections of 2000 will be described, in particular in the Free State province. Also very important, is the role of the Independent Electoral Commission throughout the process, up until the election result is announced and accepted.

Conclusion: The conclusion will be composed of a summary and final evaluation of the study, the findings and recommendations for the future.

CHAPTER 2
GENERAL ORIENTATION

2.1   INTRODUCTION

The purpose of this chapter is to highlight the changes that took place in transforming an apartheid state into a democratic country. This chapter will undertake to understand the importance of representation, democracy and elections and how they are interrelated, including the role electoral systems play in enhancing democratic governance, particularly in South Africa.

South Africa has been undergoing a process of fundamental societal change since 1990. The elections of December 5, 2000, was the final step in the transformation and democratisation of government in South Africa. It was therefore, an important milestone in the country's agenda of strengthening constitutional democracy.

South Africa and its inhabitants have undoubtedly experienced and participated in one of the most phenomenal processes of political transformation; that is, the orderly, yet rapid transfer or translocation of political power (Wessels, 1999:235).

Between 1990 and 1994 South Africa witnessed a remarkable bargaining process, which transformed the old apartheid order, and laid the ground rules for a democratic political practice (Johnson and Schlemmer, 1996:16).

This was achieved, moreover, without submerging the country in revolution or anarchy, but by using a unique formula for democratisation – a Government of National Unity. South Africa's elected Government of National Unity was a constitutionally defined multi-party government that consisted of seven political parties. The contesing parties were: the African National Congress (252 seats); the National Party (82 seats); the Inkatha Freedom Party (43 seats); the Freedom Front (9 seats); the Democratic Party (7 seats); the Pan Africanist Congress (5 seats); and the African-Christian Democratic Party (2 seat). The Government of National Unity was constituted in terms of the stipulations of South Africa's Transitional Constitution, Act 200 of 1993 [Sections 77(1)(a) and 84(1)] (South African Government, 1997a:1-2;   South African Yearbook, 1995-1997b:1).The country hereby successfully

initiated a process of constitutional transformation through a transitional government (Wessels, 1999:235).

The change in political rhetoric during the three years of negotiation was remarkable. The negotiations produced concessions from both main role players, the African National Congress (ANC), and the National Party (NP), on the path to be followed towards designing a new constitution and political dispensation.

This chapter will cover the period from 1990, through those most important stages of transformation and democratisation that South Africa experienced up to the 2000 local government elections.

2.2 THE WATERSHED SPEECH of 2 February, 1990.

On February 2, 1990 the then president, FW de Klerk delivered his Watershed Speech to parliament. After that speech South Africa could never be the same again. The purpose of the speech was to launch a new era of an all-inclusive debate to create a "new South Africa". At that moment, change played a very decisive role in South Africa's history.

Propagating the slogan of "Adapt or Die", President PW Botha had done the unthinkable in 1983, according to Sparks (1994:68), when he rammed through racial reform at the cost of splitting the National Party. President P. W. Botha had masterminded the 'total strategy'[1] on constitutional reform, which however, still allowed for white dominance. FW de Klerk however, had the willingness and the ability to move away from the militaristic politics of the past (Johnson and Schlemmer, 1996:22), towards a co-operative democracy.

Under mounting international pressure, FW de Klerk made his famous address to parliament on February 2, 1990, in which among other issues, he announced the unbanning of the African National Congress (ANC), and the possible release of Nelson Mandela.

---

[1] "**total strategy**" **was the strategy to democratise and transform South Africa. It was the first non-racial, inclusive ideology put forward by the government. There was a working document on constitutional reform in place, proposing the principle of full citizenship rights for blacks. The political implication of this reform was that South Africa was going to become one country with one constitution and one citizenship. Former President Botha believed that this had to be done by maintaining white control over the political system but with the co-opted participation of previously excluded groups (Van Zyl Slabbert, 1993: 2-3).**

The initiative for this deviance towards negotiations appears to have come from a letter written by Mandela from prison in 1988, in which Mandela proposed the start of a process of inclusive negotiation. A similar willingness to negotiate was indicated by the ANC in its Harare Declaration[2] of August 1989, in which it specified specific preconditions before negotiations could begin (Johnson and Schlemmer, 1996:22).

The speech of February 2, 1990, produced a whole new set of dynamics. President FW de Klerk announced the end of apartheid, the unbanning of proscribed organisations and the complete liberalisation of political life. Mandela was released; the state of emergency was lifted; exiles welcomed back; and the whole legislative edifice of apartheid was abolished in short order (Johnston and Schlemmer, 1996:6).

In his speech[3] on February 2, 1990, President FW de Klerk said, amongst others:

> "Our country and all its people have been embroiled in conflict, tension and violent struggle for decades. It is time for us to break out of the cycle of violence and break through to peace and reconciliation. The silent majority is yearning for this. The youth deserve it."

With the steps the government had taken thus far, it had proven its good faith and the table was laid for sensible leaders to begin talking about a new dispensation; to reach an understanding by way of dialogue and discussion. The agenda was open and the overall aims to which we South Africans were aspiring were to be acceptable to all reasonable South Africans.

Among other things, those aims had to include "A new, democratic constitution; universal franchise; no domination; equality before an independent judiciary; the protection of minorities as well as individual rights; freedom of religion; a sound economy based on

---

[2] **The Harare Declaration was a formal proposal from the ANC on how to move toward a negotiated settlement. This document, adopted at a meeting of the Organisation of African Unity in Harare, Zimbabwe, on 21 August 1989, committed the ANC to testify both the liberation struggle and drive to mobilise international pressure against apartheid. It also set out preconditions for negotiations. The most important conditions were: the ending of the state of emergency; the repeal of security laws; the release of political prisoners; and the lifting of all restrictions on organisations and individuals (this was necessary to guarantee amnesty to returning exiles).**

[3] **FW De Klerk's watershed speech of 2 February 1990. The speech that had enormous effect on South African politics and set the tone for change: democratic change. It brought with it a sense of readiness and, preparedness to negotiate. See Appendix B on page 271.**

proven economic principles and private enterprise; dynamic programmes directed at better education, health services, housing and social conditions for all."

In this regard, it was obvious that Mandela should play a crucial role. The government's intention was, clear from the speech of FW de Klerk, to make a constructive contribution to a peaceful process of change in South Africa.

On February 11, 1990 Nelson Mandela was released. He came out with a commitment toward a complete process of eradicating apartheid. The international community was supportive and an irreversible process had begun (De Klerk, 1998:168).

2.2.1 Forces Behind Change

The process of eradicating apartheid, would transform South Africa forever. Forces behind this transformation were **internal** and **external** in nature:

2.2.1.1 Internal Factors (Van Zyl Slabbert, 1991:4-5), include the following:

- **Population growth**

The disproportionate increase of black to white population growth in South Africa consistently highlighted the untenability of white minority domination and compounded the contradictions, which flowed from it. According to Coetzee (1995:12), there was a decline in the demographic statistics of the Whites. Therefore, unskilled black labour had to be used. This development brought a huge change in the racial profile of the labour market.

- **Urbanization**

The accelerating flow of black people to the cities undercut the regime's policy on land use and the provision of social services such as housing, education, and pensions. As stated by Coetzee (1995:16) lack of job opportunities forced the black people to move in search of a better life. Squatting became one of the most massive and largely unintended acts of civil disobedience and passive resistance in South Africa.

- **Unintended consequences of separate development**

Rural desertification and poverty stimulated urban drift; the inferior quality of black education compounded the shortage of skilled labour in the economy and contributed to the revolt of the black youth; influx control broke up family life and aggravated crime and normlessness in the cities; the multiplication of social services and bureaucracies put a huge drain on the fiscus without in any way relieving the central social problem.

- **The demands of the economy**

Increasingly, it became apparent that the South African economy could not carry the ideological costs that apartheid/separate development demanded. Because of this, political goals such as the consolidation of the homelands, job reservation, separate amenities, temporary African urban status, etc. were abandoned. In addition, the imperatives of economic growth demanded the undermining of political goals set by the regime.

- **The regime**

Essentially what De Klerk did with his watershed speech was to destroy the conventional political base of the governing National Party and split the white community between those who were in favour of transition and those who were against it.

2.2.1.2   External Factors: several factors were also identified by Van Zyl Slabbert (1991:8-10):

- **The changing relationship between the US and the USSR**

One of the consequences of the rapprochement between the two powerful countries was the changing significance of what they perceived to be, regional conflicts. They accepted that such conflicts should not be allowed to become flashpoints between them and that as far as possible they should be settled politically, i.e. peacefully rather than violently. This policy shift led to a different approach to conflicts in Afganistan, the Middle East, Angola, Namibia, Mozambique, (now Maputo) and South Africa.

- **The decline of South Africa as a gold producer**

South Africa's share in the international gold production had slipped from 60 per cent to 40 per cent. In addition, countries like Canada, the US, and Australia can currently produce gold significantly cheaper per ounce than we can. This coupled with the current (2001-2002) unreliability of the gold price (2001-2002) underscored the necessity for the South African economy to move beyond its reliance on its mineral base and to expand manufacturing.

- **The decline of Africa as an area of geo-political influence**

The International Monetary Fund's (IMF) report in 1991, was a telling reflection of the non-African world's growing disenchantment and disillusionment with Africa as a sphere of influence and concern. There is a continuing realisation that Africa is 'on its own' and will have to fend for itself. Certainly, as far as the South African regime at the time of transformation was concerned, (and particularly some African states), there was a strengthening of the conviction that we have to 'pull ourselves up by our own bootstraps'.

- **The collapse of Eastern Europe**

There is no doubt that De Klerk saw the collapse of regimes in Eastern Europe (after the collapse of the USSR and its Eastern European territorial "empire", due to the policies of "glasnot" and "perestroika" from the former president, Michael Gorbatjof), as a strategic opportunity to precipitate transition on the domestic front. This much he made clear in his watershed speech. There is also no doubt that events in Eastern Europe had a profound ideological and strategic effect on the ANC/SACP coalition.

- **Sanctions**

Another force towards the transformation of South Africa was the amount of international pressure, which could not be ignored. According to Wessels (1992:194), the South African political policy was condemned as racist and racially discriminating. The authorities and the political system of South Africa did not have a status of legitimacy and the reception and the intensity of the reaction of the international community against the apartheid policy, cannot be equated to any other in modern history.

Sanctions, according to Du Toit (1991:69), used the dependence of the South African economy on foreign linkages, as a way of converting potential power into actual power in a coercive way. The intent was to deploy this tactic in such a way that the benefits given to the opponent (foreign resources for economic growth) are reduced, and at the same time greater benefits (concessions by the Apartheid regime) are extracted from the opponent.

According to Fourie (1989:104), economic sanctions against apartheid were effective. They worked because they hurt, that is, they diminished the capacity of the government to sustain minority rule by an expensive mix of repression and material inducements.

Wessels (1992:197) adds by saying that the (selective) application of economic sanctions since 1984, did not only have a negative impact on economic growth, but also the narrowing of the labour market caused social problems: the increased joblessness and poverty created an unexpected revolutionary climate. In this regard, Lee et al., (1991:104) stated that, "sanctions had decreased the potential growth rate in South Africa by 10 per cent, resulting in a loss of 500 000 employment opportunities, with correspondingly highly adverse economic and political implications".

These identified internal and external factors played a critical role in the decision of the government to take up a "new road" of radical change; a process of transformation for South Africa and its society. Van Zyl Slabbert (1991:10-11) also points out the alternation and interaction between the internal and external factors towards transformation. According to Slabbert, the influence and pressure these factors had on each other, was for the following reasons. It was "precisely because the process of transition is largely a consequence of political choice relating to the internal dynamics of the South African society", and "external factors can inhibit or promote the process of transition, depending on how the internal factors respond to external pressures. At present most of the external planned pressures for change urge a positive outcome, even if some of them pursue contradictory tactics in wanting to assist the process".

As stated by Giliomee and Schlemmer (1989:28), virtually all actors in the South African political conflict recognised that no ultimate resolution of their situation would be possible without a process of negotiation between the major players. These major contenders were taken to include the government, obviously, the ANC and its base of sympathy within the country such as the United Democratic Front (UDF), the Inkatha Freedom Party (IFP), the Pan African Congress (PAC), and the Azanian People's Organisation (AZAPO).

Promotion of constitutional negotiations became the main focus of President De Klerk's administration. At that stage (1990), it was very important to deal with the obstacles or stumbling blocks, which would inhibit the transformation process (Hough and Du Plessis, 1994:5; De Klerk, 1990:293-294). The following steps had to be taken at that point in time:

- The lifting of the ban on the ANC, the Pan African Congress (PAC), the South African Communist Party (SACP) and a number of subsidiary organisations;

- the release of those imprisoned for membership of one of these banned organisations;

- the abolition of emergency regulations pertaining to the media and to education;

- the removal of restrictions imposed on 33 organisations under the state of emergency;

- the lifting of personal restrictions on 374 people already released from detention;

- a six-month limit on detention without charge under emergency regulations; and

- a decision to release Nelson Mandela unconditionally.
  (Hough and Du Plessis, 1994:5).

These decisions by the cabinet, as stated by De Klerk in his watershed speech were in accordance with the government's declared intention to normalise the political process in South Africa without jeopardising the maintenance of the "good order". De Klerk (1990:294) further expressed a commitment to the above-mentioned decisions, with the clear intention of transforming South Africa and giving way to the 'new order'. De Klerk (1990:294) describes this 'new order' as:

"… a new, democratic constitution; universal franchise; no domination; equality before an independent judiciary; the protection of minorities as well as of individual rights; freedom of religion; a sound economy based on proven economic principles and private enterprise; dynamic programmes directed at better education, health services, housing and social conditions for all".

According to Van Zyl Slabbert (1991:1), the watershed speech by De Klerk, was a "deliberate political choice". Van Zyl Sabbert (1991:1,3) further affirms that this political choice implied two things:

"The regime was in a position to exercise this choice and furthermore, its leadership referred to exercise an option in favour of transition".

He added to it by saying that,

"De Klerk inherited a situation of deadlock in which maintaining an inconclusive cycle of repression, reform, reaction, revolt, and repression was the one option, or breaking out of it the other. De Klerk chose to break out of it".

From 2 February 1990, after De Klerk delivered his speech, the idea of a "new" South Africa gained momentum. The speech opened doors to transformation and a new beginning for South Africans. A challenging road began; the negotiating of a **"new South Africa"**.

2.3 THE PHASES OF THE NEGOTIATION PROCESS

The negotiation process could be divided into several phases and these were:

THE FIRST PHASE:

This phase covers the period from the 1970s to the late 1980s, and can also be referred to as a "behind-the-scenes" phase. The period is composed of all the exploratory talks and meetings between the National Party government on the one hand and Nelson Mandela and the African National Congress on the other. This phase, according to Waldmeir (1997:xv), includes, among others, the following:

- discussions between Nelson Mandela and the Minister of Justice and Correctional Services, Kobie Coetsee;

- meetings between Thabo Mbeki of the ANC and Pieter de Lange of the NP, in New York; as well as the crucial Federal Congress of the National Party in 1986;

- meetings between Nelson Mandela and a team from the National Party, in prison in 1988;

- former President PW Botha's meeting with Nelson Mandela at Tuynhuys in 1989; and

- former President FW De Klerk's meeting with Nelson Mandela immediately after his inauguration in 1989, to determine whether they could work with each other.

What is important is that there was a realisation within the National Party leadership, that it was imperative to break with the outdated "apartheid" – policies. Hence, the decision to continue into the second phase of negotiations, as a sign of commitment to change, transpired.

THE SECOND PHASE:

This was the preparation phase for formal talks. According to Nieuwmeijer and Cloete (1991:52), it was the process of developing a commitment to a negotiated settlement of the existing dispute in South Africa, characterised by a period of dissension, private and public debates, fluidity and even contradictions and conflict in the declared policy positions and statements from the involved participants.

Nieuwmeijer and Cloete (1991:53) add that the pre-negotiation phase is typically a process whereby each party internally sorts out various unresolved issues in its own policy position, as well as "talks-about-talks". This is because final commitments to negotiate may not yet have developed and various technical issues still have to be sorted out before hard negotiation on the substance of the dispute can start.

This phase began on 2 February 1990, and continued until the Convention for a Democratic South Africa (CODESA) was established in December 1991. This phase was aimed at preparing the way for structured negotiations (De Klerk, 1998:175) and includes:

- the phase of Preliminary Bargaining;
- the Groote Schuur Minute;
- the Pretoria Minute; and
- the National Peace Accord

THE THIRD PHASE:

This phase began with the establishment of CODESA in 1991 and continued until the adoption of the Transitional Constitution in December 1993. It was a phase of structured and representative negotiations and it included:

- CODESA I, which began on December 20, 1991 and where a 'Declaration of Intent' was signed by all participants. CODESA I established five working groups to prepare for a second plenary conference – CODESA II.

- CODESA II, which was scheduled to start on May 15, 1992.

- The Multi-party Negotiation Forum. A definite date for South Africa's first fully democratic elections (27 April, 1994) was announced. A broad agreement was reached on the establishment of a Multi-party Executive Transitional Council, which would monitor the actions of the government during the period leading to the first general election.
(De Klerk, 1998:281).

THE FOURTH PHASE:

This phase covers the writing of the Transitional Constitution and the implementation thereof; and discussions around a Government of National Unity to be put into place, after the elections of 27 April, 1994. An agreement on electoral procedures and mechanisms was reached. Finally, on September 23, 1993, parliament adopted the Transitional Executive Council Act, which made provision for the establishment of a Multi-party Transitional Executive Council, which would monitor the government during the period before the election of 27 April, 1994.

Some of the phases mentioned above, will be discussed in more detail below in order to give a broader picture of the processes that took place in preparation for the 'new South Africa', which former President De Klerk spoke about in his watershed speech.

2.3.1   THE FIRST PHASE

It is important to mention that tentative negotiations had already taken place in the 1970s and 1980s between government and Nelson Mandela and the ANC leadership behind the scenes. At that stage, there were also offers made by the government to release Mandela conditionally; offers to settle comfortably in another country, a country of his choice, and never to return to South Africa, "provided he, unconditionally rejected violence as a political instrument" (Sampson, 1999:335). This clearly shows that Mandela was a serious threat to the government and the Apartheid regime. Mandela was determined to liberate South Africa and he had the ability to influence the masses and the external world. Therefore, the government thought getting rid of Mandela would make the situation easier to manage and contain.

Mandela was determined to stay in South Africa and according to De Klerk (1998:174), at some stage during 1985, Mandela came to the same conclusion that many leaders in the government had also reached by then, that neither side could win a military battle, and therefore it became necessary to start with constructive and purposeful negotiations.

The discussions with Nelson Mandela during the early eighties, in which he participated without initially consulting the ANC leadership in Lusaka, led to a lengthy dialogue with the government.   The talks were exploratory and were aimed at finding out whether circumstances could be created which might open the way to negotiations without either the ANC or the government losing face (De Klerk, 1998:174).

Eventually, the initiative led to the first secret, but official meeting between Nelson Mandela and the then President PW Botha, in 1989.

Another meeting took place just a few days before FW de Klerk's inauguration on 12 September 1989. There was a successful exploratory meeting in Switzerland between senior officials of the National Intelligence Service and an ANC delegation led by Thabo Mbeki, who is the current president of South Africa, and Jacob Zuma, who is the current deputy president. This meeting was the first official and direct contact between the South African government and the ANC (De Klerk, 1998:174).

Parallel with these first exploratory contacts with Nelson Mandela and the ANC, there were also negotiations with non-revolutionary black, coloured and Indian leaders that had been

conducted across a wide front by Dr Gerrit Viljoen, the then Minister of Constitutional Development. As stated by De Klerk in his biography (1998:175), although there was no possibility of those talks leading to comprehensive constitutional solutions, they helped to establish useful relationships with moderate non-white parties and leaders.

2.3.2   THE SECOND PHASE

The second phase aimed at preparing the way for structured negotiations. This involved levelling the political playing fields and, the removal of obstacles in the way of structured negotiations (some of these obstacles were listed on page 16 of this chapter). This phase began on February 2, 1990, but ultimately took much longer than anticipated. As matters turned out, FW De Klerk's administration was not able to launch an inclusive negotiating forum until the Convention for a Democratic South Africa (CODESA) was established in December 1991.

2.3.2.1 First historic meetings

Some of the first historic meetings in the negotiation (and transformation) process were, the Groote Schuur Minute, the Pretoria Minute and also the National Peace Accord.

2.3.2.1.1 The Groote Schuur Minute

The first historic meeting took place on May 2 - 4, 1990 at Groote Schuur, the former residence of South Africa's prime ministers. There was a delegation representing the government, and one, representing the ANC.

The first question on the agenda to address was the one on violence: the escalating spiral of violence and intimidation[4] was on the table. It was absolutely essential that negotiations for a democratic solution should be conducted in peaceful circumstances (De Klerk, 1998:181).

The discussion was composed of a whole list of specific matters in an attempt to define their mutual differences and to lay the foundations for compromises and solutions. At that stage

---

[4] **The escalating spiral of violence and intimidation was instigated by a secret force, which was known as the "third force" to discourage the plans for negotiation. Violence was also increased by the tension between the ANC and the IFP in Natal. There were killings of people and massacres around the country because of intolerance among the political supporters (Sampson, 1999: 436-439).**

the focus was on the levelling of the playing fields[5] with a view to negotiations; stopping political violence; and dealing with the problem of ANC members who had been convicted for politically motivated crimes.

The result was the "production" of an agreement, which became known as the Groote Schuur Minute. The details are as follows:

"The Government and the ANC agree on a common commitment towards the resolution of the existing climate of violence and intimidation from whatever quarter as well as a commitment to stability and to a peaceful process of negotiations." Following from this commitment, the following was agreed upon:

1. "The establishment of a working group to make recommendations on a definition of political offences in the South African situation (Davidson and Strand, 1993:95); to discuss, in this regard, time scales; and to advise on norms and mechanisms for dealing with the release of political prisoners and the granting of immunity in respect of political offences to those inside and outside South Africa. All persons who may be affected will be considered. The working group will bear in mind experiences in Namibia and elsewhere. The working group will aim to complete its work before 21st May 1990. It is understood that the South African Government in its discretion, may consult other political parties and movements and other relevant bodies. The proceedings of the working group will be confidential. In the meantime the following offences will receive attention immediately:

    (a)   The leaving of the country without a valid travel document.
    (b)   Any offences related merely to organisations, which were previously prohibited."

2. In addition to the arrangements mentioned in paragraph 1, temporary immunity from prosecution for political offences committed before today, will be considered on an urgent basis for members of the National Executive Committee and selected other members of the ANC from outside the country, to enable them to return and help with

---

[5] **Levelling the playing fields meant that all participants needed to negotiate at the same level. No party should be at a disadvantage. They aimed to create a climate which the parties agreed was conducive for negotiations.**

 Hence there was a need for violence and intimidation to stop.

the establishment and management of political activities, to assist in bringing violence to an end and to take part in peaceful political negotiations;

3. The Government undertakes to review existing security legislation to bring it into line with the new dynamic situation developing in South Africa in order to ensure normal and free political activities;

4. The Government reiterates its commitment to work towards the lifting of the state of emergency and to speed up the process of repealing the security legislation as stated by (Davidson and Strand, 1993:95-96). In this context, the ANC will exert itself to fulfil the objectives contained in the preamble;

5. Efficient channels of communication between the government and the ANC will be established in order to curb violence and intimidation from whatever quarter effectively".

The government and the ANC had agreed that the objectives contained in this minute should be achieved as early as possible (Hough and Du Plessis, 1994:51-52).

The commitment was clear.

The success of the first formal talks with the ANC facilitated De Klerk's task in pursuing another of the main goals that he had announced in his speech of February 2, 1990: the challenge of re-establishing normal relations with the international community. This was necessary for a number of reasons according to De Klerk (1998:183):

- an urgent need to gain access to foreign investment and to resume full economic relations with the rest of the world. The economy was stagnating and a lack of growth had already become a source of social unrest;

- to show De Klerk's supporters, as soon as possible, that the course that they had adopted was producing dividends. Visible progress in eliminating the restrictions that had been imposed on South African citizens and companies would help in this regard. In particular, the removal of sanctions, a dramatic rise in South African exports and an early return to international sporting competition would help to illustrate the benefits of rejoining the international community;

- finally, De Klerk wished to ensure that key international leaders would lend their support to a balanced process of negotiations in which the reasonable concerns of all South Africans – its minorities as well as the majority – would receive adequate attention. It was important to break down the stereotypes that many people overseas had developed of white South Africans and the National Party (NP) – and to persuade them that they were no longer the problem but an indispensable part of the solution.

After forty years of confrontation and growing isolation South Africa had, at last, taken its first step toward rejoining the international community.

2.3.2.1.2   The Pretoria Minute:

The months following the Groote Schuur conference were marked by intense interaction between representatives of the government and the ANC at working group level.

The second meeting in Pretoria took place on August 6, 1990, and according to Davidson and Strand (1993:96), the agreement was signed by the ANC and the government. Just before the meeting took place, the ANC came with a surprise move: they unilaterally announced that they had suspended the armed struggle. It was the first real breakthrough and the realisation of the first goal that De Klerk had set after his speech of February 2, 1990 (Sparks, 1994:124).

The meeting in Pretoria was 'the nuts and bolts' meeting on the ending of the ANC's armed struggle, violence and the creation of a climate for peaceful negotiations. Target dates were set for the implementation of agreements and for the removal of what the ANC regarded as obstacles in the path of negotiations.

The Pretoria Minute, August 6, 1990, was agreed upon and signed. The details were as follows:

1. "The Government and the ANC had again committed themselves to the Groote Schuur Minute.

2. The final report of the Working Group on political offences dated 21 May 1990, as amended, was accepted by both parties. The guidelines formulated in terms of the Report would be applied in dealing with members of all organisations, groupings or institutions, governmental or otherwise, who committed offences on the assumption

that a particular cause was being served or opposed. The meeting had instructed the Working Group to draw up a plan for the release of ANC-related prisoners and the granting of indemnity to people in a phased manner and to report before the end of August. The following target dates had in the meantime been agreed upon:

- the body or bodies referred to in paragraph 8.2 of the Report of the Working Group will be constituted by 31 August 1990.

- the further release of prisoners, which could be dealt with administratively, would start on 1 September 1990.

- indemnity, which could be dealt with in categories of persons and not on an individual basis would be granted as from 1 October 1990. This process would be completed not later than the end of 1990.

- in all cases where the body or bodies to be constituted according to paragraph 8.2 of the Report of the Working Group would have to consider cases on an individual basis, the process will be expedited as much as possible. It was hoped that this process would be completed within six months, but the latest date envisaged for the completion of the total task in terms of the Report of the Working Group was not later than 30 April 1991.

This programme would be implemented on the basis of the Report of the Working Group.

3. In the interest of moving as speedily as possible towards a negotiated peaceful political settlement and in the context of the agreements reached, the ANC's announcement was that it was then suspending all armed actions with immediate effect. As a result of this, no further armed actions and related activities by the ANC and its military wing Umkhonto we Sizwe would take place. It was agreed that a working group would be established to resolve all outstanding questions arising out of this decision to report by 15 September 1990. Both sides once more committed themselves to do everything in their power to bring about a peaceful solution as quickly a possible.

4. Both delegations expressed serious concern about the general level of violence, intimidation and unrest in the country, especially Natal. They agreed that in the context of the common search for peace and stability, it was vital that understanding should grow among all sections of the South African population that problems can and should be solved through negotiations. Both parties committed themselves to undertake steps and measures to promote and expedite the normalisation of the situation in line with the spirit of mutual trust obtained among leaders involved.

5. With due cognisance of the interest, role and involvement of other parties the delegations consider it necessary that whatever additional mechanisms of communication are needed should be developed at local, regional and national levels. That would enable public grievances to be addressed peacefully and in good time, avoiding conflict.

6. The Government had undertaken to consider the lifting of the State of Emergency in Natal as early as possible in the light of positive consequences that would result from this accord.

7. In view of the new circumstances then emerging there would be an ongoing review of security legislation. The government would give immediate consideration to repealing all provisions of the Internal Security Act that –

    (a)   refer to communism or the furthering thereof;
    (b)   provide for a consolidated list;
    (c)   provide for a prohibition on the publication of statements or writings of certain persons; and
    (d)   for an amount to be deposited before a newspaper may be registered.

    The Government would continue reviewing security legislation and its application in order to ensure free political activity and with the view to introducing amending legislation at the next session of Parliament. The Minister of justice would issue a statement in this regard, inter alia calling for comments and proposals.

8. We are convinced that what we have agreed upon could become a milestone on the road to true peace and prosperity for our country. In this we do not pretend to be the only parties involved in the process of shaping the new South Africa. We know there

are other parties committed to peaceful progress. All of us can henceforth call upon all those who have not yet committed themselves to peaceful negotiations to do so now.

9. Against this background, the way was open to proceed towards negotiations on a new constitution. Exploratory talks in this regard would be held before the next meeting, which would be held soon".

(Pretoria Minute, August 6, 1990).

The right wing, the Afrikaner Weerstandsbeweging (AWB), launched a campaign depicting these meetings as the selling out of the white man and as surrender under pressure to the ANC (De Klerk, 1998:187). The AWB followed with demonstrations and campaigns for the right to self-determination for the Afrikaner people (Spitz and Chaskalson, 2000:40).

This came as a great threat to De Klerk's initiatives, as the right wing, in particular the Afrikaner Weerstandsbeweging (AWB), alerted the political mainstream to the unpredictable threat from Afrikanerdom's "maniacal fringe", according to Spitz and Chaskalson (2000:40). It was a threat because, as stated by Price (1990:77), when the so-called "Afrikanerdom" comes under external pressure, "Afrikaner culture produces a response that entails in-group solidarity and greater recalcitrance (refusing to do what you are told to do even after punishment) in the face of external influences".

Hence a white-only referendum, which De Klerk called in March, 1992, was to be held to deal with the challenge from the right wing that he was acting without a mandate (Sparks, 1994:133).

The referendum was held on the issue of negotiating a new constitution and on 17 March, 1992, former president De Klerk won a triumphant victory - 68.7 percent of the vote, with an 86 percent turnout (Sampson, 1999:460).

The Pretoria Minute was the starting point of a very difficult phase in the government's talks with the ANC. It very soon became clear that the ANC had a very limited ability to ensure that its supporters and cadres honoured the undertakings that the ANC had given. There were underground operations (networks) such as Operation Vula, preparing for a revolution, which was entirely at odds with the undertakings in the Groote Schuur Minute. On the contrary, the ANC/SACP-alliance continued to be implicated in violence, crime and intimidation around the country (De Klerk, 1998:188).

Despite the difficulties, the Pretoria Minute was a major milestone on the road to a negotiated solution. It also greatly strengthened De Klerk's hand in achieving the next major foreign policy goal - acceptance by the United States to support the process of responsible reform in South Africa. The United States Congress had adopted very hostile and deeply entrenched positions against South Africa, which were embodied in the Comprehensive Anti-Apartheid Act (CAAA). The CAAA had imposed a wide spectrum of sanctions on South Africa and had laid down stringent conditions with which South Africa would have to comply before they could be removed. The then President Bush, needed an assurance that the process of reform would be irreversible, dramatic and remarkable (De Klerk, 1998:189-190; Mbeki, 1991:43).

2.3.2.1.3   The National Peace Accord

Three days after the Pretoria Minute was signed by Mandela and De Klerk in August 1990, a new wave of violence swept through the Transvaal townships, killing a thousand blacks in a month (Sampson, 1999:438).

The violence was among blacks because there was serious conflict between the ANC and the IFP, and the conflict was further instigated by the involvement of a "third force" (as referred to in Section 2.3.2.1.1). As stated by Sparks (1994:154), it was disclosed by the Weekly Mail, that the South African security police had secretly funded the Inkatha Freedom Party (IFP) to help it organise rallies to counter the ANC. A "third force", according to Sparks (1994:157), consisting of elements of the Inkatha Freedom Party, the South African police force, and Military Intelligence, formed a coalition and caused chaos as a means to justify the armed forces taking over the country to restore order, and halt or derail the inevitable transition to democracy.

The killings escalated into a potential civil war, as the police appeared reluctant to intervene. According to Sampson (1999:438), the killings were especially sinister because they seemed timed to upset the negotiations. Armed gangs began to attack the packed trains, which carried black commuters between Soweto and Johannesburg.

As stated by Sampson (1999:439), Mandela was convinced by the ANC intelligence that the attacks were not simply the work of IFP supporters, but were instigated by what he called a "third force" inside the security services, which was deliberately trying to prevent ANC talks with the NP government.

In May 1990, negotiations broke off completely when the ANC withdrew, charging the government with complicity in the violence and demanding measures to restore its confidence in the negotiations (Friedman, 1993:16).

The ANC took this move because the brunt of the escalating violence was being borne by the ANC grassroots, and people felt that the leadership was too remote from the branches and the general members (Johnston, 1993:3).

At the opening of Parliament on 1 February 1991, President De Klerk spelled out the road ahead for constitutional development in South Africa. Principles such as "equity, full political rights and freedom for all," … "Collective community values and ideas which include a free democratic system, political participation, government legitimacy, equality before the law, a Human Rights Charter and freedom of the press, religion, movement and association", surfaced (Marais, 1993:301).

In September 1991 a national peace conference was held at the Carlton Hotel in Johannesburg. The aim of the conference, as stated by Friedman (1993:16), was to deal with misunderstandings and to build trust and sufficient confidence among parties to persuade them to proceed with constitutional talks for negotiations to continue. Twenty-four political bodies attended, including among others, the ANC, NP, IFP, PAC, SACP and also the three main leaders: De Klerk, Mandela and Buthelezi (Sampson, 1999:444).

At the end of the conference all the parties agreed to a 'National Peace Accord'. The National Peace Accord is a formal agreement in which the political parties and interest groups committed themselves to a joint peace effort, and agreed to submit to the discipline imposed by the Accord, and to establish structures to monitor it (Friedman, 1993:16).

This Accord promise to - 'actively contribute to a climate of democratic tolerance, refrain from intimidation and agreed that no weapons…may be possessed, carried or displayed at any political meeting'.

The National Peace Accord includes the agreement reached on the following:

> " a code of conduct for political parties and organisations; general provisions for security forces; a police code of conduct; measures to facilitate socio-economic reconstruction and development; a Commission of Enquiry regarding public

violence and intimidation; a National Peace Secretariat; Regional and Local Dispute Resolution Committees; a National Peace Committee; and procedures and Special Criminal Courts for enforcing the peace agreement between parties" (Hough and Du Plessis, 1994:10).

These historic meetings mentioned above, as well as the National Peace Accord, were paving the way for real negotiations to start. Ushering in the third phase was CODESA.

2.3.3 THE THIRD PHASE

The purpose of the second phase, as stated before, was to prepare the way for structured negotiations to take place; to create an environment conducive to formal negotiations. The second phase, was completed by the National Peace Accord and it was thus time for the third phase to begin. In the third phase, structured negotiations began. These negotiations were composed of the Conference for a Democratic South Africa, better known as CODESA I, CODESA II and the Multi-party Negotiation Forum.

2.3.3.1 CODESA I

CODESA (Conference for a Democratic South Africa) would introduce the third phase of structured and representative negotiations (De Klerk, 1998:173-175).

CODESA represented a start: it "planted the seeds of compromise, participants learnt to tolerate each other and, crucially, to develop faith in the negotiation process itself" (Spitz and Chaskalson, 2000:27).

To assist with the negotiations, the Department of Constitutional Development had been transformed into a mechanism that could initiate, direct and support constitutional negotiations.

Dr Gerrit Viljoen, the then Minister of Constitutional Development and National Education and Mr Roelf Meyer, who was then one of the rising stars in the National Party and successor of Dr Viljoen, were charged with the task of stimulating, directing, conducting and supporting negotiations.

The composition of CODESA had to be as inclusive as possible. That would be a means of proving the support the negotiations had received.

Three tendencies became apparent, and these would have to be dealt with and managed right through the whole negotiating process.

Firstly, small parties, such as parties from the independent homelands (Transkei, Ciskei, Venda and Bophuthatswana), developed all sorts of techniques to try to exercise more influence on decisions than their status and numbers really justified. For example, the Bophuthatswana President, Lucas Mangope, was prepared to take part in CODESA on the basis of sufficient consensus, but decisions that affected his territory's existence would not be allowed (Fabricius, 1991:2). The homelands, known as the TBVC states (Transkei, Bophuthatswana, Venda, Ciskei), finally agreed in principle to re-incorporation, except for Bophuthatswana. CODESA agreed that the TBVC states would participate in transitional arrangements; that the people of these regions would vote in a national election; that the election would be taken as a test of support on re-incorporation; and that all TBVC citizens will have their SA citizenship restored immediately after the election, should the vote fall in favour of parties supporting re-incorporation (Cargill, 1992:48). Furthermore, consensus had been reached that the TBVC states would participate in the constitution-making process and the transitional government (Anon., 1992:6).

Secondly, the government tried to form a bloc of parties and organisations that believed in the same principles. For example, the IFP was in the same camp with the NP government because they shared some common views on federalism and self-government (Anon., 1992:1). The ANC's reaction to this was to accentuate the question of race whenever it suited them, regardless of the principles involved. The ANC's expectation was for all black delegations to share the same views because they were historically discriminated against as blacks, therefore, they had to stand together. As stated by De Klerk (1998:243), the ANC and its allies, particularly the Congress of South African Trade Unions (COSATU) and the South African Communist Party (SACP), wished to impose their views on the rest of society by confrontation and unacceptable mass action. Enormous pressure was exerted on black leaders, who were in principle strongly opposed to the ANC, to become part of the anti-government negotiating bloc – a bloc which, consisted of among others, Buthelezi, and Mangope.

Finally, the ANC made use of mass demonstrations and marches, and tried to create a climate of threatening unrest and crisis, under which negotiations had to take place. They also did not hesitate to use intimidation, particularly against black South Africans, to ensure support for their mass action campaign. The mass action campaign was putting emphasis on black people

pulling together and sharing the same vision of liberation. Through the masses (the public), the ANC believed that it could bring the country to a stage where it would be ungovernable and they would be forced to listen to the demands of the masses, who had been oppressed for decades. The mass action campaign used slogans such as "injury to one, is injury to all". Neither did they tolerate any opposition from parties such as the NP, which were typically white, in areas such as Soweto and Sharpville in the Gauteng province (former Transvaal), where they had enormous support. This was due to the fact that this party were associated with apartheid (De Klerk, 1998:177).

CODESA I started on 20 December,1991, at the World Trade Centre at Kempton Park, in Johannesburg.   There were twenty delegations (nineteen parties and the government delegation), almost three hundred delegates. There were several parties on the political scene, which did not participate in the CODESA negotiations, for example, the Pan African Congress (PAC), the Azanian People's Organisation (AZAPO), and from the left and right wing parties such as the Conservative Party (CP), Herstigte Nasionale Party and the Afrikaner Weerstandsbeweging (AWB), as well as Mangosuthu Buthelezi of the Inkatha Freedom Party (IFP).   The chairpersons of the first meeting were Judge Schabort and the late Judge Mohamed (De Klerk, 1998:221).

In opening the negotiation process at CODESA, Nelson Mandela gave an address and some parts of his message were as follows:

"… Today will mark the commencement of the transition from apartheid to democracy. Since 1987 the ANC has intensively campaigned for a negotiated transfer of power. This campaign reached new heights in 1989 when the OAU, the Non-Aligned Movement and the UN General Assembly all adopted declarations supporting this position.

In keeping with this spirit, CODESA must therefore lay the basis for the elimination of racial and apartheid domination.

The strength of CODESA lies in the range of political parties and persuasions represented here. The presence of so many parties augurs well with the future. The diverse interests represented, speak of the capacity to develop consensus across the spectrum and of the desire to maximise common purpose amongst South Africans. Many parties here have already invested so much by way of preparing their

constituencies for transformation. Above all, the investment already made must spur us on to a total commitment for the successful outcome of this convention.

The National Convention in 1909 was a gathering of whites representing the British colonies. It was also a betrayal of black people and a denial of democracy. The Act of Union entrenched colonial practices and institutions constitutionally. In its wake, our country has lived through eight decades of wasted opportunity. CODESA provides the first opportunity since to attempt to establish democracy in our country and we can see no reason why an election for the Constituent Assembly should not be possible during 1992.

Negotiations, to be successful, must be owned and supported by the majority of South Africans…The approach which we adopt at CODESA must be fundamentally inclusive … CODESA can be the beginning of reconstruction. Let our common commitment of the future of our country inspire us to build a South Africa of which we can all be truly proud" (See Appendix E – Mandela RN, 1991:Address at the opening of CODESA I).

The ANC and the government had divergent views on how the constitutional negotiations should take place. The ANC demanded that the government should hand over power to a non-elected interim multi-party government.

The ANC maintained that such a multi-party government should rule the country while elections were held for a constitutional assembly, which would write a new constitution. Elections would then be held in terms of the new constitution for a fully representative parliament and government.

The National Party and most of the other parties rejected the idea. They insisted that a multi-party constitutional convention should draw up a new constitution, in terms of which the first democratic elections for a new parliament would be held.

At that stage, the government delegation proposed a two-phase process of constitution writing. A new interim constitution would be drafted by CODESA, in terms of which the first fully representative parliament would be elected. There would also be an elected Constitution Writing Assembly and interim government. The Constitution Writing Assembly would be bound by immutable constitutional principles and finally the new constitution would be adopted (De Klerk, 1998:254; De Villiers, 1993:41).

2.3.3.1.1 Declaration of Intent

A 'Declaration of Intent' was endorsed by most of the parties involved. Eighteen out of twenty delegations signed. According to Sampson (1999:458), Mandela interpreted it as an agreement between the ANC, the government and most other parties. A Declaration of Intent, 'to bring about an undivided South Africa, with one nation sharing a common citizenship, patriotism and loyalty'. The two main teams, that was, the ANC and the government, agreed to accept decisions by 'sufficient consensus'. The Bophuthatswana-delegation did not sign because that would imply the re-incorporation of Bophuthatswana as an independent state into the new South Africa; and for the KwaZulu delegation, in the view of the Inkatha Freedom Party (IFP), the establishment of a genuine federation with reference to an undivided South Africa, would be an option.

This Declaration of Intent contained a commitment to all the basic elements of a liberal democratic state:

> "South Africa would be a united, democratic, non-racial, non-sexist state; the constitution would be sovereign; we would have a multi-party democracy with universal franchise and regular elections; there would be a division of powers between the executive, the legislature and the judiciary; the diversity of the languages, religions and cultures of the people of South Africa would be respected; the universally accepted rights would be protected and entrenched in a Charter of Human Rights" (quoted from De Klerk, 1998:225).

A Declaration of Intent was signed, in order to commit the participants to a democratic dispensation and the acceptance of all decisions made by CODESA (Gordhan, 1991:17). It said, among other statements, the following:

"We, the duly authorised representatives of political parties, political organisations, administrations and the South African Government … declare our solemn commitment:

(1) to bring about an undivided South Africa with one nation sharing a common citizenship, patriotism and loyalty, pursuing amidst our diversity, freedom, equality and security for all irrespective of race, colour, sex or creed; a country free from apartheid or any other form of discrimination or domination;

(2)   to work to heal the divisions of the past, to secure the advancement of all, and to establish a free and open society based on democratic values where the dignity, worth and rights of every South African are protected by law;

(3)   to strive to improve the quality of life of our people through policies that will promote economic growth and human development and ensure equal opportunities and social justice for all South Africans;

(4)   to create a climate conducive to peaceful constitutional change by eliminating violence, intimidation and destabilisation and by promoting free political participation, discussion and debate;

(5)   to set in motion the process of drawing up and establishing a constitution that will ensure, inter alia:

    (a)   that South Africa will be a united, democratic, non-racial and non-sexist state in which sovereign authority is exercised over the whole of its territory;

    (b)   that the Constitution will be the supreme law and that it will be guarded over by an independent, non-racial and impartial judiciary;

    (c)   that there will be a multi-party democracy with the right to form and join political parties and with regular elections on the basis of universal adult suffrage on a common voters' roll; in general the basic electoral system shall be that of proportional representation;

    (d)   that there shall be a separation of powers between the legislature, executive and judiciary with appropriate checks and balances;

    (e)   that the diversity of languages, cultures and religions of the people of South Africa shall be acknowledged;

    (f)   that all shall enjoy universally accepted human rights, freedoms and civil liberties including freedom of religion, speech and assembly protected by an entrenched an justiciable Bill of Rights and a legal system that guarantees equality of all before the law.

We agree:

(1)   that the present and future participants shall be entitled to put forward freely to the Convention any proposal consistent with democracy; and

(2)   that CODESA will establish a mechanism whose task it will be, in co-operation with administrations and the South African Government, to draft all texts of legislation required to give effect to the agreements reached in CODESA.

(Hough and Du Plessis, 1994:101-104).

Along the way there were disagreements and eventually CODESA I broke down. According to Davidson and Strand (1993:100), two problems arose on issues relating to the subsequent talks. The first was caused by, Inkatha. Chief Buthelezi argued that since the IFP was a non-racial national political party with himself as leader, the Zulu people would be unrepresented at the talks unless the Zulu King was allowed to participate. This was refused by the ANC for two reasons. First, it regarded the IFP, in principle, as no different from other parties from the self-governing territories. Secondly, it rejected Inkatha's demands for special treatment of the Zulu King: if he was allowed to join the talks, so should all other traditional leaders. In protest against this, Chief Buthelezi refused to come to the negotiations and the IFP delegation was lead by its Secretary General, Dr Frank Mdlalose. The second problematic issue was the notion of "sufficient consensus". As stated by Davidson and Strand (1993:100), the term is very confusing in itself. It was generally understood to mean that if the ANC and the government were in agreement on an issue, consensus was sufficient for a decision on the matter, regardless of what other parties thought. Since there was sufficient consensus, that is, an agreement between the ANC and the government to accept this principle, it was entrenched in the CODESA structures despite protests from the IFP.

When CODESA resumed, it was then known as CODESA II.

2.3.3.2   CODESA II

CODESA I had established five working groups to prepare the way for a second plenary conference – CODESA II – which was scheduled to be held on, May 15 and 16, 1992.

The working groups were as follows:

- **Working group 1**: to deal with the creation of a climate in which all parties could compete freely. It also considered the role, which the international community might play in the transition process.

- **Working group 2**: to deal with constitutional principles – including the key question of whether South Africa should be a unitary, federal or confederal state.

- **Working group 3**: was given the task of considering arrangements for the transition from the old system to a new constitution. In particular, it had to make proposals to ensure that in the run-up to national elections the political playing fields would be even.

- **Working group 4**: to deal with the future constitutional position and probable re-incorporation of the independent homelands, Transkei, Bophuthatswana, Venda and Ciskei, the TBVC states.

- **Working group 5**: was given the task to work out a plan for the speedy implementation of the agreements reached by the other working groups (Wessels, 1996: 99-104).

Working group 2 on constitutional matters could not reach consensus on some key issues. Working group 2's brief, as stated by Spitz and Chaskalson (2000:20), was to agree on a set of constitutional principles and a mechanism for drafting a new constitution. Its work brought to attention some of the most controversial matters, such as the relationship between central, provincial, and local government, and the "meaningful participation of political minorities".

According to Spitz and Chaskalson (2000:21), specific areas of disagreement were issues such as the balance between central, provincial, and local government; the participation of political minorities; economic freedom, government intervention, and economic systems; the diversity of languages, religions and cultures; affirmative action; a bill of fundamental rights; self-determination; and the role of traditional leaders.

Further disagreement was about future constitutional arrangements. The ANC and the NP government delegations clashed on the question of the majorities needed to pass clauses in a final constitution. The ANC argued for two-thirds majority in an elected constitution-making assembly, whereas the NP, having yielded to the ANC's demand for an elected assembly, insisted on a 75 per cent majority (Spitz and Chaskalson, 2000:25). At this plenary session, known as CODESA II, the talks broke down on the issue of what percentage votes would be required to ratify the final constitution.

According to Rautenbach and Malherbe (1994:25) the new constitution was in effect a transitional constitution which contained specific provisions for the manner in which a final constitution would be adopted. The National Assembly and the Senate jointly formed a Constitutional Assembly, which would adopt a final constitution with a two-thirds majority within two years. The final constitution adopted by the Constitutional Assembly would only come into operation if the Constitutional Court certified that it fully complied with the constitutional principles in schedule 4 of the transitional constitution, also stated further on in this chapter.

The parties could not agree on some key conditions and the working group on the constitution had reached a deadlock on issues of 'power-sharing' and 'winner takes all'. Most importantly, according to Spitz and Chaskalson (2000:19), the two main parties (the ANC and NNP) held conflicting views about the purpose of CODESA. The ANC, on the one hand, wanted a rapid transition to majority rule and decisions would have to be taken by an Interim Government and an elected Constitution-making body. The ANC wanted CODESA to have minimal influence in determining the way forward. That would work to its advantage as the likely majority party; it would be well placed to shape the new order. On the other hand, the government and its allies such as the IFP, wanted a slow transition and a long period of shared rule. They also wanted CODESA to determine the way forward, as much as possible, because that would guarantee the NP an active role in shaping key decisions and structures.

The working group nevertheless reached consensus on a broad constitutional framework, much of which was subsequently incorporated into the Transitional Constitution of 1993.

This framework included: a Transitional National Assembly, elected on a proportional basis with half the members elected from national lists and half from regional lists; a parliament comprising a National Assembly and a Senate which would be bound by constitutional principles agreed upon by CODESA; a multi-party transitional government; and a final constitution which would be written and adopted by the National Assembly, acting as a Constitutional Assembly (De Klerk, 1998:235).

The breakdown was confirmed when the ANC suspended its involvement in negotiations following the Boipatong massacre in June 1992. ANC squatters were murdered by IFP supporting hostel dwellers, allegedly with the support of the police (Johnson and Schlemmer, 1996:27).

Mass action by the ANC and rallies took place from June 16, 1992. A series of stay-aways, boycotts, meetings and marches were planned and executed through July and August and became worse in September, when the Ciskei military in Bisho opened fire on ANC marchers led by 'Red' Ronnie Kasrils, killing twenty eight (28) people (Sampson, 1999:463).

The white right wing was also becoming exasperated: the Conservative Party (CP) warned of civil war if self-determination was not agreed upon (Friedman and Atkinson, 1994:27).

According to Friedman and Atkinson (1994:13), CODESA failed because the ANC and the government over-estimated their strength and underrated that of their opponents, among others, the right wing. By the time negotiations resumed, both were more aware of their limits, and the cost of another failure.

Spits and Chaskalson (2000:27) added that CODESA broke down because basic differences separated the major participants and there was a reluctance to bridge these differences. CODESA provided instructive lessons to the politicians. One of the key lessons was that effective negotiation could not occur in working groups containing nearly eighty political representatives and advisers. Another was that parties distributed written position papers to the media at the same time as delivering them to the delegates. The two biggest parties, the ANC and the NP, could learn even something more important from the failure of CODESA: that negotiations would collapse without the solid axis of a bilateral understanding between the ANC and the government (Spitz and Chaskalson (2000:27).

International pressure, like sanctions, and a weakening economy due to sanctions, brought the parties back to the negotiation table. This time, though, the negotiating structure was to be significantly different (Johnson and Schlemmer, 1996:27).

The final phase was started when Cyril Ramaphosa of the ANC, together with Roelf Meyer brokered a summit between De Klerk and Mandela on September 26, 1992. A Record of Understanding[6] was signed (Smith, 2002:71-72).

According to Sampson (1999:465), violence and the deepening economic crisis called for talks. The Record of Understanding was signed and three preconditions were accepted: The

---

[6] **An agreement signed by Mandela and De Klerk to curb the violence and meet the three demands by the ANC, which formed part of the constitutional principles. These included provision for an interim constitution with a Bill of Rights, a democratically elected Constitutional Assembly, which would at the same time act as an interim parliament; and for a transitional Government of National Unity. Most importantly, the final constitution would have to be adopted by a special majority and it would be bound by agreed upon constitutional principles (De Klerk, 1998: 254).**

ANC required that the Zulu hostels be fenced-off and that traditional weapons be banned; and government was forced to curb violence and release political prisoners. The Record of Understanding also agreed on a constitutional assembly and a transitional government of national unity.

The Record of Understanding, in fact, according to Sampson (1999:466), produced a fundamental realignment. It stopped De Klerk's political alliance with Buthelezi; and it also rapidly reduced the political violence outside Kwa Zulu-Natal, including the train attacks, hit-squads and massacres. This paved the way for the resumption of multi-party negotiations (Johnson and Schlemmer, 1996:28).

With the Record of Understanding, the ANC and the government embarked on a series of bilateral meetings in which they negotiated the details in the agreements. The process would lead to a new round of multi-party talks in March 1993 (Davidson and Strand, 1993:107).

2.3.3.3   MULTI-PARTY NEGOTIATION FORUM

Talks resumed between the ANC and the government in August 1992. During the final weeks of 1992 and the beginning of 1993, the government spent much time in bilateral discussions with other parties involved, trying to attract those who had withdrawn, such as the CP, AZAPO and FF, as a result of the Record of Understanding to join the next round of multi-party discussions. According to Spitz and Chaskalson (2000:35), the involvement of the Afrikaner Volksunie (AVU), also helped the multi-party talks to embrace the concerns of conservative but moderate Afrikaners. For the first time, the FF on the right and the PAC on the left had been drawn to the negotiating process.

In March 1993, multi-party negotiations commenced at the World Trade Centre. This time, the forum was more inclusive; 26 delegations in all (also to include those who did not attend up to that stage, such as AZAPO, PAC, and FF. As stated by Spitz and Chaskalson (2000:35), initially the Bophuthatswana government, the PAC, and the CP, were not given seats on the panel of seven rotating chairpersons. The conference therefore, decided to appoint to the panel a delegate from each of the 26 parties at the talks, giving each party a mouthpiece in discussions on procedures such as the use of 'sufficient consensus' in decision-making.

The CODESA label was dropped. Since the collapse of CODESA II, it had too many negative connotations for too many of the participants. The new label, which was favoured, was a 'Multi-party Negotiation Forum' (De Klerk, 1998:272).

Progress was being made with the negotiations because of a Declaration of Intent that had been signed by the delegations and the atmosphere was hopeful by December 1992. By February 1993, the ANC and the government had agreed in principle, that elections would be followed by a five-year Government of National Unity, whose members would include all parties polling over 5 per cent of the total vote cast. In March, a negotiating council was convened with twenty-four other parties, to work out the details. Again, on the 23 March 1993, the then president, FW De Klerk, made a dramatic announcement; the seven nuclear bombs, which the government had secretly developed, had been dismantled and destroyed (Sampson, 1999:468).

 Major interruptions were the assassination of Chris Hani of the South African Communist Party (SACP) on 10 April, 1993 and a protest by several thousand right-wing demonstrators, who were in support of the struggle for self-determination (Robertson, 1993:anon).

On July 2, 1993 the great majority of the parties were able to announce a definite date for South Africa's first fully democratic elections – 27 April 1994.

In the midst of all this, President FW De Klerk and Mr Nelson Mandela were jointly awarded a Philadelphia Peace Medal. On their return to South Africa, the negotiations at Kempton Park had entered their final crucial phase. Broad agreement on the transitional and electoral procedures and mechanisms thereto had been reached.

On September 23, 1993, Parliament adopted the Transitional Executive Council Act, which made provision for the establishment of a multi-party Transitional Executive Council (TEC), which would monitor the Government during the run-up to the election to ensure that none of its actions favoured or harmed any of the contesting political parties (De Klerk, 1998:281).

As stated by Sarakinsky (1994:68), transitions to democracy, tend to occur in two ways. In the first, an interim body governs until a new government is elected, and then oversees the drafting of a new constitution. In the second, an existing government remains in power until a new one is elected. In both cases, agreements or pacts are reached between those in power and those challenging for it.

In the South African case, the formation of the TEC reflected a compromise between the two: the government stood in office, but its power was limited by an interim body. Since parliament remained the only source of law, the TEC could be created only by a law passed by the parliament it was partly to replace. This helped to re-emphasise the importance of an elected law-making body (even one from which the majority was excluded), and of achieving change through constitutional rule (albeit ones seen by most South Africans as unjust) (Sarakinsky, 1994:68).

The TEC according to Sarakinsky (1994:68), managed to move parties into an essential phase of the journey to democratic rule, and was a crucial compromise between their conflicting visions of how democracy should be achieved.

In essence, the task of the TEC was to create a conducive climate for free and fair elections.

A broad understanding on outstanding issues was reached. During the hours preceding the adoption of the draft interim constitution by the plenary of the Multi-party Negotiating Forum, the forum managed to reach agreement on two additional important issues:

-   they secured confirmation that a Government of National Unity (GNU), which they decide upon, and which would emerge from the election of 27 April 1994, would continue for five years until 1999. There would be no new election before this time, unless the government was defeated in a no-confidence vote; and

-   more crucially, the Forum reached agreement on the procedures to follow for the appointment of the members (judges) of the Constitutional Court (Sarakinsky, 1994:68).

After most issues were finalised, Nelson Mandela gave an address to the plenary session of the Multi-party Negotiation Forum. Some of the points he raised were:

"We have reached the end of an era. We are at the beginning of an era. The central theme of the Constitution for the Transition is the unity of our country and people. This constitution recognises the diversity of our people.

We emerge from a conflict ridden-society; a society in which colour, class and ethnicity were manipulated to sow hatred and division. We emerge from a society

which was structured on violence and which raised the spectre of a nation in danger of never being able to live at peace with itself.

Our agreements have put that era behind us. This shameful past dictates the crucial need for a Government of National Unity. We are firmly on the road to a non-racial and non-sexist democracy.

For the first time in the history of our country, on April 27, 1994, all South Africans, whatever their language, religion and culture, whatever their colour or class, will vote as equal citizens.

Democracy is about empowerment. Now together we can begin to make the equality of education the right of all our children; to begin to remove homelessness, hunger and joblessness; to begin to restore land to those who were deprived by force and injustice; to break the cycle of stagnation in our economy"
(See Appendix G - Mandela RN, 1993: Address at World Trade Centre: 17 Nov, 1993).

To show a commitment to democratise, an Interim Constitution, which was decided upon by the Multi-party Negotiation Forum, had to be in place, from which everything else would then flow.

A new fully representative parliament would be elected under the new constitution, which would also act as a Constitutional Assembly. It would write and adopt a final constitution that would have to comply with pre-agreed immutable constitutional principles. Before the final constitution could come into effect a new Constitutional Court would have to certify that it complied with the constitutional principles (Sarakinsky, 1994:68).

During this period the country, would be ruled by an elected transitional multi-party government under the Interim Constitution. The constitution prescribed clear procedures for the formation of the Government of National Unity. As stated by Reynolds (1999:3), the first cabinet would have to put into practice the principle of power sharing. In accordance with Section 88 of the Interim Constitution, any party with 20 or more of the 400 seats in the National Assembly would be entitled to representation in the cabinet.

This proposal meant that the core demands on both sides would be met.

2.3.4   THE FOURTH PHASE

This phase covers the writing and implementation of the Transitional or Interim Constitution.

2.3.4.1   THE INTERIM CONSTITUTION

On the morning of November 18, 1993, the Interim Constitution was adopted by the Forum. It was a major milestone on the road to the New South Africa.

Wessels (1994:1) confirms that with the acceptance of the interim or the transitional constitution of South Africa as The Constitution of the Republic of South Africa, Act 200 of 1993, and promulgated in the Government Gazette (No. 15466) of 28 January 1994, all South Africans received an equal franchise and the principle of representation extended constitutionally to every South African citizen. Therefore the process of democratisation, leading to a 'new' South Africa, was founded on the acceptance of the new Transitional Constitution.

At the end of the negotiations, De Klerk made a closing speech in which he said, amongst other things:

> "Despite all the setbacks and frustrations we had endured; despite the walkouts and the boycotts; despite the terrible violence which continued to afflict so many of South Africa's people; despite the absence that day in 1992, of important parties (such as the Pan Africanist Congress); we had shown that it was possible for people with widely differing views and beliefs to reach basic and sound agreements through compromise, through reasoned debate and through negotiation" (De Klerk, 1998:291).

De Klerk (1998:291) added that the Transitional Constitution was the distillation of the dreams of generations of disenfranchised South Africans. It offered a reasonable assurance of continuing security for others who traditionally had the vote; it was capable of protecting individual and community rights; it would prevent the misuse of power and would uphold the rule of law; it established a fair division of powers between the pillars of good and orderly government; it was also a product of compromise. As such it did not satisfy South Africans completely, but it satisfied all, sufficiently, to meet most pressing concerns and hopes. In so doing, it provided the basis for a new national consensus.

On December 22, 1993 the Interim Constitution was adopted by parliament. Officially, it was the end of Apartheid rule.

The Interim Constitution, among other matters, stipulated the Supremacy of the Constitution in Section 4. More importantly, the Interim Constitution listed all the pre-agreed-upon principles in Schedule 4 and some of them read as follows:

I. "The constitution of South Africa shall provide for the establishment of one sovereign state, a common South African citizenship and a democratic system of government committed to achieving equality between men and women and people of all races.

II. Everyone shall enjoy all universally-accepted fundamental rights, freedoms and civil liberties, which shall be provided for and protected by entrenched and justiciable provisions in the Constitution, which shall be drafted after having given due consideration to inter alia the fundamental rights contained in Chapter 3 of this constitution.

III. The Constitution shall prohibit racial, gender and all other forms of discrimination and shall promote racial and gender equality and national unity.

IV. The Constitution shall be the supreme law of the land. It shall be binding on all organs of state, at all levels of government.

V. The legal system shall ensure the equality of all before the law and an equitable legal process. Equality before the law includes laws, programmes or activities that have as their object the amelioration of the disadvantaged, including those disadvantaged on the grounds of race, colour or gender.

VI. There shall be a separation of powers between the legislature, executive and judiciary, with appropriate checks and balances to ensure accountability, responsiveness and openness.

VII. The judiciary shall be appropriately qualified, independent and impartial and shall have the power and jurisdiction to safeguard and enforce the Constitution and all fundamental rights.

VIII. There shall be representative government embracing multi-party democracy, regular elections, universal adult suffrage, a common voters' roll, and, in general, proportional representation.

XI. Provision shall be made for freedom of information so that there can be open and accountable administration at all levels of government.

X. Formal legislative procedures shall be adhered to by legislative organs at all levels of government.

XI. The diversity of language and culture shall be acknowledged and protected, and conditions for their promotion shall be encouraged.

XII. Collective rights of self-determination in forming, joining and maintaining organs of civil society, including linguistic, cultural and religious associations, shall, on the basis of non-discrimination and free association, be recognised and protected.

XIII. The institution, status and role of traditional leadership, according to indigenous law, shall be recognised and protected in the Constitution. Indigenous law, like common law, shall be recognised and applied by the courts, subject to the fundamental rights contained in the Constitution and to legislation dealing specifically therewith.

XIV. Provision shall be made for participation of minority political parties in the legislative process in a manner consistent with democracy.

XV. Amendments to the Constitution shall require special procedures involving special majorities.

XVI. Government shall be structured at national, provincial and local levels."

On the day the Interim Constitution was adopted by Parliament, FW de Klerk addressed parliament and part of what De Klerk (1998:292) said, was that there would be a new parliament, but this time it would be a parliament without a "legitimacy problem". He said parliamentary tradition would continue, but this time it would be without the albatross of injustice, discrimination and exclusion hanging about its neck.

With those words, FW de Klerk was in a way, preparing parliament for the next challenge ahead. The Interim Constitution was in place, preparations for the first democratic elections had to be done.

2.4 CONCLUSION

South Africa and its people went through a challenging transformation and democratisation process. That process required the co-operation of all stakeholders, to pave and give shape to the "new" South Africa they were in search of. People with diverse backgrounds, value systems and interests had to identify commonalities among themselves, on which to build the "new" South Africa. This process required negotiators with a willingness to compromise and reach common ground, in order to achieve a win-win situation.

The transformation and democratisation process was set into motion by the former President, FW de Klerk's watershed speech, which was delivered on the 2 February, 1990. This speech, because of its liberal content, marked the beginning of change in South Africa. It was the turning point towards democracy. The watershed speech carried a sense of hope within it. Hope for South Africa to achieve representivity; to have regular elections, which would be free and fair; to have a system of constitutionalism, and a bill of rights. The future depended on keeping the promises made in that speech.

Misunderstandings and disagreements became part of the negotiation process. Massacres and threats of a civil war were at the height of the violence, brought on by a lack of trust among the negotiating parties. It was fear of the unknown and an unwillingness to compromise. Change is always rejected initially, however, once the process is clear to all and understood by all, then approaches change as well. A shared vision and co-operation was essential for any progress to be made.

All parties involved, came out better equipped in their negotiation skills and gained political maturity. It was imperative that they recognised the value of these negotiations and realised that the country's future depended on their commitment to achieve the expected outcome: a new South Africa with democratic principles entrenched in the constitution.

The whole process and its achievements proved to the world that people with diverse backgrounds and views, with deep racial divisions because of apartheid policies and opposing

political ideologies, can find common ground for the good of the country and take decisions that would lead to a democratic outcome – a "new" South Africa.

The next chapter will focus on democracy and representation from a theoretical perspective.

CHAPTER 3

REPRESENTATION AND ELECTIONS –
A THEORETICAL PERSPERCTIVE

3.1   INTRODUCTION

In this chapter, a theoretical perspective of the concepts, democracy and representation, will be discussed in relation to elections. The representative principles of democracy, as well as liberal democracy as a model of democratic governance, will be touched on.

The aim of this chapter is to identify the representative principle of democracy. In order to do that, this chapter will describe what democracy is and how representation can be enhanced through the application of the various models of democracy, especially in young and developing democracies such as South Africa. It is also important to emphasise the crucial role played by representation in the daily lives of communities and also in the election of representatives who will in turn be the government.

The Constitution, in its preamble, stipulates the principles underlying the new political order in South Africa: the Republic of South Africa is one, sovereign, democratic state, founded on, amongst others, the following values:

> "Universal adult suffrage, a national common voters' roll, regular elections and a multi-party system of <u>democratic</u> government, to ensure accountability, responsiveness and openness".

3.2   DEMOCRACY

3.2.1   A Conceptualisation of Democracy:

The term, "democracy" is literally derived from two Greek words: demos, meaning "the people", and kratein, meaning "to rule". Democracy is popular sovereignty, or rule by the people, and it is a form of government distinguished from rule by a single king or queen (monarchy), rule by hereditary nobility (aristocracy), rule by the most educated, rule by the

elders, and rule by religious leaders (Levine, 1987: 35-6). Thus, democracy, according to the classic tradition, as stated by Pennock (1979:3), is government by all, as contrasted with government by one or a few. The emphasis is on "the people" and "to rule" (by all of them).

Democracy is based on several principles and according to Merkl (1972:90-95) there are four principles: government by discussion or consent, majority rule, recognition of minority rights, and constitutionalism. "Democracy is government by discussion": means rational deliberation and open choice; whereas public policy is determined by the "principle of majority rule". This is not the same as saying the numerical majority of the population or even eligible voters determine policy. Rather, a majority vote of those voters who participated, or whatever body is entrusted with making a decision, will prevail. "One man, one vote". The rights of minorities and individuals delimit the sphere of action of majority rule and of governmental activity. "Constitutional government", gives regularity and stable procedures to what would, on the face of it, be a rather turbulent form of government.

- Democracy as an ideology is concerned with articulating the claims of the people to political power, and exploring the appropriate arrangements for its legitimate exercise and accountability (Eccleshall et al., 1984:133).

- According to the Rockefeller Panel Report (1960:v), democracy is a powerful idea because it respects the desire of every individual to share in his own rule. It is powerful because it is based on the belief that every individual has the capacity to learn the art of self-government.

- Democracy is, according to Wiseman (1990:6), about how representatives of the people are chosen. The electorate decides which set of governors and policies it wants, provided it is given the choice. The notion of choice and competition are central to the conception of democracy. When voters elect representatives, the element of choice should be as wide as possible. Closely related is the contention that a wide selection of candidates, free to propose different views, should be allowed to compete with each other in attempting to attract support of the electorate.

- Harris (1986:218), adds on by saying that government for the people is government in the best interests of the people. To sum up Abraham Lincon's three terms, government of the people really means government on behalf of the people, government by the people really means representative government, and government

for the people suggests that government should be carried on by, persons of high principle. Of the three ideas, the third is perhaps the most valuable and meaningful. It suggests that those who are trusted with government are not politicians who seek to make themselves rich or powerful at the expense of those whom they are supposed to serve.

"Democracy bestows an aura of legitimacy on modern political life: laws, rules and policies appear justified when they are 'democratic' (Held, 1993:13).

As stated in the Rockefeller Panel Report (1960:4), also a distinctive conviction marks a democratic society. One part of the conviction is that all human arrangements are fallible. The second part is that people can improve the societies they inhibit if they are given the facts and are free to compare things as they are with their vision of what they ought to be.

In political systems with many people, such as modern nations, government "by the people", according to Powell Jr (2000:3), must for the most part be indirect. The people participate primarily by choosing policy makers in competitive elections. Such elections are instruments of democracy to the degree that they give the people influence over policymaking. Government "by the people", is a form of government where sovereign power, according to Pennock (1979:3), resides in the people as a whole, and is exercised either directly by them or by the officers elected by them.

3.2.2 A Contextualisation of Representative Democracy:

For the purpose of this section, "contextualisation" means intergrating democracy and representation, to form representative democracy and that will be the focus.

Representation as a political principle, is "a relationship through which an individual or group stands for, or acts on behalf of, a larger body of people". According to Heywood (1997:206), representation differs from democracy in that, while the former acknowledges a distinction between the government and the governed, the latter, at least in its classical form, aspires to abolish this distinction and establish popular self-government.

As stated in Thompson (1976:13), John Stuart Mill believes that a representative government is the only government which can fully satisfy all the exigencies of the social state. It is one in which all people as a whole participate; and that any participation, even in the smallest public function, is useful.

"Representative democracy is thereforea government of, by and for the people; a government which functions for, and with the consent of, the governed. Officials of this government are to be selected by popular vote and be responsive to the will of the majority of the people" (Fuller, 1977:2).

3.2.2.1 Essentials and Requirements of a Representative Democracy

According to Roskin et al., (1991:79-80), to make democracy possible, several things are required: First, a substantial middle class forms a democratic foundation. If there are many poor and few rich people in a country, the situation is inherently unstable. The rich use their power to ensure that they will stay rich, and the poor, often whipped up by demagogic politicians, turn extremist and revolutionary. Violence, civil war, and fierce repression, either by reactionaries or by revolutionaries, is frequently the result. Either way, there is no democracy. But, where there is a substantial middle class (people who are neither rich nor poor), the economic tug-of-war subsides because most people have a stake in the existing system and do not want to overthrow it. They develop gradualist perspectives that aim at moderate and calm change over time, not violent upheavals. Closely related to a large middle class is the level of education, which instils a longer time frame in which to consider important matters. People may want reform, but usually not radical change. People learn to play by the rules of the game. A country with many educated citizens has a better chance of sustaining a democracy. Overall economic level is related to both size of the middle class and education. Poor countries almost axiomatically have a small middle class and massive illiteracy. Democracy is not impossible in a poor country, but it is difficult and rare.

Secondly, as stated by Busia (1967:103-104), by common agreement, another essential of democracy is the Rule of Law. He continues to say that it is one thing to accept the Rule of Law as a democratic principle; it is another thing to provide for implementing it. In a democracy, the Rule of Law places limitations on the power of the government in the interest of personal freedom.

> Busia (1967:107), says, that democracy ultimately rests on the morality and discipline of the citizens. A democracy in the last analysis depends on the character of individual men and women and the moral standards of the community.

> The moral principles of a democracy are, according to John Norton Moore, as quoted by Rebehn (1999:28):

- The idea of constitutionality – constitutions embody the fundamental bond between people. They are the highest form of law to which all other laws and government proclamations are subordinate, and they have to be taken seriously.

- The general principle of responsibility – governments are responsible to the people. Legislative and executive representatives must be chosen by means of a system of competing election-participants, which guarantees the accountability of the representatives.

- Separation of powers and mutual control – checks and balances should not just be achieved through the separation between the executive, legislative and judicial branches of government, but also through institutions like a bi-cameral parliament and an ombudsman.

- Guarantee of basic human rights – there are a certain number of minimum rights that cannot even be amended by the legislative branch. These should include freedom of speech, fairness of judicial procedure, religious freedom, protection of civil rights, accountability of government representatives, the guarantee of the integrity of government action, protection of the rights of employees, civilian control of the military, protection of the environment and protection of economic freedom and property rights.

- Minimal government, federalism and a strong judiciary - the judiciary must not only exercise a controlling function over the other branches of government, but, must also protect the fundamental elements of the constitution, the separation of powers, the rights of individuals and the integrity of the election process itself.

In the third place, according to Smith (1960:11), a key concept of democracy is equality, the idea of the supreme worth of the individual person. This means that every personality is entitled to express itself in its own way, to grow and develop according to its own capacity. Stated more concretely, equality means that every individual is to have an equal right with every other individual to secure the values in which he believes.

Democracy is, in the fourth place, according to Busia (1967:98-99), government by consent. Public discussion, free elections, the right to freedom of speech and association

are regarded as essential because they are necessary for achieving consent. Democracy caters for pluralistic societies. His comment is noteworthy because the states of present-day Africa are composed of pluralistic societies. They consist not only of different religious groups, but also of many different ethnic groups, and a growing number of different associations, such as trade unions, farmers', traders', youth, or women's associations. The individuals who join these associations do so because they promote or protect some particular interest(s) of theirs.

Roskin et al., (1991:66-72) in turn, identified the following as "essential ingredients" of a representative democracy:

- **Popular support of government**: "Popular support is the crucial test of modern democratic government, for in a democracy the policy makers' legitimacy usually depends on the support they receive in the form of a majority or plurality of votes cast".

- **Political competition**: "The people's right to reject unsatisfactory officials at the polls is bolstered when a choice of policies (usually represented by competing political parties) is offered on the ballot".

- **Alternation in power**: "In a democracy, the reign of power will occasionally alternate, both in terms of actual officeholders and in terms of prevailing ideals. The party that was the majority then becomes a minority".

- **Popular representation**: "In representative democracies, the voters elect representatives to act as legislators and, to voice and protect their general interests".

- **Majority rule**: "In any government decision involving important policy-making, there is rarely complete agreement … If the government is to be the instrument of the popular will, but there is disagreement on issues, how shall the popular will be determined? The simple answer is that the majority should decide. In any controversy, the policy that has the support of the greatest number of citizens should generally become the policy of government".

- **Right of dissent and disobedience**: "If the government exists to serve the people, the people must have the right to resist the commands of government if those commands no longer serve the public will".

- **Political equality**: "In a democracy, at least in theory, everyone is equally able to participate in government and to compete freely for public office".

- **Popular consultation**: "Most government leaders realise that to govern effectively they must know what the people want and must be responsive to these needs and demands".

- **Free press**: "Dictatorships cannot tolerate a free and critical mass media; democracies cannot do without them. One of the clearest ways to determine the degree of democracy in a country is to see how free its press is. The press provides citizens with facts, raises public awareness, and keeps rulers responsive to mass demands. Without a free and critical press, rulers can disguise wrongdoing and corruption and lull the population into passive support".

3.3   MODELS OF DEMOCRACY

There are several models of representation and these are as follows:

(i)   **Classical Democracy**: The principle of this theory is that the citizens should enjoy political equality in order that they may be free to rule and be ruled in turn (Held, 1987:34).

(ii)   **Protective Democracy**: The principle of protective democracy is that citizens require protection from the governors, as well as from each other, to ensure that those who govern pursue policies that are commensurate with citizens' interests as a whole (Held, 1987:70).

(iii)   **A Radical Model of Developmental Democracy**: This model is of a belief that citizens must enjoy political and economic equality in order that nobody can be master of another and all can enjoy equal freedom and dependence in the process of collective development (Held, 1987:78).   Economic or developmental

democracy has been used to specify a system of government that distributes the material resources of society so as to maximise equality (Levine, 1987:40).

(iv) **Developmental Democracy**:   Developmental democracy points out that participation in political life is necessary not only for the protection of individual interests, but also for the creation of an informed, committed and developing citizenry.   Political involvement is essential to the 'highest and harmonious' expansion of individual capacities (Held, 1987:102).

(v) **Direct Democracy and the "End of Politics"**:   This theory suggests that the 'free development of all' can only be achieved with the 'free development of each'.   As stated by Held (1987:136), freedom requires the end of exploitation and ultimately complete political and economic equality;   only equality can secure the conditions for the realisation of the potentiality of all human beings so that 'each can give' according to his or her ability and 'receive what they need'.

(vi) **Competitive Elitist Democracy**:   The principle of justification is based on the method for the selection of a skilled and imaginative political elite capable of making necessary legislative and administrative decisions.   That method is an obstacle to the excesses of political leadership (Held, 1987:184).

(vii) **Pluralism**:   The principle of justification is that this method of representation secures government minorities and, hence, political liberty.   It is also a crucial obstacle to the development of excessively powerful factions and an unresponsive state (Held, 1987:204).

(viii) **Legal Democracy**:   The majority principle is an effective and desirable way of protecting individuals from arbitrary government and, therefore, of maintaining liberty.   As stated by Held (1987:251), for political life, like economic life, to be a matter of individual freedom and initiative, in order for majority rule to function justly and wisely, it must be circumscribed by the rule of law.

(ix) **Direct or Participatory Democracy**:   According to this theory, an equal right to self-development can only be achieved in a 'participatory society', a society which fosters a sense of political efficacy, nurtures a concern for collective problems and contributes to the formation of a knowledgeable citizenry capable of taking a sustained interest in the governing process (Held, 1987:262).

Participatory democracy, or direct democracy, also supported by Levine (1987:36), is a form of government that emphasises three features: (1) popular participation, (2) majority rule, and (3) political equality. It has its origins in Athenian experience, which was different from the form of government that many Americans today regard as their own democracy. The major differences reflect geography, participation, and the relationship between citizen and state.

(x)   **Indirect or Representative Democracy**: Representative democracy is based on the principle of popular sovereignty. As stated by Levine (1982:40), the number of people included in the political community is larger and though the citizens play no direct role in making laws, other forms of political participation are permitted.

(xi)   **Democratic Autonomy**: Individuals should be free and equal in the determination of the conditions of their own lives; that is, they should enjoy equal rights (and, accordingly, equal obligations) in the specification of the framework which generates and limits the opportunities available to them, so long as they do not deploy this framework to negate the rights of others (Held, 1987:290). The principle of autonomy is enshrined in the constitution and bill of rights.

3.4   THE PRINCIPLES OF RESPONSIVENESS AND RESPONSIBILITY OF REPRESENTATIVE DEMOCRACIES

To achieve responsiveness and responsibility, all modern governments rely heavily upon representation. According to Pennock (1979:309), political representation in the proper sense of the word, means that all legitimate governments are "representative". Elections are thought to constitute the great sanction for assuring representative behaviour, by showing what the voters consider to be their interests by giving them incentives to pursue those objectives. Representatives are intermediaries. They also have a role to play in 'representing' to the constituents the organ of which they are a part. They tell voters about the interests of the country as seen from the centre.

According to Lijphart (1984:2), Dahl has shown that a responsive democracy can exist only if at least eight institutional guarantees are present and these are:

- Freedom to form and join organisations;

- Freedom of expression;

- The right to vote;

- Eligibility for public office;

- The right of political leaders to compete for support and vote;

- Alternative sources of information;

- Free and fair elections; and

- Institutions for making government policies depend on votes and other expressions of preference.

Pennock (1979:316) continues to say that subject to representation is the validity of the mandate theory in connection with responsiveness and responsibility. With regard to representation, the mandate theory relates specifically to elections and authorisation or direction to representatives, that an election creates. Thus, by being elected, a representative may be said to have been authorised to use his own judgement in pursuing justice, or the interest of the nation, or certain key issues that were featured during the campaign.

Representative democracy may nevertheless constitute a limited and indirect form of democratic rule, provided that representation links government and the governed in such a way that the people's views are articulated or their interests are secured (Heywood, 1997:206).

With many European countries, and increasingly in America and Britain, democratic representation has become connected to the concept of proportionality (Eccleshall et al., 1984:131). This also comes with the emergence over the past few centuries of political communities containing diverse ethnic, religious, and racial groups, larger numbers of people, and more sophisticated economies, that a different model of democracy has developed: namely, representative democracy (Levine, 1987:38).

Therefore, the principle of popular sovereignty comes into play. There is a close connection between representativeness and the principle of popular sovereignty. According to Rokin et al., (1991:67) where there is popular representation, the voters elect representatives to act as legislators to voice and protect their interests. Popular sovereignty, therefore, affirms the power base. As stated by Heywood (1997:209), popular sovereignty is a principle that gives assurance that there is no higher authority than the will of the people.

The principle of popular sovereignty, according to Ranney (1996:94), requires that the ultimate power to make decisions be vested in all the people rather than in some of them. This principle, which is the nucleus of the conception of democracy, has several major aspects:

- **Sovereignty: Ultimate decision-making power**

"One characteristic that sets a modern nation (state) apart from all other forms of political organisation is that the nation is sovereign; that is, it has the full and exclusive legal power to make and enforce laws for the people within its territory and under its jurisdiction. In every sovereign nation (state) the ultimate power over political decisions is located somewhere in the political-governmental structure. In a democracy, power must be vested in all the people and not in one of them or a small group of them".

- **Vestment in the People**

"The principle of popular sovereignty does not logically require that all the people directly make all the daily decisions of government …The people in a democracy … may lend, or 'delegate', part of their decision-making power to legislators, executives, administrators, judges, or anyone else they wish. The people are sovereign as long as they, and not their delegates, have the ultimate power – the final word beyond which there is no appeal – to decide which decision-making power will be kept for themselves and which will be delegated to whom, under what conditions of accountability, and for what periods of time".

- **The People: All Adult Citizens**

"… in a democracy, power rests in all adult citizens rather than in all persons who happen to be around. The criteria for determining who may share in this power are thus citizenship and adulthood. Every nation distinguishes between the people who are its citizens and the people who are not".

- **Sovereignty of All the People**

> "Only when ultimate power is vested in all the people is the government a
> democracy. All the people should take an active part in decision-making".

Held (1991:227), argues that advocates of popular sovereignty tend to see the state as a mere 'commission' for the enactment of the people's will and, therefore, open to direct determination by the public. He continues to say that "the thesis of popular sovereignty places the community (or a majority thereof) in a wholly dominant position over individual citizens – the community is all-powerful and, therefore, the sovereignty of the people could easily destroy the liberty of individuals".

The argument above, brings to mind the realisation that sovereignity is possible because, the principle of democracy is majority rule. Therefore, it is important that fundamental human rights with an explicit focus on "group rights"[7] be entrenched in a constitution, provided that the constitution is the supreme law of the country.

Wessels (1996:142), states that although "sovereign" in their decision-making power, the people need not necessarily be directly involved in all the decisions made by the government. The people in a democracy can delegate their decision-making power to elected representatives, executive officials, judges or any other person of their choice. "The people are sovereign as long as they, and not their delegates, have the ultimate power to decide which decision-making powers will be kept for themselves and which will be delegated to whom, under what conditions of accountability, and for what periods of time" (Ranney, 1993:101).

In support of Ranney's view, Levine (1997:38) also argues that representative democracy is based on the principle of popular sovereignty. He adds to it that, although modern representative democracy requires popular participation, the scope and form of that participation are different from Athenian democratic practices[8] in two ways. Firstly, the

---

[7] **Groups rights can be ethnic, racial or religious**

[8] **Athenian democratic principles are democratic principles which were honoured in Athens during the Greek times. Political participation in ancient Greece involved only citizens, that is, male property owners. Women, slaves, youths, and foreigners were excluded from citizenship. The citizens in Athens constituted a minority of the population of the city-state. Citizens were expected to participate actively in the actual making of laws, and administration of laws, and the dispensing of justice. The political institutions of the day were set up in such a way as to give the greatest scope for maximum citizen participation. There was no distinction between the state and society (Levine, 1982:38).**

number of people included in the political community is larger. Representative democracies claim maximum popular participation. Secondly, although most citizens play no direct role in making laws (with an exception of engaging in such practices as deciding on referenda and initiatives), other forms of political participation are permitted. For example, joining an interest group for the purpose of influencing elected officials and appointed bureaucrats to act in particular ways.

It is also important to emphasise, that a representative democracy, or indirect democracy, possesses some of the features of direct democracy, but also has some important differences.

Direct democracy: according to Baradat (2000:114), is a system where people act as their own legislature. There are no representatives; in other words, the people make the laws for themselves. This type of a government system, as stated by Baradat (2000:115), was favoured by Jean Jacques Rousseau because he was of the view that no one could truly represent another person's will. Hence, all the individuals in the society must represent themselves.

Harris (1986:219), adds that direct democracy is a face-to-face democracy in which people can continually take an active part. It is the kind of democracy, which encourages and stimulates community initiative from 'below' and minimises direction from 'above'. Direct democracy, is possible and effective in fairly small communities.

Heywood (1997:68), also confirms that direct democracy is based on direct, unmediated and continuous participation of citizens in the tasks of government. Direct democracy thus clears off the distinction between government and the governed and between the state and civil society; it is a system of popular self-government.

The merits of direct democracy includes, according to Heywood (1997:68), the following:

- It heightens the control that citizens can exercise over their own destinies, as it is the only pure form of democracy;

- It creates a better-informed and more politically sophisticated citizenry, and thus it has educational benefits;

- It enables the public to express their own views and interests without having to rely on self-serving politicians;

- It ensures that rule is legitimate in the sense that people are more likely to accept decisions that they have made themselves".

Held and Pollitt (1986:142) supports the views above and continues to say that, "there is no other version that is truly democratic. Representatives can misrepresent". Held and Pollitt (1986:142-143) also provide criticism of a direct democracy. One objection is that direct democracy can lead to inconsistent decisions. Citizens change their minds all the time. Another criticism goes right back to the ancient Greeks: democratic assemblies are liable to be manipulated by scrupulous orators.

Characteristics that are somewhat similar are popular participation, political equality, and majority rule. The differences in contemporary systems are, a system of representative government based on free elections (freedom of the electorate to choose their representatives) and a system of limitations on state activity (constitutionalism). In this way, citizens would be protected from abuse by government and there would be checks and balances in place to ensure accountability (Levine, 1987:38).

Indirect democracy, on the contrary, is a system of government, where, "instead of the people making the laws themselves, they elect legislators to do it for them. Thus, the people are removed one step from the legislative process, and their relationship to the policy-making process is less direct than under the pure or direct form of democracy" (Baradat, 2000:115); and is, as stated by Heywood (1997:68), a limited and indirect form of democracy. "It is limited in that popular participation in government is infrequent and brief, being restricted to the act of voting every few years. It is indirect in that the public do not exercise power themselves; they merely select those who will rule on their behalf" (Heywood, 1997:68).

The strengths of indirect or representative democracy, as stated by Heywood (1997:68), include the following:

- It offers a practicable form of democracy (direct popular participation is only achieved in small communities);

- It relieves ordinary citizens of the burden of decision-making, thus making possible a division of labour in politics;

- It allows government to be placed in the hands of those with better education, expert knowledge and greater experience;

- It maintains stability by distancing ordinary citizens from politics, thereby encouraging them to accept compromise".

3.5 LIBERAL DEMOCRACY AS A PARTICULAR MODEL OF REPRESENTATIVE DEMOCRACY

Liberal democracy is dealt with here, to explain the "liberal component" of the concept.

The foremost founders of liberal democracy were John Locke (1632-1704), Adam Smith (1723-1790), and Jean-Jacques Rousseau (1712-1778). As stated by Winter and Bellows (1992:62), their ideas laid the foundation for Western democracy and its early prototypes in Britain and the United States.

The core of Locke's philosophy, according to Winter and Bellows (1992:63), centers on two primary features that have served as the theoretical underpinning of Anglo-Saxon politics for the past three centuries: The first is government by consent of the citizenry, and the second is government by constitution. Government, according to Locke, has an obligation to protect the natural rights and the properties of people.

The next step is the formation of government by majority decision, as contrasted with the unanimity necessary for the "social contract".

Jean-Jacques Rousseau in his book, Social Contract**,** stated that "man was born free **…** ". Rousseau, according to Winter and Bellow (1992:65), shared many of the tenets of the Enlightenment, the period during which he lived. He says the freedom of the state of nature can be regained only through the establishment of a legitimate civil society in which citizens give up natural freedom, in return for which they participate in the "general will" of the community. As each individual agrees to be ruled as well as to rule, all are made free.   The agreement is done freely by general will.

Another of Rousseau's basic contributions to liberal democracy is the concept of popular sovereignty. The political community created by the social contract alone, possesses supreme

power or sovereignty. All legitimate governments are basically democratic as already stated. According to Roskin et al., (1991:67), popular support is a crucial test of modern democratic government, for in a democracy the policymakers' legitimacy usually depends on the support they receive in the form of a majority or a plurality of votes cast. The concept of general will is another important contribution of what the common good requires. The weakness in the idea of the general will, according to Winter and Bellows (1992:66), is that Rousseau failed to safeguard minority rights.

The theory and principles of liberal democracy as they are understood today (McNair, 1995:16), grew out of the "bourgeois of autocracy" in early modern Europe, beginning in the sixteenth century and culminating in the French Revolution of 1789, with a slogan of 'Liberty, Equality, and Fraternity'.

The political principles of liberal democracy fall into two large categories:

- Provisions to provide broad-based citizen involvement in the public decision-making process. Locke and Rousseau stressed that citizens must be able to participate in the political process.

- The presence of a high degree of freedom. This freedom, although often taken for granted by citizens in democratic societies, are very important and tend to distinguish democracies from totalitarian societies.

For the liberal, or those who support liberalism, according to Held (1993:163), democracy basically means a form of government in which the people wield political authority, which they delegate to their freely-chosen representatives and of which they retain the right to withdraw if the government should grossly violate its trust.

McNair (1995:16) says the emergence of the bourgeoisie (or capitalist class) as the dominant economic force in Europe, required the overthrow of autocracy and its monopolisation of political power. For capitalism to develop freely there had to be freedom of thought and action for those with entrepreneurial skills and the wealth to use them. There had, therefore, to be freedom from arbitrariness of absolute power, an end to the ideology of divine right, and the recognition of the status of capital earned in the marketplace rather than inherited. Consequently, bourgeois philosophers, such as Locke and Milton, worked out a critique of autocratic power, replacing it with a theory of representative democracy and individual, or citizenship rights, economic and political power. Voting rights were also introduced and

constitutional constraints on the abuse of political power were put in place. Bobbio, as stated by McNair (1995:17), confirmed that the main concern of liberal democratic theory was thus 'to grant individuals civil liberties against the incursion of the state'.

The concept of liberal democracy, as stated by Tarrant in Rebehn (1999:27), is essentially a hybrid of two rival constellations, market and moral democracy. He argues that, "moral democracy is a preferable conception to market democracy" in as far as it can deliver the value system which supports the institutions of democracy.

The principles of both moral democracy and market democracy have been identified and also received broad consensus from researchers. The principles are as follows (Rebehn, 1999:28):

- Government by the people through elected representatives – government decision-making is delegated to constitutionally elected representatives.

- Elections – the representatives are elected at regular intervals by means of fair elections where coercion is relatively rare or insignificant.

- Active voting rights – nearly all grown-ups have the right to elect government representatives.

- Passive voting rights – practically all grown-ups have the right to stand as candidates for the election.

- Freedom of speech – citizens have the right to voice their political opinion in the general sense of the word without risking serious punishments.

- Variety of sources of information – citizens have the right to access alternative sources of information. Additionally, such alternative sources of information must exist and be protected by law.

- Freedom of assembly – citizens have the right to form relatively independent associations or organisations, including political parties.

Liberal democracy, as stated by Pennock (1979:12), places considerable stress on individual liberty and on institutions of government designed to protect individuals against governmental

arbitraries or oppression and to ensure that all have equal legal opportunities to share in the selection of those who govern. Liberal democracies' worldwide acceptance as a form of democratic rule, as argued by Pennock (1979:12) above, is based, according to Heywood (1997:68), on the principle of limited government. Its liberal features are reflected in a network of internal and external checks on government that are designed to guarantee liberty and afford citizens protection against the state. Its democratic character, according to Heywood (1997:75), can be identified by the following distinguishable characteristics:

- Liberal democracy is an indirect and representative form of democracy in that political office is gained through success in regular elections that are conducted on the basis of formal political equality.

- Liberal democracy is based on competition and electoral choice. These are achieved through political pluralism, tolerance of a wide range of contending beliefs, and the existence of conflicting social philosophies and rival political movements and parties.

- In a liberal democracy, there is a clear distinction between the state, government, and, civil society. This distinction is maintained through the existence of autonomous groups and interests, and the market or capitalist organisation of economic life.

The applied features of liberal democracy as a means to establish a democratic form of government are according to Heywood (1997:28):

- **"Constitutional government based on formal, usually legal, rules"**. Constitutionalism, in a narrow sense, is the practice of limited government ensured by the existence of a constitution.

  More broadly, constitutionalism is a set of political values and aspirations that reflect the desire to protect liberty through the establishment of internal and external checks on the government power. In this sense, constitutionalism is a species of political liberalism. It is typically expressed in the form of support for constitutional provisions that achieve this goal, for example, a codified constitution.

- **"Guarantees of civil liberties and individual rights".** Liberalism is an ideology based on a commitment to individualism, freedom, toleration and consent, and, this commitment is usually legally enshrined in a Bill of Rights as part of the constitution. A bill of rights is therefore a constitutional document that specifies the rights and freedoms of the individual in relation to the state.

- **"Institutional fragmentation and a system of checks and balances".** Institutional fragmentation, has, amongst others, the object to prevent the (over-) concentration of power in a single institution, and, to put into place a system of checks and balances, which can be accomplished through the vertical and horizontal division of governing power respectively as tiers and branches of government.

  Verticalism is generally known as federalism, which means, the existence of two distinct levels of government, neither of which is legally or politically subordinate to the other. Its central feature is therefore the notion of shared sovereignty; a system of government in which (governing) "power is formally (constitutionally) divided between the national government and certain regional governments, each of which is legally supreme in its own sphere".

  Horizontalism on the other hand is generally known as the separation of power, which is the principle of the division of government power among co-equal legislative, executive and judicial branches.

- **"Regular elections that respect the principle of 'one person, one vote; one vote, one value'; party competition and political pluralism".** Elections are often thought of as the heart of the political process. They are a means by which the people can control their government. For an election to be democratic, the way in which the following questions are being addressed will determine its qualitative character and outcome: Which offices and posts are subject to the elective principle? Who is entitled to vote? How are the votes cast? Are the elections competitive or not? And, how is the election conducted? (Heywood, 1997:211).

- **"The independence of organised groups and interests from government".** Whereas indirect democracy is based on the principle of representation,

representative democracy demands optimal popular participation in the political process. This is a philosophy that can only be given from a society based on the principles of modern pluralism, which implies "extensive participation in the political process through competing and autonomous groups".

Interest group activity is a fundamental feature of modern democracy because "it creates a system of representation that operates alongside electoral representation. In fact, interest groups cumulatively may have more influence upon decision-making than elections and political parties. Interest groups increase the amount and quality of information available to governments. Interest groups partly redress one of the defects of democracy, because they reflect the quality or intensity of concern".

- **"A private-enterprise economy organised along market lines".** At almost every level, politics is intertwined with the economy and with society. Liberal democracy goes hand in hand with a market economy (a modern free-market, or free enterprise) which is defined as an economic system that defends private property, emphasises the virtues of competition, and minimum intervention by the government, and, suggests that general prosperity will result from the pursuit of self-interest.

3.6 CONCLUSION

The representative principle of democracy has been the focus of this chapter and it is clear that representation affords legitimacy because political choice and competition are central to representative democracy. Citizens or the electorate has the freedom to choose who the representatives are.

Representatives act on behalf of the people. They represent and protect the interests of the citizens, and also serve as a link between the governors and the governed.

Representation is seen as a vehicle towards achieving responsiveness and responsibility. As stated, all legitimate governments are 'representative'. They have a mandate to fulfil and be answerable to the people. Regular elections play a role to ensure representative behaviour. Responsiveness can be achieved if political rights are guaranteed.

Representative democracy is a limited and indirect form of democratic rule. The citizens are protected from being abused by the government and on the same token the government represent and protect their interests.

Liberal democracy, as a particular model of representative democracy, encourages competition and electoral choice. There is also a clear distinction between the state, government and civil society. Liberal democracy is based on, among others, the principle of constitutionalism, a system of checks and balances, regular elections and guarantees for civil liberties and individual rights.

In the final analysis, character, morality and discipline, determine the type of democratic rule.

CHAPTER 4

THEORETICAL PERSPECTIVES
ON THE ELECTORAL PRINCIPLE:
ELECTIONS, VOTING AND ELECTORAL SYSTEMS

4.1 INTRODUCTION

This chapter's focus will be on elections, voting and electoral systems. These concepts and practices lie at the core of democracy and democratic governance; that is, in ensuring representation. They are important because they are the machinery responsible for ensuring that there is a government representative of the voters' interests.

The purpose of this chapter is to clarify the interrelatedness of the three concepts, elections, voting, and electoral systems. To discuss the different electoral systems, with the aim of identifying an electoral system, which would be best suited for a society in transformation, which is also faced with challenges of diversity and high levels of illiteracy. A system which would enhance democratic governance.

There is a strong relationship among elections, voting and electoral systems. This is why Harrop and Miller (1987:41), continue to define an electoral system as "a set of rules for conducting an election". These rules specify which public officials are subject to election, who is eligible to vote, how those eligible can claim their right to vote, how the candidates must be selected, and how the votes are to be counted so as to produce an overall result.

4.2 ELECTIONS

Elections are the chief institutional mechanism by which representatives are selected to give expression to the most basic demand of democracy, namely, representation.

"Elections concern voters; they also concern governments. Elections are about freedom and choice; they are also about control and constraint" (Harrop and Miller, 1987:1).

This demonstrates how important voters are in an election; and how important their freedom of choice is in a democracy. Government is the result of a choice made by the voters, and government has the responsibility to be accountable to the voters or the electorate. This will be clarified further in this chapter.

An election, according to Harrop and Miller (1987:2), is a formal expression of preferences by the governed, who are then aggregated and transformed into a collective decision about who will govern.

In theory, elections allow citizens to choose and guide their government. In modern elections, however, the element of rational choice is heavily manipulated by the twin factors of personality and mass media (Roskin et al, 1991:248).

Elections are also a device for filling an office or post through choices made by a designated body of people: the electorate (Heywood, 1997:211).

According to Ball (1983:124), elections are the means by which the people choose and exercise some degree of control over their representatives.

For democracy to prevail, the electoral system and elections represent the "mechanical" heartbeat of the political process. "Democratic electoral systems are essentially constitutional and institutional instruments by which political views about the franchise, government by consent and fair representation are practically applied in elections in order to achieve the aims of an election and thereby serve a broader democratic ideal" (Faure et al., 1988:143).

Although controversy continues to rage about the nature of representation, there is one point of universal agreement: a representative process is intrinsically linked to elections and voting.

Most shades of political opinion seem to include the following among the 'good purposes' for which elections have been instituted, at any rate to the extent that they would not regard any of them as undesirable in itself. These purposes may be regarded by some as incompatible one with another, and as being of differing relative importance (Lakeman, 1970:28):

(i)   a parliament reflecting the main trends of opinion within the electorate;
(ii)   government according to the wishes of the majority of the electorate;

(iii)   the election of representatives whose personal qualities best fit them for the function of government; and

(iv)   strong and stable government.

If an election can meet these demands, according to Lakeman (1970:28), the ideal will, would have been nearly approached.

There are definite rules and mechanisms that guide the conduct of elections, and therefore according to Heywood (1997:211) elections can take different forms:

- Firstly, which offices or posts are subject to the elective principle? Although elections are widely used to fill those public offices whose holders have policy-making responsibilities, key political institutions are sometimes treated as exceptions.

- Secondly, who is entitled to vote? How wide is the franchise drawn? Restrictions on the right to vote are based on constitutional stipulations.

- Thirdly, how are votes cast? The secret ballot is usually seen as the guarantee for a fair election, in that, it keeps the dangers of corruption and intimidation at bay. Nevertheless, electoral fairness cannot simply be reduced to the issue of how people vote. It is also affected by the voters' access to reliable and balanced information, the range of the choices they are afforded, the circumstances under which campaigning is carried out and finally, how scrupulously the vote is counted.

- Fourthly, are elections competitive or non-competitive? Electoral competition is a highly complex and often controversial issue. It concerns not merely the right of people to stand for election and the ability of political parties to nominate candidates and campaigning legally, but also broader factors that affect party performance, such as their sources of funding and their access to the media.

Elections serve a great purpose and some of the functions of elections, will be discussed in general.

4.2.1   Functions of elections

Elections perform several functions. As stated by Taylor and Johnston (1979:35), they provide for popular control ensuring that those who govern are, within the constraints of the choices offered to the voters, the most popular with the electorate, which guarantees that citizen support will be given to the government. If held regularly, they also ensure that government is responsible, since the representatives are then accountable to the electorate every so often (usually between two and five years); in this role, they also provide a channel of communication between governors and the governed (the rulers and the ruled).

The central functions of elections are according to (Heywood, 1997:213):

- recruiting politicians: In democratic states, elections are the principal sources of political recruitment, taking account also of the processes through which political parties nominate candidates. Politicians thus tend to possess talents and skills that are related to electioneering, such as charisma, oratorical skills and good looks, not necessarily those that suit them to carry out constituency duties, serving on committees, running government departments and other related duties;

- making governments: Elections only make governments directly in states such as the USA, France and Venezuela, in which the potential executive is directly elected. The use of proportional representation may mean that governments are formed through post-election deals, and that governments can be made and unmade without the need for election;

- providing representation: When they are fair and competitive, elections are a means through which demands are challenged from the public to the government;

- influencing policy: Elections certainly discourage governments from pursuing radical and deeply unpopular policies, but only in exceptional cases, when a single issue dominates the election campaign, can they be said to influence policy directly;

- educating voters: The process of campaigning provides the electorate with an abundance of information, about political parties, candidates, policies, the current

government's record, and the political system. However, this only leads to education if the information that is provided, and the way it is provided, engages public interest and stimulates debate, as opposed to apathy and alienation;

- building legitimacy: Elections help to foster legitimacy by providing justification for a system or rule. This happens because the ritual involved in campaigning somehow confers on an election a ceremonial status and importance. Most importantly, by encouraging citizens to participate in politics, even in a limited form of voting, elections mobilise active consent; and finally

- strengthening elites: Elections can also be a vehicle through which elites can manipulate and control the masses.

4.3   VOTING AND VOTING BEHAVIOUR

4.3.1   Voting

"A vote is a share in power to decide, it is therefore a form of power over others, and no man has a right to power, except in a narrow legal sense. 'Every such power, which he is allowed to possess, is morally, in the fullest force of the term, a trust'. A man's vote 'has no more to do with his personal wishes than the verdict of a juryman. It is strictly a matter of duty: he is bound to give it according to his best conscientious opinion of the public good'. If this is conceded, it is easy to see reasons why a man should do his duty … "(Mackenzie, 1958:127).

As stated by Lakeman (1970:28), the voice of the people should be the ultimate arbiter, and this voice should be expressed and heard through the ballot box. Voting then provides a person with the richest source of information about the interaction between individuals, society and politics.

Therefore, elections serve as mandates (Pomper, 1974:246). A mandate would be the most general form of direct voter control. In this theory, political contests are seen as debates over future governmental policies, and the election as the means to resolving the debates. Heywood (1997:68) also says that representative democracy is sometimes expressed as an 'electoral mandate'. The form of rule is democratic insofar as representation establishes a reliable and effective link between the government and the governed.

For a mandate to be valid, Pomper (1974:250) says, it should be based on an informed choice of the electorate. If a party's voters support its policies without thought and simply because of their partisanship, this loyalty clearly does not impose any restraint on the government. Nor is a mandate discernible if no alternatives to the winning party's programme are available. In order for the voter to make a decision on public policy, they must have a defined choice.

4.3.2   Voting Behaviour

"… in every modern democratic system, votes are the basic units of political power" (Ranney, 1996:188).

Mobilising support and lobbying play an important role in voting behaviour. According to Ranney (1996:188), the groups that mobilise the largest numbers of voters in support of the public policies and officials they favour, get the largest share of what they want out of politics.

According to the still influential classical liberal theory, as expressed in the eighteenth-century Enlightenment, the voter is not only continuously interested in politics through civic involvement, but is impartial, well informed on issues and personalities, committed to the public welfare, and willing to participate in public debates on policy issues (Abcarian and Masannat, 1970:160).

According to Berelson, Lazarsfeld and McPhee (1954:307), the democratic citizen is expected to be interested and to participate in political affairs. The citizen's interest and participation can take such various forms as reading and listening to campaign material, working for the candidate or the party, arguing politics, donating money, and voting.

The rational model of the classical liberal theory of the democratic citizen has been observed, and many of its standards of political life and civic-mindedness were of doubtful validity as a description of ongoing personal behaviour. For many individuals, that is to say, voting is not a logical, intellectual process in which the public interest is carefully weighed, but rather a process in which collective norms and random events appear to be strong and sometimes dominant forces (Abcarian and Masannat, 1970:161).

Investigations of the relationship between social status and voting has proceeded on the assumption that one's vote is closely related to one's social position in society and that collective voting patterns may be treated as the political projection of a nation's social system.

According to Abcarian and Masannat (1970:160-1), the study of political allegiance has led to interest in one especially important process: why do some people change their votes and who are they? In the United States only a minority of citizens express intense and sustained interest in the political arena. These persons are highly partisan and change their votes quite frequently. The available evidence that persons with changeable voting habits are minimally partisan in outlook or, while partisan, are subject to cross pressures, they therefore express uncertain political orientations and loyalties. In addition, there are many persons for whom politics is marginal and who do not perceive voting or election results as central to their life situations.

Investigation of issue orientations moves attention to the substance of politics. Hence, a distinction is often made between "position" and "style" issues. As stated by Abcarian and Masannat (1970:161), position issues are closely tied to social status and are economic in nature, relating to matters such as taxation, agricultural programmes, and labour management relations. Style issues, on the other hand, deal with matters in which no strong correlation between class or status and issue orientation is found or needs to be assumed. Hence, such matters as civil rights, academic freedom, foreign policy, and honesty in government tend to be matters of personal taste or preference that must be assessed in a context different from class or status.

4.3.3   Criteria for a Good Voting System

There are three attractive properties for a good voting system, according to McLean (1987:154). These are, using ordering information, picking a condorcet winner, and strategic voting.

- **Using ordering information**: As stated by McLean (1987:154), the more information a voting procedure can use, the better. Usually when voters have to choose among candidates, or parties, or options, they know more than just which one is their favourite. Just so a rational individual is defined as one who can make transitive and complete ordering among the options.

- **Picking a condorcet winner**: A condorcet winner, according to McLean (1987:155), is defined as an option, which can beat all others in pairwise voting. If there are only two options, one of them must be the condorcet winner (unless they tie, which can only occur with an even number of voters), and simple majority voting is the best way to find out.

- **Strategic voting**: A strategic vote is any vote which does not truly express a voter's ordering, but which is cast in the hope of improving an option's chances. According to McLean (1987:155), some voting systems force voters to consider a strategic vote. For instance, in a plurality vote (as in the Anglo Saxon 'first-past-the-post' system for the most public elections), if a voter's favourite candidate is thought to have little chance of winning, the voter must decide between the 'sincere' choice of voting for the favourite and the voter's 'strategic' choice of voting for the voter's second-best, in order to keep out the worst.

4.3.4   How People Cast Their Votes

Voting, as stated by Mackenzie (1958:127), may be open or secret; compulsory or optional; in person, by proxy or by post. The dominant form in all modern elections is personal voting by secret ballot, without compulsion.

Open voting is now obsolete in elections to legislative assemblies, even in societies where the level of literacy is low.

With compulsory voting, it may be best to distinguish first between formal and informal, legal and extra-legal compulsion. According to Mackenzie (1958:129), in the absence of formal sanctions a registered elector is legally free to abstain from voting, but in deciding whether to vote or not to vote, he is influenced by various motives and pressures. The turnout depends on such factors as the amount of publicity given to the election, the effectiveness of canvassing by parties, and the general attitude of the community.

The argument of compulsory voting is in effect that voting is a duty, and that the state should do what it can to reinforce the social pressure (or moral obligation) to vote (Mackenzie, 1958:130).

Proxy voting has never really been taken seriously except in the House of the Lords in Britain and in the management of limited liability companies. In modern elections its scope is

limited to the case of voters necessarily absent from the poll in circumstances such that it is difficult for them to vote by post. As stated by Mackenzie (1958:131), this was important in Britain at the election of 1918 and 1945, which took place when many voters were still on service at distant stations overseas.

Proxy voting has several administrative problems and some of these are:
Firstly, the authentication by the voter of a form of proxy; secondly, the acceptance of the form as valid by the Registration Officer; and thirdly, setting an appropriate mark opposite the voter's name in the register. This means that registration of proxies must be completed a little time before the election (Mackenzie, 1958:131).

Postal voting may be much more important, and it is not easy to decide how freely it should be allowed. The case for it is that the opportunity to vote should be given as generously as possible; the case against it is that postal voting on the whole favours the most literate voters and the best organised party machines (Mackenzie, 1958:132).

4.3.4.1 Personal Voting By Secret Ballot

There are four main types of procedure: one on which the voter chooses between ballot-boxes; one in which (s)he marks an official paper, identical in form for all voters and drops it in a single box; one in which (s)he chooses the paper (s)he prefers out of several and drops the chosen paper in a single box; and voting by machine. These methods can, of course, be combined in various ways (Mackenzie, 1958:134-138):

- **Choice of boxes**: In a sense, this is the oldest and strictest form of 'balloting'. Ballots in the literal sense are small balls, used either for drawing lots or for voting. 'Ballots' used for voting were all identical and a voter chose by dropping his ballot into the appropriate urn. The form of voting was 'secret ballot' if the voter's choice was kept secret, either by screening the boxes, or by constructing a box into which the voter could slip his hand and choose one of several compartments inside, or by a system of 'black balls' and 'white balls', by which the voter could slip one ball into the voting urn, the other into an urn for discarded balls.

  This ancient method has become popular again in recent years because it is the best way of giving secrecy to the vote in countries where the literacy rate is low.

It is important that there should be good lighting on the place of voting, that the boxes should not be blocked by ill-folded papers, or by other objects put in by malicious persons, and that the boxes should not be placed so that the voter may access it more easily than the others.

- **Marking a voting paper**: The second main method is that by which an official voting paper is given to each elector; he signifies his choice by marking the paper, and then drops it in the box, or folds it or places it in an envelope and gives it to an official to drop in the box. The paper may be a simple one as in the plurality system, in which the voter need only place an X opposite the candidate of his choice.

  In a system dependent on markings, officials are bound to discourage the use of anything except an official voting paper, because of the trouble that may arise in counting. There is always a certain amount of difficulty over 'spoiled papers'; naturally, the proportion increases with the complexity of the system, and if it is relatively high, it may cause serious trouble in the process of counting votes.

- **Choice of voting paper**: The other system is one in which alternative choices are printed separately on different pieces of paper: the voter chooses the piece of paper, which he favours and drops it in the box. This system may be used in single-member constituencies, but is more often associated with the list system of proportional representation, in which the voter chooses the list he prefers; and with the old American 'long ballot' system, in which the voter votes simultaneously in a series of simple plurality elections for a variety of offices (and perhaps in referenda as well), and expects to be supplied by the party of his choice with a 'slate' or 'ticket' covering a whole range of voting.

  Under this system, the papers are generally printed by the parties, subject to official regulations about their form and content.

- **Machine voting**: This system has become universal in the United States of America according to Mackenzie (1958:138), because it has become particularly suitable to American practice, under which the voter votes in

several elections at once under a plurality system. A typical machine is laid out in columns: at the top of each column is a plain statement of the office or decision, which it represents: below it in each column are buttons or levers, each representing a possible choice in that election. The voter enters the curtained booth, pulls or pushes a main lever which activates the machine, moves the lever of his choice in each column, moves the main lever again to lock the machine and register his votes, then withdraws. The machine is no more than an adding machine, certified and sealed before proceedings begin; it records the votes as they are made, and all that is required in 'counting' is to unseal the machine with due precautions and look at the dials.

4.3.5   Characteristics of Voting

As a decision, voting has certain characteristics according to Himmelweit et al., (1981:1), which provide a particular good opportunity to learn more about decision-making in general**.** Firstly, the decision is recurrent. Secondly, the options are the same for everyone, permitting easy comparison, and thirdly, a decision is made by the electorate on the same day, in the same economic and political climate. Finally, given the pervasive role of the mass media, and of broadcasting in particular, it can be argued that the electorate has access to much the same information, or is at least exposed to a common pool of information about otherwise remote issues when making the decision.

This is indeed rare in decision-making, as Himmelweit et al., (1981:1) states. It can therefore be seen more clearly than in decisions where options differ across individuals, the role played in the choice by the voter's history and background and the extent to which "ideological thinking" varies with education.

Although the parties from which a choice has to be made remains much the same across elections, Himmelweit et al., (1981:1-2), points out that their platforms change, as does the social and economic climate in which the elections are contested. Each election is, therefore, unique and also part of a sequence, permitting examination of the relative contribution to the voter's decision of his or her previous vote decisions and current attitudes.

According to Gudgin and Taylor (1979:5), the support for political parties varies from place to place. The reason for this is simply that different parties attract the support of different societal groups, which are themselves unevenly distributed across the country. Hence, the electoral geography of a country will typically reflect certain elements of the social geography

of that country; which particular elements will depend on the nature of the party system that operates within the country.

Lakeman (1970:28), says that today, though few would dispute that the 'Voice of the People' must be the ultimate arbiter, and that the "Voice" must be heard through the ballot box, the method and machinery by which this voting is practised differ from country to country, and some still retain the forms of a century ago.

4.3.5 Voting Through Party Identification

Party identification is "the sense of attachment a person feels to a political party" (Ranney, 1996:191).

If there is one thing that analysts and researchers have learned about voters in the past thirty years of election research, says Reynolds (1999:56), it is that most voters do not make up their minds anew in each election, nor do they make up their minds only when they enter the voting booth.

Most voters tend to have pre-existing predispositions about which party they 'identify with' or feel close to, predispositions that underlie actual voting choice. Reynolds (1999:59), states that the aggregate trends shown by the survey, "Opinion '99 Project", done by a consortium of the Institute for Democracy in South Africa (IDASA), the Electoral Institute of South Africa (EISA), the market research firm Markinor, and the South African Broadcasting Corporation (SABC), suggested that analysts and politicians alike, needed to rethink many of their simplistic understandings of voters.

The survey showed that voters are not nearly as blindly loyal or as unresponsive to 'political reality' as is widely assumed. This is true as well of black voters, who have been traditionally portrayed as solidly, even blindly committed to 'their' political parties, and lacking the ability or willingness to distinguish between positive and negative areas of performance.

According to this survey, Reynolds (1999:59) states that voter support for political parties is not nearly as committed or 'glued in' as most observers have thought. Secondly, when deciding which parties to support, voters look to real-world events (or at least how they perceive them), such as the economy, government performance, and how the country is doing generally. Finally, when evaluating the economy, government and political parties, voters do not fall into the simple 'for them/against them' mindset. They are capable of distinguishing

between how they are doing personally and how the country is doing, or between how things are today and how they expect them to be in a year's time.

Translating votes into seats: If it is accepted that the relationship between seats and votes is a fundamental and a critical characteristic of modern democracies, then, according to Gudgin and Taylor (1979:1), it follows that electoral laws should spell out precisely what this relationship will be. It may be argued, for instance, that a party should receive the same proportion of seats as its proportion of votes. Such exact proportional representation defines an ideal determinist relationship:

$$S = V$$

where S is the percentage of seats and V is the percentage of votes for a party. This is one of innumerable deterministic relationships, which could be laid down in an electoral law to govern the seats-votes relationship (Gudgin and Taylor, 1979:1).

When discussing voting and voting behaviour, it is necessary to bring into the discussion political parties and party systems, because parties influence how people vote.

4.3.5.1 Parties and Party Systems

A political party is a group of people that is organised for the purpose of winning government power, by electoral or other means. Parties are often confused with interest groups or political movements. Four characteristics usually distinguish parties from other groups (Heywood, 1997:230):

- Parties aim to exercise government power by winning political office (small parties may nevertheless use elections more to gain a platform than to win power).

- Parties are organised bodies with a formal 'card-carrying' membership. This distinguishes them from broader and more diffuse political movements.

- Parties typically adopt a broad issue focus, addressing each of the major areas of government policy (small parties, however, may have a single-issue focus, thus resembling interest groups).

- To varying degrees, parties are united by shared political preferences and a general ideological identity.

The distinctive feature of the political party, as stated by Abcarian and Masannat (1970:145), is to be found in its goal of electing candidates to public office in order to control or influence government policies. A political party serves as a vehicle through which like-minded persons associate in the expectation that their views will achieve the stamp of legitimacy through elections and lead to authoritative determination of government processes. "Parties are the great tools of democracy" (Roskin et al., 1994:201)

A vital context within which parties function is that of the electoral system, the process through which a society organises and empowers its political institutions to engage in acts of decision-making. The heart of the electoral system is voting, by which the individual expresses his choices among candidates and policies as in political democracies (Abcarian and Masannat, 1970:146).

Parties, according to Levine (1982:166), arose from the need to mobilise the electorate, which was being made increasingly more numerous by the expansion of the suffrage. Modern political parties originated in a democratic context, namely, the need to organise voters in competitive elections.

4.3.5.1.1 Functions of Parties

A number of general functions of parties can be identified. The main functions are as follows (Heywood, 1997:233; Levine, 1982:166-168):

- **Representation:** It is often seen as a primary function of parties. Representation refers to the capacity of parties to respond to and articulate the views of both members and the voters. At the same time, Levine (1982:168) says political parties often serve as an important link between government and the people, because of the character of the electoral process and the legitimising function of elections;

- **Elite formation and recruitment:** Parties of all kinds are responsible for providing states with their political leaders. In most cases parties provide a training ground and experience, and offer them some form of career structure, albeit one that depends on the fortunes of the party;

- **Goal formation:** Political parties have traditionally been one of the means through which societies set collective goals and, in some cases, ensure that they are carried out. Parties play this role because, in the process of seeking power, they formulate programmes of government (through conferences, conventions, and election manifestos) with a view to attracting popular support. Levine (1982:167) adds by saying that, parties serve to organise opinion which is often otherwise unclear and undirected, so that voters can make rational judgements about policy and candidates. The party platform, which is a statement of party objectives and promises, reveals to the people what the party stands for.

- **Interest articulation and aggregation:** In the process of developing collective goals, parties also help to articulate and aggregate the various interests found in society. The fact that national parties invariably articulate the demands of a multitude of groups, forces them to aggregate these interests by drawing them together into a coherent whole, balancing competing interests against each other. Constitutional parties are clearly forced to do this by the pressure of electoral competition.

- **Socialisation and mobilisation:** Through internal debate and discussion, as well as campaigning and electoral education, parties are important agents of political education and socialisation. The issues political parties choose to focus on help to set political agenda, and the values and attitudes that they articulate become part of the larger political culture.

- **Organisation of government:** Parties help with the formulation of governments. Parties also give governments a degree of stability and coherence, especially if the members of the government are drawn from a single party and are therefore united by common sympathies and attachments. Even governments that are formed from a coalition of parties are more likely to foster unity and agreement than ones that consist of separate individuals each with his/her own priorities.

Parties, furthermore, facilitate cooperation between the two major branches of government, the assembly and the executive. Finally, parties provide, in competitive systems at least, a vital source of opposition and criticism, both inside and outside of government, as well as broadening political debate and educating the electorate. This helps to ensure that government policy is more thoroughly scrutinised and therefore more likely to be workable (Roskin et al., 1994:202 – 204).

4.3.5.2   Party Systems

Political parties are important not only because of the range of functions they carry out, but also because the complex interrelationships between and among parties are crucial in structuring how political systems work in practice.

The major party systems found in modern politics are as follows (Heywood, 1997:241-244): One-party; two-party; dominant-party; and multi-party systems.

4.3.5.2.1   One-Party Systems

The term "one party" in the United States defines a condition where meaningful two-party competion is absent (Winter and Bellows, 1992:158).

A single party enjoys a monopoly of power through the exclusion of all other parties, by political or constitutional means. Because monopolistic parties effectively function as permanent governments, with no mechanism (short of a coup or revolution) through which they can be removed from power, they invariably develop an entrenched relationship with the state machine. This allows such states to be classified as 'one-party states', their machinery being seen as a fused 'party-state' apparatus (Heywood, 1997:241).

Two rather different types of one-party systems can be identified:

- The first type has been found in state socialist regimes, where 'ruling' communist parties have directed and controlled virtually all the institutions and aspects of society. Such parties are subject to strict ideological discipline, in accordance with the tenets of Marxism-Leninism, and they have highly structured internal organisations in line with the principles of democratic centralism (Blondel, 1990:152).

- The second type is associated with anti-colonialism and state consolidation in the developing world. One-party systems in Africa and Asia have usually been built around the dominant role of a charismatic leader and drawn whatever ideological identity they have possessed from the views of that leader (Blondel, 1990:154).

All one-party systems are, according to Cord et. al.(1985:202), characterised by a single party that controls every level of government and is the only party legally allowed in the country.

The impact this system has on voting and elections is that, one party systems limited the scope of voting and people's interest in the democratic process of bringing about and upholding a system of party government

4.3.5.2.2   Two-Party Systems

A two-party system is duopolistic in that it is dominated by two 'major' parties that have a roughly, equal prospect of winning government power. In its classical form, a two-party system can be identified by three criteria:

- Although a number of minority parties may exist, only two parties enjoy sufficient electoral and legislative strength to have a realistic prospect of winning government power.

- The larger party is able to rule alone (usually on the basis of a legislative majority); the other provides the opposition.

- Power alternatives between these parties; both are electable, the opposition serving a 'government in the wings'.

Two-party politics was once portrayed as the surest way of reconciling responsiveness with order, representative government with effective government, and supposedly characterised by stability, choice and accountability. The two major parties are able to offer the electorate native governments. Voters can support a party knowing that, if it wins the election, it will have the capacity to carry out its manifesto promises without having to negotiate or compromise with coalition parties.

In two-party systems, the opposition is in most cases sufficiently united that they can coalesce into a dominant opposition party, which can, if the electoral winds shift, remain united as a governing party (Winter and Bellows, 1992:158)

The disadvantage of a two-party system is that, two evenly matched parties are encouraged to compete for votes by outdoing each other's electoral promises, perhaps causing spiralling public spending and fuelling inflation. This amounts to irresponsible party government, in that parties come to power on the basis of election manifestos, which they have no capacity to

fulfil. Another weakness of two-party systems is the obvious restrictions they impose in terms of electoral and ideological choices (Heywood, 1997:243).

According to Winterand Bellows (1992:158), no two-party system has two parties, in stead, there are only two major parties that have a chance to control te national politica system.

4.3.5.2.3 Dominant-Party System

Dominant-party systems should not be confused with one-party systems, although they may at times exhibit similar characteristics. A dominant-party system is competitive in the sense that a number of political parties compete for power in regular and popular elections, but is dominated by a single majority party that consequently enjoys prolonged periods in power.

The most prominent feature of a dominant-party system is the tendency for the political focus to shift from competition between parties to factional conflict within the dominant party itself.

Whereas other competitive party systems have their supporters, or at least apologists, few are prepared to come to the defence of the dominant-party system. Apart from a tendency towards stability and predictability, dominant-partyism is usually seen as a regrettable and an unhealthy phenomenon. In the first place, it tends to erode the important constitutional distinction between the state and the party in nature. Secondly, an extended period in power can engender complacency, arrogance and even corruption in the dominant party. Thirdly, a dominant-party system is characterised by weak and ineffective opposition. Criticism and protest can more easily be ignored if they stem from parties that are no longer regarded as genuine rivals for power. Finally, the existence of a 'permanent' party of government may corrode the democratic spirit by encouraging the electorate to fear change and to stick with the 'natural' party of government (Heywood, 1997:244).

4.3.5.2.4 Multi-Party Systems

A multi-party system is characterised by competition amongst more than two parties, reducing the chances of single-party government and increasing the likelihood of coalitions.

The strength of multi-party systems is that they create internal checks and balances within government and exhibit a bias in favour of debate, conciliation and compromise. The process

of coalition formation and the dynamics of coalition maintenance ensure a broad responsiveness that cannot but take account of competing views and contending interests.

Winter and Bellows (1992:159) adds on by saying that, in multiparty systems parties often represent limited-appeal interests and seek to advance these interests by participating in a coalition. Only one or two parts of the party program may be accepted by other members of the coalition. The compromises on party doctrine occur in the legislature, after the election, and the negotioations are decisive. It is at this time that critical bargains are struck and ministries divided among the parties. The number of parties and the amount of party cohesiveness and government stability vary among multy party systems.

The main criticism of multi-party systems relates to the pitfalls and difficulties of coalition formation. The post-election negotiations and horse-trading that take place when no single party is strong enough to govern alone, can take weeks, or sometimes months, to complete.

More seriously, coalition governments may be fractured and unstable, paying greater attention to squabbles amongst coalition partners than to the tasks of government.

A final problem is that the tendency towards moderation and compromise may mean that multi-party systems are so dominated by the political centre that they are unable to offer clear ideological alternatives.

A discussion on parties and party systems will help understand the role parties play in elections and also how they behave in the preparations for elections. Preparations for the elections involves all the stakeholders, each stakeholder has to do its part to ensure the success of the elections.

4.4 ELECTORAL SYSTEMS

A study of electoral systems often has profound implications. Issues of electoral systems are issues of political power hence they can play a significant role as mechanisms for democratic governance. Electoral systems are understood as the way in which voters express political preferences for a party and/or candidates; and, the method whereby votes are translated into parliamentary seats (in the case of legislative elections) or into government posts (in the case of elections for the president, governors, or mayors) (Krennerich and Nohlen, 1998:54).

An electoral system is a set of rules for conducting an election. Electoral systems also perform the functions of aggregating different views; of building consensus; of strengthening or breaking up parties; and, of prescribing rules for the distribution of seats (Kotze, 1992:12).

An electoral system is the framework within which the political choices of the population are reflected in the distribution of the seats in the legislative authority. The choice thereof is never made in the abstract, but always in a particular context. A system is needed that will produce a popularly elected and stable authority which represents the majority; which has responsive representatives who govern responsively and which provide continuity (Kotze, 1992:12).

Technical aspects of electoral systems include electoral districting and the magnitude of the constituencies, the form of candidacy, the form of voting, and the formula for converting votes into seats. Even within the same type of electoral system, there can be multiplicity of ways in which these elements are combined (Krennerich and Nohlen, 1998:54).

One of the most important linkages between elections and democratic governance is, according to Matlosa (1999:63), the electoral system. This means that electoral systems are crucial in determining the impact of elections on democratic governance. By democratic governance, it is simply meant that the management of national affairs is transparent, participatory, representative and accountable to the electorate.

Democracy, according to Lijphart (1994:1), means representative democracy in which elected officials make decisions on behalf of the people. This indispensable task in representative democracy is performed by electoral systems; the set of methods for translating the citizens' votes into representatives' seats. Thus the electoral system is the most fundamental element of representative democracy.

The new electoral conditions force theorists willingly or unwillingly, to the conclusion that no satisfactory solution can be reached until effect is given to Mill's fundamental principle of democracy – that the various sections of political opinion should be represented in the legislative chamber in proportion to their strength (Humphreys, 1911:109).

An increasing diversity in countries around the world, for example, the American population in the twenty-first century, makes the issue of representation a compelling one, (Barber: www.barnsdle.demon.co.uk/vote/PR.htm), as the nations seek to integrate into their lives an

ever-widening array of groups. Barber argues that the right to vote is the right to cast an effective vote, which in turn generates the right to representation.

Political parties in democracies devote most of their attention, as stated by Levine (1987:176), to contesting elections. Their prospects of electoral success depend on the electoral methods used that are sanctioned by law. These methods are rarely neutral in the sense that they are created for an objective, registering of popular will, through the ballot box. Rather, they are shaped by diverse historical traditions and social and political forces.

Among the principal methods are those based on territorial, functional and proportional representation, and they are as follows (Levine, 1987:176-177):

- **Territorial representation**: territoriality is one of the most important electoral rules that govern the size of the constituency. In only a few countries, is an entire country considered as the single unit for selecting legislative members. In most countries, however, the unit for designating candidates, is the electoral district. The population and the shape of a district depends upon many factors. Sometimes the shape of the district is determined by constitutional features, such as the federal system of the United States of America (Levine, 1987:176).

- **Functional representation**: representation based on territorial considerations is not the only method, since functional features such as economic and social groups are also used. Such a method is both ancient and modern. According to Levine (1987:177), in ancient times representation was based on class and status. In medieval England the great estates were represented in Parliament. As early as the thirteenth century, representatives of the clergy, the nobility, and the burgesses constituted the parliament.

  In the twentieth century, functional representation has also been used in fascist Italy, for example (Levine, 1987:177).

- **Proportional representation**: more common as an electoral system, is the system of proportional representation (PR). PR is a system in which candidates of political parties are elected in proportion to their voting support. This is the dominant system in Western nations and has also been used in American cities (Levine, 1987:177).

According to Levine (1987:177), there are hundreds of variations in the proportional representation system. For the purpose of this research, only four variations are going to be discussed later in this chapter.

As Levine states further, political institutions perform multiple functions. For instance, electoral systems perform among others, the functions of aggregating different views, of building consensus, of strengthening or breaking up political parties and prescribing rules for the distribution of seats (Kotze, 1992:12).

An electoral system, according to Harrop and Miller (1987:42), "should ideally satisfy three main requirements. First, an electoral system should help to make government possible for those at the top, but acceptable to those at the bottom. It should give the government the authority it needs for effective action while offering the people the choice on which legitimacy depends. It should encourage stability and continuity, discourage erratic change, yet still permit change when that is the clear and persistent popular will. Secondly, the electoral system should help to reduce political frustration and encourage tolerance. To reduce frustration, it should enable the voters to 'throw the rascals out'. This is a safety valve for reducing tension irrespective of changes in policy. To encourage tolerance, an electoral system should draw people into the political system, not shut them out. Thirdly, the electoral system should not itself add to the problems that already exist. The content and application of electoral rules should convince all the people that the government was 'fairly' elected. Minorities must be reassured that they will not be ignored or neglected".

The best electoral system can never in itself and of itself ensure satisfactory elections or guarantee self-government to the community that adopted it. An electoral system must be operated properly and kept in good working order if it is to produce its best results; but a bad electoral system can most certainly damage, and even ruin the prospects of self-government. So, even though a good electoral system is not by itself a sufficient condition for ensuring *de jure* representative government, it is none the less a necessary condition. A good electoral system has clear electoral laws (Ross, 1955:47).

Electoral laws are those laws, which govern the processes by which electoral preferences are articulated as votes and by which votes are translated into distributions of governmental authority, typically parliamentary seats, among the competing political parties. Electoral laws should also cater for minorities (Rae, 1967:14).

4.4.1   The Elements of Electoral Systems

According to Faure (1994:102) elements of modern electoral systems regulate and affect a considerable part of the political processes and structures in democratic states.   In constitutional law and party political traditions of such states, provision is made for the regulation and functioning of the political processes, by drafting a set of particular rules in connection with the following:

- **The method of voting:** This mainly includes the franchise, the identification of voters, the ballot paper and special voting procedures.

- **Elections and political parties:** Aspects that fall under this heading are the frequency of elections, that is, the duration of parliamentary terms;   election dates, political parties and the electoral acts, the financing of political parties, the election campaign, electoral divisions and the counting of votes.

- **Candidates:**   This category provides for the candidature of individual candidates, the filling of posts, the party political selection of candidates and the filling of seats, which become vacant between general elections.

- **Election results:**   Provision is also made for the formal announcement of election results and the setting of disputed results (Faure et al, 1988:148-9).

Concerning the election of 27 April 1994, the first democratic election in South Africa, all aspects referred to in (a), (b), (c) and (d) were addressed and covered by the Electoral Act, No. 202 of 1993.

4.4.2 Different Types of Electoral Systems

As stated, an electoral system is a set of rules that govern the conduct of elections. These rules vary in a number of ways:

- voters may be asked to choose between candidates or between parties;

- voters may either select a single candidate, or vote preferentially, ranking the candidates they wish to support in order;

- the electorate may or may not be grouped into electoral units or constituencies;

- constituencies may return a single member or a number of members; or

- the level of support needed to elect a candidate varies from a plurality to an overall or absolute majority or a quota of some kind (Rose, 1983:20-21).

For general purposes, as applied in the modern democratic world, the systems available can be divided into two broad categories on the basis of how they convert votes into seats.

 On the one hand there are **majoritarian systems**, in which larger parties typically win a higher proportion of seats than the proportion of votes they gain in the election. This, according to Heywood (1997:214), increases the chances of a single party gaining a parliamentary majority and being able to govern on its own. Majoritarian formulas, according to Lijphart (1994:48), can in principle be applied in districts ranging from single-member to multi-members.

On the other side there are proportional systems, which guarantee an equal, or at least more equal, relationship between the seats won by a party and the votes gained in the election. In a pure system of proportional representation, a party that gains 45% of the votes would win 45% of the seats. Proportional systems therefore make single-party majority rule less likely, and are commonly associated with multi-party systems and coalition government (Heywood, 1997:214).

4.4.2.1   Majoritarian Systems

Three types of majoritarian systems can be identified, namely, the simple plurality system, second ballot and alternative vote.

(i)   The Simple Plurality System

- **Features**

The plurality system, which is known as first-past-the-post, was developed in Britain, and was applied in South Africa until a new dispensation came into being. The plurality system usually functions in coherence with territorially demarcated single-member constituencies. According to this system, a candidate is elected or a seat is won when a candidate obtains a relative majority of votes, cast in an election. The simple plurality system is, for example, used in the UK, the USA, Canada and India.

As stated by Mackenzie (1958:50), electoral democracy rests on the general acceptance of the convention that it is right and convenient in certain circumstances to take the formally expressed opinion as part of the whole, and then to be bound in law and conscience by the decision taken. Such a convention is always found in democracies of this type, indeed it constitutes their special character or definition; but the practical bearing of the rule, like that of many such rules, depends on interpretation.

Firstly, the 'first-past-the-post' system may have very odd results in a single-member constituency if all national parties feel bound to contest the seat, and some 'free-lancers' join in. Secondly, if there were more than two parties of national importance, a general election conducted on these lines may produce results that seem peculiar (Mackenzie, 1958:51).

Nearly all elections in the United States are based on the winner-takes-all principle: those people who voted for the candidate who receives the most votes win representation; those who voted for the other candidate lose completely. This system is unjust and unnecessary. It is unjust because it leaves minorities not represented, with a resulting impact on majority rule as well as fair representation. It is unnecessary because there is an immediate opportunity for countries, at local, state, and national levels, to join the vast majority of mature democracies that have already adopted systems of proportional representation (www.barnsdle.demon.co.uk/vote/PR.htm).

- **Advantages and disadvantages of the simple plurality system**

Some of the advantages of simple plurality systems are as follows (Rose, 1983:30-31; Heywood, 1997:215):

- The system establishes a clear link between representatives and constituents, ensuring that constituency duties are carried out.

- It offers the electorate a clear choice of potential parties of government.

- It makes for strong and effective government in that a single party usually has majority control of the assembly.

- It produces stable government in that single-party governments rarely collapse as a result of disunity and internal friction.

The main disadvantage of the plurality system is that, it is a mechanism of disproportional representation: the candidate who is "first-past-the-post" (that is the largest share of the vote in a constituency), wins. In a single member constituency with three candidates standing, it is in this case that it is perfectly possible to win an election with 34% of the vote (Bogdanor and Butler, 1983:4).

The simple plurality system has its own disadvantages (Heywood, 1997:15; Rose, 1983:31; Ranney, 1996:168):

- The system undermines the legitimacy of government, in that government often enjoy only minority support, producing a system of plurality rule. The plurality system creates instability because a change in government can lead to a radical shift of policies and direction.

- It leads to unaccountable government, in that the legislature is usually subordinate to the executive, because the majority of its members are supporters of the governing party. Finally, it discourages the selection of a socially broad spread of candidates in favour of those who are attractive to a large body of voters.

- **Majority Representation**

The first group of variation rests on the assumption that 'the part whose opinion is to prevail' must be at least a majority. In elections this almost always means a majority of those actually voting, not a majority of those entitled to vote (Mackenzie, 1958:53).

- **Minority Representation**

Under a system of simple plurality voting, whether in single-member constituencies, it is possible for a bare majority, or even for a minority, to take all the seats, if it is well organised and geographically well distributed. According to Mackenzie (1958:57), probably greater danger lies in small countries where a party which secured only 51% of the votes cast (and the poll was low), won three-quarters of the seats. However, simple plurality voting almost always counts in favour of the biggest organised groups against smaller ones. There are various ways of counteracting this tendency without having recourse to proportional representation, but they all require the use of multi-member constituencies. Those ways according to (Mackenzie, 1958:57-59) are:

- **The Single Non-Transferable Vote (SNTV)**

    This simplest scheme is to give each elector one vote only in a multi-member constituency. This is the most probable pattern of voting: all that the system ensures is that any of the voters capable of organising themselves effectively behind the right number of candidates – not too many and not too few – is likely to be successful more or less in proportion to its members. The system gives a much larger bonus to good organisation than does the single transferable vote.

- **The Limited Vote (LV)**

    The LV is the application of the same principle as the SNTV, and was used in England for a short period after the Reform Act of 1867, which created a number of three-member constituencies in large towns. To reduce the preponderance of the majority party, each elector was given only two votes for three seats.

- **The Cumulative Vote (CV)**

  This was a system used in the election of School Boards in Great Britain from 1870 to 1902; a period when it was important to ensure that reasonable representation was given to religious minorities in the control of local education. The result is in fact much the same as that of the single transferable vote.

- **Points System and Fractional System (PS and FS)**

  It is possible to carry the same principle as CV further, by inventing devices which in effect give the voter more votes than there are seats to be filled, and enable him (with limits defined in each system) to put candidates in order of preference by the way in which (s)he would divide the votes between them.

(ii)   Second Ballot System

- **Features**

In this system there are single-candidate constituencies and single-choice voting, as in the first-past-the-post system. To win on the first ballot, a candidate needs an overall majority of the votes cast. If no candidate gains a first ballot majority, a second, run-off ballot is held between the leading two candidates. This system is traditionally used in France.

Advantages and disadvantages of a Second Ballot System

The main advantage is that,

- the system broadens electoral choice: voters can vote with their hearts for their preferred candidates in the first ballot, and with their heads for the least better candidate in the second.

The disadvantages of the system are that,

- run-off candidates are encouraged to abandon their principles in search of short-term popularity, or as a result of deals with defeated candidates.

-    the holding of a second ballot may strain the electorate's patience and interest in politics (Heywood, 1997:16; Bogdanor, 1983:6-7; Ranney, 1996:169).

According to Lijphart (1994:20), all majoritarian systems make it difficult for small parties to gain representation (unless they are geographically concentrated), because they need to win the majorities or pluralities of the vote in the electoral districts. For this reason, all majoritarian systems tend to systematically favour the larger parties, to produce disproportional election outcomes, and to discourage multipartism.

4.4.2.2   Proportional Systems

Proportional representation differs from the above, to the extent that, in proportional systems a general election is principally a means of representing popular preferences. An election is meant to produce the closest match between a party's share of the vote and its share of representation in the national parliament. The election is an end in itself.

According to Humphreys (1911:109), self-government can only be realised when every section of the community through its own representatives can give expression to its needs in the assembly which is representative of the nation and which derives all its authority from the fact that it is so representative. This assembly acts in the name of the nation; its decisions are said to embody the national will.

> "Democracy is about the will of the people. That means without distortion. If one can justify first-past-the-post on the grounds of stability then it is hard to see why any form of gerrymandering[9] could not be justified. Proportional representation is about choice. It is about voters having the chance to vote for a party that genuinely reflects their views, not a lesser evil. It is about flexibility. It is about new movements being able   to   find   a   place   in   the   political   system   …   "
> (www.barnsdle.demon.co.uk/vote/listPR.html).

Proportional representation (PR) is based on the principle that any group of like-minded voters should win legislative seats in proportion to its share of the popular vote. Whereas the winner-takes-all principle awards 100% of the representation to a 50.1% majority Proportional representation allows voters in a minority to win their fair share of

---

[9] "**gerrymandering" is a practice of changing the size and borders of an area for election purposes, to deliberately give one group or party an unfair advantage over the others.**

representation. There is a broad range of proportional systems. Some are based on voting for political parties; others for candidates. Some allow very small groupings of voters to win seats; others require higher thresholds of support to win representation. All promote more accurate, balanced representation of the spectrum of political opinion in a given electorate (www.barnsdle.demon.co.uk/vote/PR.htm).

In PR systems, proportionality, as stated by Lijphart (1994:11), and the chances for small parties to gain representation, are necessarily very limited when there are two or three representatives per district, but increase dramatically when magnitude increases.

Under proportional electoral systems, four variations exist, namely the limited vote system, the additional member system, the single transferable vote system and the party list system (Bogdanor and Butler, 1983:9).

(i) Limited Vote System (LVS)

- **Features**

There are multi-member constituencies, each returning three to five members. Electors cast only a single non-transferable vote and three to five winning candidates are returned on a simple plurality basis.

- **Advantages and disadvantages of the Limited Vote System**

The advantages of this system are as follows:

- the system is fair to small parties, which can improve their chance of victory by putting up only a single candidate, so concentrating their support.

- competition amongst candidates from the same party broadens electoral choice and provides a strong incentive for candidates to develop a personal appeal.

- constituents have a number of members to go to if they have grievances they wish to redress.

The disadvantages of this system are as follows:

- intra-party competition breeds factionalism and conflict.

- members may more easily escape their constituency responsibilities because other members are always available, and the system is only semi-proportional (Heywood, 1997:218; Ranney, 1996:170-172).

(ii)   Additional Members System (AMS)

- **Features**

A proportion of seats (50% in Germany) are filled by the first-past-the-post system using single-member constituencies. The remaining seats are filled using a party list. Electors cast two votes: one for a candidate in the constituency election, and the other for a party.

- **Advantages and disadvantages of the Additional Member System**

The advantages of this system are as follows:

- it allows electors to choose a constituency representative from one party and yet support another party to form a government.

- although the system is broadly proportional in terms of its outcome, it keeps alive the possibility of single-party government.

- the hybrid nature of this system balances the need for constituency representation against the need for electoral fairness. The party-list process ensures that the whole assembly is proportionally representative.

- it takes account of the fact that representing constituents and holding ministerial office are very different jobs that require different talents and experience.

The disadvantages are as follows:

- constituency representation suffers because of the size of the constituencies, which are generally twice as large as in first-past-the-post systems.

- the system creates two classes of representation, one burdened by insecurity and constituency duties, the other having higher status and the prospect of holding ministerial office.

- the retention of single-member constituencies prevents the achievement of high levels of proportionality.

- parties become more centralised and powerful under this system, as they not only decide who has the security of being on the list and who has to fight constituencies, but also where on the list candidates are placed (Heywood, 1997:219).

(iii)   **Single Transferable Vote System (STVS)**

- **Features**

Single transferable vote emphasises the personal rather than the territorial principle, (as is the case with majority systems) and is therefore an electoral system aiming to bring about proportionality by providing preference voting in multi-member constituencies. Bogdanor (1983:9) defines the working of the system as follows:"Its two central features are the attempt to secure proportional representation of political opinion, and the provision for choice of candidates within, as well as, between parties".

As stated by Lakeman (1970:105) and Mackenzie (1958:63), the system is designed to make every vote as effective as possible, whether used to support a party or not. The object of the single transferable vote is to enable each citizen to take part as freely and as fully as possible in the selection of his/her own representative, in the belief that this is the essence of true democracy.

The other aim of this system, according to Mackenzie (1958:62), was to strengthen the position of the individual candidate, and to encourage loosely organised minorities, so as to secure an assembly of intelligent and capable people, representing opinion in the country, but not dominated by party machines.

This system is used in, for example, Ireland, and supported for adoption in the UK by the liberal democrats. It is also important according to Mackenzie (1958:62), to

realise that the single transferable vote system was invented before the growth of modern party organisation in Europe. In the 1830s and 1840s there was growing acceptance of the thesis of de Tocqueville's famous book 'Democracy in America', the first part of which was published in 1835, that democracy in the sense of government based on direct universal suffrage was certain to come to Western Europe within a relatively short time.

Parties may put forward as many candidates as there are seats to fill. Candidates are elected if they achieve a quota. This is the minimum number of votes needed to elect the stipulated number of candidates, calculated according to the Droop formula:

$$\text{Quota} = \frac{\text{total number of votes cast}}{(\text{number of seats to be filled} + 1)} + 1$$

The votes are counted according to first preferences. If not all seats are filled, the bottom candidate is eliminated. His or her votes are redistributed according to the second preference and so on, until all the seats have been filled.

- **Advantages and disadvantages of the Single Transferable Vote System**

Advantages of this system are as follows:

- the system is capable of achieving highly proportional outcomes.

- the availability of several members means that constituents can choose whom to take their grievances to.

- competition amongst candidates from the same party means that they can be judged on their records and on where they stand on issues that cut across party lines.

Here are a few disadvantages of this system:

- the degree of proportionality achieved varies largely on the basis of the party system.

- strong and stable single-party government is unlikely, and intra-party competition may be divisive, and may allow members to evade their constituency responsibilities (Bogdanor, 1983:9-10).

Assessment of Single Transferable Vote:

It should be said from the outset that evidence about the use of the Single Transferable Vote system in large political units is still very limited. It has been used for elections to the main popular assembly only in the Republic of Ireland, which had a population of about 3 million then, and in Tasmania, which had a population of 300 000. The system has been used for elections to the second chambers in the Common-Wealth of Australia and in New South Wales, and on a limited scale in some parliamentary and local elections elsewhere (Mackenzie, 1958:71).

Single Transferable Vote system is therefore a version of proportional representation favoured exclusively by countries with British links. Voters are required ti list the candidates in the constituency in order of preference. During the count, votes are transferred to second and third preference candidates either because the voter's first preference has more votes than are strictly required for election, or because the candidate comes bottom in preferences and is therefore eliminated. As this suggests, Single Transferable Vote system requires a complex counting process (Harrop and Miller, 1987:49)

As stated by Mackenzie (1958:71), it is agreed on all hands that the system is much the most elegant device available for enabling individuals to express themselves through the electoral process in such a way that the outcome of voting bears a logical relationship to the votes cast. At some points, however, the logic is drawn rather fine. When it comes to second and third preferences, it may often happen that what is reckoned is not the individual vote of any specific elector, but a vote derived by sums in proportion from the votes of a large number of electors.

Single Transferable Vote system tends to make the voter concentrate on the individual candidate rather than the party label of the candidate and it makes it easier for smaller parties to gain representation in the assembly (Ball, 1983:94).

Other features of the Single-Transferable-Vote, as stated by Mackenzie (1958:73), are as follows:

- **Quality of member**: The tendency of the system is to give more opportunity to the voter to express an opinion about the merits of individual candidates. The electorate gain freedom in the choice of members, at the expense of the parties. Whether this means better members, depends on the quality of the electorate and on their sources of information about the candidates.

- It is agreed that multi-member constituencies are **necessary**.

- A **collectively effective assembly**: The single transferable vote system is often criticised on the grounds that it may wreck the stability of the executive in countries where the executive depends for its existence on continuous support in the elected assembly. There is no doubt that the theoretical tendency of the Single Transferable Vote system is to weaken the grip of parties on the mechanism of elections. It should do so for two reasons:

  o because it makes it relatively easy for small parties to establish and maintain themselves, and
  o because it enables the elector to express his/her choice between the candidates offered to him/her by his/her own party.

The single transferable vote system therefore tends to break up a system of two parties, and to weaken discipline within each party in the assembly and in the country.

The climate of opinion in a country may be strongly opposed to cabinet instability, and it may therefore be possible for an assembly with several parties and much freedom of speech to produce a majority coherent enough to support a cabinet for long periods. The evidence is limited (Mackenzie, 1958:73).

Reynolds (1999:33) adds on to say that, a multi-party democracy under Single Transferable Vote system has a tendency to openness.

- Political possibility: the Single Transferable Vote system is certainly a valuable 'tool', more suitable in some circumstances than in others, but according to

Mackenzie (1958:74), not to be rejected out of hand. Its weakness in terms of practical politics is that it is difficult to induce established political parties to support it, because there is good reason to believe that it will be hostile to their interests.

A strong two-party system is most easily maintained under single-member plurality voting, and where that system exists, the two largest parties (even though otherwise irreconcilable), generally unite to support this system. In a multi-member system parties find it easier to preserve internal discipline under some variant of the list system, than under Single Transferable Vote: best disciplined parties therefore defend list systems, and the odds are on their success.

-   JS Mill, laid most stress on the educational function of democracy. For him, according to Mackenzie (1958:73), the main merit of representative government was that, it produced an 'active self-helping type' of person more effectively than any other sort of government.

It is scarcely in dispute that the Single Transferable Vote system is more 'educational' than first-past-the-post voting in the first of these senses: it sets the elector a more interesting and varied problem. But the single-member constituency system probably has the advantage in the second sense: experience is lacking, but it is less likely that under the Single Transferable Vote system an election can become, in effect, the direct choice of a government to which the chooser must submit for the following few years (Mackenzie, 1958:74).

The Single Transferable Vote system, where it exists, gains most of its support from smaller parties and from the sentiment of individual voters (Mackenzie, 1958:74).

(iv)   Party List System (PLS)

*   **Features**

The Party List System is a truly European variation of proportional representation, where proportionality is preferably seen in terms of the accurate representation of political parties. This system can, indeed, not be regarded as a homogeneous electoral system as it has a great variety of applications (Bogdanorand Butler, 1983:13).

The list system of proportional representation became important a generation after the invention of the Single Transferable Vote system. Perhaps the critical event in its development, according to Mackenzie (1958:75), was the decision to adopt it in Belgium in 1899, because it appeared there to have real political success.

The elector votes for a list of candidates presented by a political party and each party wins the number of seats in tha constituency according to the votes cast for that party list. The list system is the most popular European electoral system (Ball, 1983:93).

In the last quarter of the nineteenth century, under a system of majority voting with a second ballot, there had been violent and dangerous oscillations between liberal and catholic parties, which also represented the linguistic division between Walloon and Fleming. After the adoption of the list system these oscillations were reduced; cabinets had weaker majorities and shorter lives, but there was less danger of permanent and irreconcilable division within the country (Mackenzie, 1958:75-6). The system's proportional representation is compatible with stability, and its abolition is unthinkable (Mackenzie, 1958:76; Reynolds, 1999:40).

This system can, indeed, not be regarded as a homogeneous electoral system as it has a great variety of applications. The different systems can be distinguished according to four criteria (Bogdanor, 1983:13; Reynolds, 1999:40):

(1)   whether the list is of a national or sub-national (local or regional) nature;

(2)   whether the proportional allocation of seats is awarded on national level or in multi-member constituencies;

(3)   whether the system allows voters to choose between candidates of their own party preference – or even between parties -, or whether voters are limited to choose candidates according to their party's order of ranking; and

(4)   the nature and size of the threshold or quota, that is, the maximum number that an independent candidate or a party needs in order to qualify for a seat.

Parties compile lists of candidates to place before the electorate, in descending order of preference. "These lists are normally political parties but they may be coalitions

of parties or even factions within parties"
(www.barnsdle.demon.co.uk/vote/listPR.html). Electors vote for parties, not for
candidates. Parties are allocated seats in direct proportion to the votes they gain in
the election. They fill these seats from their party lists. A threshold may be imposed
to exclude small, possibly extremist parties from representation.

The List System of proportional representation has several variations. They are
(Lakeman, 1970:90-104):

- fair share for the parties
- the largest remainder
- the D'Hondt rule or Largest Average
- selection by the party
- choosing from the lists
- mixed systems

- **Fair share for the parties:** According to Lakeman (1970:90), the fundamental
  idea is simple enough. It is accepted that if a number of seats are filled by the
  same voting operation, those seats can be distributed among two or more parties
  in proportion to the total number of votes that each of those parties receives.
  Upon this very foundation, however, complications arise from two distinct aims:
  (a) to relate as accurately as possible the number of seats held to the polling
  strength of the parties, (b) to permit an opportunity for the voter to express an
  opinion on the personal merits of the candidates.

- **The Largest Remainder:** It is not usually practicable to treat a whole country as
  one constituency. According to Lakeman (1970:91), the method is therefore
  adopted for constituencies with smaller numbers of seats, and in order to ensure
  that each party obtains its proportion in relation to the votes it polls, the number
  of seats is divided into the total votes cast. By this a 'quota' is established, which
  will entitle a party to a seat. For example, if a constituency has five seats and the
  total number of votes cast is 300 000, the quota will be 60 000. Each party will
  be entitled to one seat for every 60 000 votes it polls.

- **The D'Hondt Rule or Largest average:** This method is commonly known as the d'Hondt rule, after its inventor, Victor d'Hondt of the University of Ghent. Its nature is indicated by its French name **'la regle de la plus forte moyenne' -** the largest average. The object is to secure that, when all the seats have been allotted, the average number of votes required to win one seat will be as nearly as possible the same for each party (Lakeman, 1970:93).

  The d'Hondt method is the least proportional, and it systematically favours large parties (Lijphart, 1994:23).

- **Selection by the Party:** The simple form of the list system, which does not attempt to give the voter any personal choice within the party list is that which was used in France for the general elections of 1945 and 1946. According to Lakeman (1970:97), in any given constituency, each party nominates as many candidates as there are seats to be filled; the party decides the order in which it wishes the candidates to be elected, and their names are printed in that order on the ballot paper; each party has a separate ballot paper. The voter selects the paper of the party (s)he wishes to support, places it in an official envelope, and drops the sealed envelope into the ballot box.

- **Choosing from the lists:** Most countries using list systems of proportional representation have modified them so as to give the voters a choice between candidates in a more or less effective form.

A still greater departure from the list system, pure and simple, is "**panachage**"[10], the voter's choice being no longer confined within whichever one list (s)he may select. This feature is found, for example, in Switzerland. The desirability of panachage is hotly debated. The general opinion in some countries, according to Lakeman (1970:102), is that the voters belonging primarily to one party ought not to influence the election of candidates of another party, while other countries hold that the infinitely variable views of the citizens ought not to be confined within the rigid, and perhaps arbitrary, boundaries of parties.

---

10 "**panachage" is a method used in Switzerland mostly, to keep the total membership of the council roughly constant. This quota is revised from time to time in accordance with the census figures.**

The best example of a list system with complete freedom for the voter to indicate preferences for a number of candidates, of one or more parties, is the Swiss. As stated by Lakeman (1970:102), each elector has as many votes as there are seats to be filled, and may distribute them as he pleases among all the candidates nominated, not necessarily confining himself-/herself within one list; (s)he may also cumulate two votes on one candidate.

The first operation in the count is to total the votes cast for the candidates of each list (or combination of allied lists) and allot seats in proportion to these totals. The seats are then filled by the candidates of those lists in the order of the number of votes they have received. Only in the event of a tie is the order in which the candidates' names appear on the ballot paper taken into account; thus, control over which persons are elected passes very largely out of the hands of the party organisers into those of the voters (Lakeman, 1970:103).

- **Mixed Systems:** A mixed system was evolved in 1946 for the first post-Hitler election in West Germany, and is still used there. This consists of electing a certain fraction of the members exactly as in a British general election, and correcting any misrepresentation of each party as nearly as possible up to proportionality. This gives results that are very fair to the parties, but its personal element is illusory: just as in Britain or in France, the successful candidates are those whom their parties nominate for the safest seats or as heads of lists (Lakeman, 1970:103).

- **The advantages and disadvantages of the Mixed System (MS)**

  Advantages of this system are as follows:

  - this is the only potentially pure system of proportional representation, and is therefore fair to all parties;

  - the system promotes unity by encouraging electors to identify with their nation or region rather than a constituency;

  - the system makes it easier for women and minority candidates to be elected, provided, of course, they feature on the party list;

- the representation of a large number of small parties ensures that there is an emphasis upon negotiation, bargaining and consensus.

The disadvantages of this system are as follows:

- the existence of many small parties can lead to weak and unstable government;

- the link between representatives and constituencies is entirely broken;

- unpopular candidates, who are well placed on a party list, cannot be removed from office;

- parties become heavily centralised, because leaders draw up party lists, and junior members have an incentive to be loyal in the hope of moving up the list (Faure et al., 1988:155-6; Mackenzie, 1958:83).

In South Africa proportional representation, gained the adherence of its foremost public men with amazing rapidity, and although the delegates to the South African National Convention abandoned the proposal for the use of the proportional method in the elections to the legislative assembly of the United South Africa, the adoption of this principle for the election of members of the Senate and of the committees of the provincial councils, as finally agreed to, marked an advance which a few years earlier would have been thought impossible (Humphreys, 1911:122).

The Transvaal Municipal Commission, as stated by Humphreys (1911:122), recommended the adoption of proportional representation in municipal elections, and the Government embodied this recommendation in an Act passed in June 1909. The first election under this Act took place with complete success on 27 October 1909, in Johannesburg and Pretoria, each of these towns being polled as a single constituency.

The period that Humphreys (1911:122) is referring to, is the period during which some of the South African citizens were not allowed to vote and therefore the interests of that sector of society, were not represented. One could ask a question, how proportional was the form of proportional representation in South Africa in 1909? Was proportional representation structured in a way that suited the circumstances? One concludes that it was proportional representation, which was very exclusive.

4.5   DIFFERENCES BETWEEN PROPORTIONAL REPRESENTATION AND THE FIRST-PAST-THE-POST FORMULAE

There is universal agreement among scholars that electoral proportionality is a major goal of electoral systems and a major criterion by which they should be judged. According to Lijphart (1994:140), for many PR supporters, proportionality is a goal in and of itself; virtually synonymous with electoral justice, but it is also regarded as an important means for minority representation. Compared with majoritarian systems, PR can be said to have the advantage of permitting representation by minorities that define themselves as groups wishing to have representation as minority parties. PR thus avoids any unpleasant choices in favour of certain minority groups and, as a consequence, against other minorities.

As a rule, according to Rae (1967:87), strong parties profit at the expense of weak parties in majoritarian systems; the strongest parties usually receive especially favourable treatment, sometimes even obtaining an unearned legislative majority.

Proportional representation tends, in effect, to mitigate the apparent biases of majority and plurality formulae, but it does not eliminate or reverse them (Rae, 1967:88).

First-past-the-post formulae, as stated by Rae (1967:103), are a conservative force in their effect upon the relationship between large established parties and small challengers. They tend to maintain the status quo by protecting these established parties from minor party competition.

Proportional representation systems are not so conservative in that regard. But with respect to relationships between the established parties, 'first-past-the-post' formulae appear to be radical agencies, since they exaggerate the effects of changes in the relative strength of these parties. In this connection, proportional representation formulae are positively conservative, but are certainly less radical than the plurality and majority formulae (Rae, 1967:103).

The redistribution effects attributed to electoral systems in general are usually intense under 'first-past-the-post' formulae and least intense under proportional representation formulae. The former are apt to give a greater advantage to strong parties, especially the strongest parties, and to exclude more weak parties from representation. These formulae seem to magnify changes in the popular support of the parties, while proportional representation formulae do not appreciably magnify such changes (Rae, 1967:103).

First-past-the-post formulae, as stated by Rae (1967:103), cannot be said to be the genesis or maintenance of two-party systems. Proportional representation formulae are associated with more fractionalised party systems, but cannot be said to cause them. And, of course, proportional representation formulae are associated with more proportional seat allocations. None of them, however, produces perfectly proportional allocations.

4.6   EVALUATION OF ELECTORAL SYSTEMS

In order to evaluate an electoral system, it is necessary to determine the evaluation criteria. It is generally assumed that electoral systems perform multiple functions and these, according to Krennerich and Nohlen (1998:55-57) are as follows:

- **Representation:** This requirement has a double meaning: (a) representation for all, so that different groups, mainly minorities, feel represented; (b) fair representation of parties and candidates (that is, in the context: proportional), according to the share of votes they received. A high degree of proportionality between vote and seat shares of the parties is thus regarded as problematic.

- **Concentration:** Concentration relates to the aggregation of social interests and political opinions in a way which enables political institutions to act. The electoral system should produce an acting authority, based on an appropriate number of parties.

- **Participation/Accountability:** These functions are closely related. With regard to voter participation, the key question is whether the voter can choose only between political parties (party-list vote), or between individual candidates as well (personalised vote). As for the accountability of representatives (councillors), the key question is whether they are elected as individuals (in a constituency or through a non-closed party list), or through a closed party list. It is often assumed that a personalised form of voting and/or constituency representation improves the voter representative relationship through increasing the participation of the voters and/or improving the accountability of the representatives.

- **Simplicity:** The electoral system should not be too difficult for the electorate and the administration both to understand and to operate.

The main advantage of the above system is that it puts too much of a premium on organisation of the minority community and that tends to enhance rather than to soften the differences between the minority and the majority. Otherwise, the method is perfectly practicable for use by illiterate communities (Smith, 1960:116).

List systems of voting also appear to offer more hopeful possibilities for use in underdeveloped countries, than the single-transferable vote. In a list system the voter is required to choose between lists of candidates, each of which has the backing of a political party. The voter should be assured that there would be order and no intimidation (Smith, 1960:11).

There is a serious concern about lack of voter accountability. Faure and Lane (1996:97) state that a serious concern is the effect of the party list system on voter accountability. While there can be little doubt that proportional representation in conjunction with the party list system guarantees an acceptable degree of proportionality, the present system with closed ordered party lists is bound to erode the accountability of representatives to the electorate. Candidates no doubt seek listing by the party leadership as a first priority, and there is really no way for the voter to discriminate between a party and its candidates. It is entirely a party matter, who makes the list and who remains there. Voters will not necessarily forfeit their choice for a party because certain unacceptable candidates are listed – hence the fact that small parties ride the back of larger ones without the voters being in a position to prevent it. The consequences of party lists and a ballot to be used for party preference only, are indeed a serious erosion of voter accountability and a strengthening of party bureaucratic tendencies.

Electoral systems should be carefully chosen to assure all the people a high level of security. Elections are important and before they can take place, particularly at local government level, the areas have to be demarcated and delimited.

4.7   CONCLUSION

In this chapter, it has been clear that elections are important for democracy to prevail. Elections, as already said, are the chief institutional mechanism by which representatives are elected to give expression to the most basic demand of democracy;   a democratic

government, that is, representativeness. The relationship between democracy and representation is emphasised.

Elections and electoral systems give life to democracy. For elections to take place, there has to be an electoral system and electoral law and regulations in place. The electoral system should be user-friendly, taking into consideration the type of voters or society in question (illiteracy levels).

Voters are very important in this whole process because voting, in itself, is a form of power. Power to influence the decisions of the representatives. Therefore a vote is a share in the power to decide on who governs and how they govern the country. Voters are important for a democracy. They should be able and willing to practice their right and responsibility, to elect their own representatives, so as to give him/her a mandate and ensure that their interests and needs are addressed. Among other forms of voting, the secret ballot as described in this chapter is preferred by most voters as it gives privacy and enhances freedom and fairness in elections.

Electoral systems, as mentioned before, come with electoral laws that govern the processes by which the electoral preferences are articulated as votes and by which votes are translated into distributories of governmental authority. Electoral systems perform a function of aggregating different views; of building consensus; of strengthening and breaking up parties; and of prescribing rules for the distribution of seats.

Different types of electoral systems have been discussed; the majoritarian systems, which tends to benefit strong parties at the expense of the weaker, smaller parties, and proportional systems that seem to be less radical because they promote proportionality. Proportional systems tend to mitigate the apparent biases of majority and plurality formulae.

Up to this stage it is very clear that elections, voting and electoral systems play a very crucial role in bringing about democracy. Together they can make democratic governance a reality.

CHAPTER 5

LOCAL GOVERNMENT:
A CONCEPTUALISATION AND CONTEXTUALISATION

5.1   INTRODUCTION

This chapter's focus will be on local government and local government elections as an applied study from the preceding theoretical frame of reference.

As indicated in the layout of the study, local government in South Africa (its history and the interim phase of local government towards the designing of a new local government dispensation) will be used as a case study of system design within the set theoretical parameters of chapters 3 and 4.

Through this chapter a focus will be placed on: a conceptualisation and contextualisation of local government; local government in South Africa, to include its history, the transformation of local government in South Africa, and the design of a new local government electoral system and political dispensation. Special reference is made to the Free State province in this regard.

5.2   LOCAL GOVERNMENT

Local government is government closest to the people; it is the level of government that fights crime, extinguishes fires, paves streets, collects rubbish, maintains parks, provides water, and educates children. Some local governments are engaged in all of these activities; others provide only some of these services (Bowman and Kearney, 1990:315).

5.2.1   Conceptualisation

5.2.1.1 Local government by Definition

Democratic local government is defined by Heymans and Totemeyer (1988:2), as "a decentralised representative institution with general and specific powers devolved on it in

respect of an identified restricted geographical area within a state[11]". According to Bekker (1996:17) this definition implies that local government is both 'local' and 'government'.

First, the meaning of 'local' can imply that it is an area consecrated by a long history and tradition, together with the different urban settlements (municipalities) that structure the formal spatial awareness. It can also be seen as a specific structure that provides certain public services. It can therefore be said that 'local' in this context means a specific local structure of government. Secondly, 'government' means that local government possesses original powers and it is a complete sovereign institution.

Local government, as stated by Bekker (1996:17), consists of a system of geographical units called 'municipalities'. This system refers to defined boundaries, a legal identity, an institutional structure, powers and duties laid down in general, specific statutes, and a degree of financial and other autonomy.

5.2.1.2   Types of Local Governments

As stated by Bowman and Kearney (1990:315), a useful way of thinking about local governments is to distinguish between "general-purpose" and "single-purpose" local governments. General-purpose local governments are those that perform a wide range of government functions. These include counties, municipalities, towns and townships. Single-purpose local governments, as the label implies, have a specific purpose and perform one function.

Regardless of the purpose of a local government, it is important to remember that it has a lifeline to 'state government[12]'. That is, 'state government' gives 'local government' its legal life. Local citizens may instil a local government with its flavour and character, but state government makes local government official (Bowman and Kearney, 1990:315).

Being so close to the people offers special challenges to local government. For example, citizens are well aware when rubbish has not been collected or when the libraries do not carry current best sellers. They can contact local officials and attend hearings. Local government

---

[11] **State – "the state is an inclusive association that encompasses all the institutions of the public realm and embraces all the members of the community. The state is a continuing , even permanent, entity and it exercises impersonal authority" (Heywood, 1997:85).**
[12] **State government: government is part of the state. Government is a means through which the authority of the state is brought into operation. Government is the 'brain of the state' with regard to making and implementing state policy. Governments come and go, they are temporary (Heywood, 1997: 86).**

can be very interactive. The different types of local governments, according to Bowman and Kearney (1990:316 - 335) are as follows:

- **Counties**

Counties are general-purpose units of local government. With a few exceptions, most Americans for example, are governed in and by counties. Municipalities in Virginia (USA) that are independent jurisdictions for instance, and are not part of the counties surrounding them, are special cases. The governments have carved up their territory into 3 041 discrete subunits called counties.

Counties were created by states to function as their administrative appendages. In other words, counties were expected to manage activities of state-wide concern at the local level. Their basic set of functions traditionally included property tax assessment and collection, law enforcement, elections, land transaction record keeping, and road maintenance. The county courthouse was the centre of government (Bowman and Kearney, 1990:316).

- **Municipalities**

Municipalities are cities. According to Bowman and Kearney (1990:322), the words are interchangeable, and they refer to a specific, population chunk of territory operating under a charter from state government. Cities differ from counties in how they were created and in what they do. Historically they have been the primary units of local government in most societies. Like counties, cities are general-purpose units of local government. Unlike counties, they typically have greater decision-making authority and discretion. In addition, cities generally offer a wider range of services to their citizenry than most counties do. Public safety, public works, parks, and recreation are standard features, supplemented in some cities by publicly maintained cemeteries, city-owned and operated housing, city-run docks, and city-constructed convention centres. It is city governments that pick up garbage and trash, sweep streets, inspect restaurants, maintain traffic signals and plant trees.

City governments operate with one of three structures: a mayor-council form, a city commission form, or a council manager form. In each structure, an elected governing body, typically called a city council, has policy-making authority. What differentiates the three structures is the manner in which the executive branch is organised (Bowman and Kearney, 1990:324).

- **Towns and townships**

Towns are generally smaller, in terms of population, than cities or counties. The extent of their governmental powers depends on state government, but even where they are relatively weak, town government is increasingly becoming more formalised (Bowman and Kearney, 1990:332).

- **Special districts**

Special districts, as stated by Bowman and Kearney (1990:333), are supposed to do what other local governments cannot or will not do. They are created to meet service needs in particular areas. If, for example, residents of an unincorporated area want fire protection but the closest city refuses to extend its coverage and the county is unable to provide adequate service, the residents may establish a special fire district. The process usually requires the residents to petition the government to hold a referendum on the question. If the vote is favourable, a fire service district will be established, employees will be hired, and fire protection will be provided. Residents will pay a special tax or fee for the operation of the district.

Not all special districts are organised alike. Ninety percent of them provide a single function, such as irrigation or mosquito control. Governing bodies can be independently elected or, in the case of weaker special districts, appointed by another government, such as a county.

- **School districts**

School districts are a type of single-purpose local government. They are a special kind of district, and as such are considered one of the five types of local government. The trend in school districts follows the theory that 'fewer is better'. The school board is the formal source of power and authority in the district. The board is typically composed of five to seven members, usually elected in non-partisan, at-large elections. Their job is to make policy for the school district. One of the most important policy decisions involves the district budget – how the money will be spent (Bowman and Kearney, 1990:335).

According to Gildenhuys (1996:8), any local government must have a clear vision of what its goal is. Local governments must have a purpose in mind and a goal towards which they strive. A goal of a modern local government should be to create circumstances within its

municipality and its legal jurisdiction for the attainment of a satisfactory quality of life for each of its citizens. The development of a satisfactory quality of life by each citizen will only be possible where:

- there are ample and equal opportunities for each individual to subsist, including equal opportunities to work, to do business as producers, manufacturers, contractors, traders and professionals;

- sufficient and indispensable municipal infrastructure services and amenities of optimum quality are efficiently and effectively supplied;

- quality of the physical environment within which the individual lives, works, does business and relaxes, is satisfactory and not fraught with all sorts of dangers; and

- people feel safe and secure to live their lives without fear of social disruption and personal threats (Gildenhuys, 1996:8-9).

These should be the general goals of any local government and the way in which a local government should visualise its municipality's future.

Following the historical development of broad government goals and objectives, and closely examining the above-mentioned general goals, one can conclude that the objectives of a local government to attain these general goals, should be those according to Gildenhuys (1996:9):

- control and protection objectives: to control certain aspects of the environment and activities of individual citizens and to protect the public against all kinds of natural and human-made disasters;

- social welfare objectives: to provide opportunities for the development of each citizen's social welfare; and

- economic welfare objectives: to provide opportunities for the development of the economic welfare of each citizen.

The traditional working of local authority is based on the principle that the council is responsible for all that happens in the authority (Clarke and Stewart, 1990:60).

Most of the countries in Western Europe draw a distinction between the council and the political executive. The political executive may be an Executive Board constituted by the council from its own membership. It may be an individual appointed by the council or directly by the whole area of the authority.

5.2.1.3   The New Significance of the Representative Role of Local Government

As already indicated, representation is the relationship between an individual and a group, where the individual represents what the group stands for, or acts on behalf of a larger group of people (Heywood, 1997:206).

The representative role of the councillor has received little recognition in the workings of most authorities. As stated by Clarke and Stewart (1990:60), at its most basic this is to do with the representation of constituents and a particular geographical area in the affairs of the council. It is to do with the representation of the constituents' interests and the council's collective commitment to serving the community. The enabling role as the expression of local government gives a new importance to that role. The enabling role will depend on councillors who are both the expression of the community **voice** in government and the means of community **choice**. It will require the development of the representative role to its fullest potential:

- **A voice of the community:** According to Clarke and Stewart (1990:60), it is through the council that the needs of the people and problems faced in an area can gain expression. The council can be and has been a means of expressing the concerns of the local community. The council can speak on behalf of its community, but it is not structured to do so. It is structured around the services it provides, and the procedures which dominate its working reflect the requirements of those services. Councillors will also need to have as wide a range of information as possible about the community and what is happening to it. This will include data about needs and how they might be met and an assessment of current provision in the community; that is, market research in the broadest sense.

- **Building the community strategy:** It has been shown, according to Clarke and Stewart (1990:61) that, it is not enough for the enabling council simply to have a strategy for its own services, nor it is enough for a local authority to give expression to the needs, problems and opportunities faced by a community. It should go beyond

this and assist the development of a community strategy, which shows how those needs and problems can be overcome and opportunities realised. In effect, the community strategy sets goals for the local community and for the local authority within it. The council cannot impose such a strategy on others. The goals that it sets, if they are to be effective, must be more than its own. They must carry the commitment of others upon whom their success depends.

- **Community action:** A strategy by itself is of little use unless it leads to action. The council has to learn ways by which it can facilitate action without itself necessarily being directly involved in that action as well as, securing that its own actions help to achieve the community strategy. The council needs to develop the capacity to manage the development of its resources for community action as well as for the services it is directly providing.

- **Networks of influence and learning:** According to Clarke and Stewart (1990:62), councillors are and should be part of the networks that link the local authority to the organisations, groups and individuals from whom the enabling council must learn and with whom they must work in action and in influence. These networks need to be enhanced, extended and maintained. A network for influence and learning is only of value if it is used.

- **The advocate for the citizen:** The councillor represents an area and those who live within it. As stated by Clarke and Stewart (1990:63), the individual citizen can look to the councillor as the representative. The councillor is the advocate to whom the citizen can turn to represent them both in dealing with the local authority and also with other agencies. This work is the vital part of the representative role. A citizen is entitled to representation and does not recognise the boundaries of local authority services as being the outer limits of that entitlement. "A councillor is primarily the elected representative of his local authority and not only his ward with the result that his first duty is to the community as a whole and he may act as spokesman for his ward only if this does not clash with his communal commitments, and resist any action designed to advance the interest of a group at the community's expense" (Cloete, 1989:68).

According to Elcock (1994:61), councillors and their parties supply the policy guidelines within which their officers must work. They reflect more or less adequately the demands and

needs of the citizen whom councillors are elected to represent. The supreme decision-makers in any local authority are its elected members. All the decisions taken anywhere in a local authority are formally those of the council and all the staff employed by the authority are ultimately responsible to it.

The significance of good local government, according to Reddy (1999:9), has been advocated throughout the democratic world in programmes aimed at achieving stable government. The importance of local government as the basis of all structures of governance cannot be overemphasised; it is vital in the universal quest for a stable democratic society.

The following characteristics of local government can therefore be identified (Reddy, 1999:10):

- **Locality:** 'Smallness' is implied and a sense of community consciousness or even solidarity. Local government will have relevance for a particular geographical area. The issue of size is important but has not been resolved.

- **Legal personality:** The local government system owes its existence to law. Powers should be clearly defined in laws based on relevant clauses of the country's constitution.

- **Autonomy:** The ability to make binding decisions and policy choices within a legally stipulated framework and to allocate resources and provide services other than those of the central government.

- **Governmental power:** The authority to carry out formal governmental functions, notably coercive revenue raising, staff decisions, implementation of binding by-laws and allocation of resources, and

- **Participation and representation:** These would be promoted by, local government because those making decisions or directing its affairs are either elected or appointed from the community it serves. The local citizenry have a better chance of participating in local government than in central government institutions.

Communities are the political building blocks of any society. Therefore, local government is of key importance in promoting and reinforcing democratic values (IEC, 2000:1).

The responsibility and the right of all adult citizens to participate in the affairs of their government is one of the cornerstones of democracy. The most fundamental form of participation is the right to vote in free and fair elections (IEC, 2000:1).

Participation should not end with casting a vote in an election. The citizens should feel the responsibility to be part of decision-making by forming interest groups and being part of committees. They should participate in order to represent their interests well. Representation plays an important role in modern democracy. Representation is about giving power over to a representative to govern on the citizens' behalf. A representative needs the support and participation of the citizens so as to operate optimally.

Local government is viewed by authors and academics as the most important level of government because it is the lowest and the closest to the people.

5.2.2 Contextualisation:

Local government will be conceptualised will a discussion on local government in the Republic of South Africa (RSA).

A new style of intergovernmental relations has been constitutionally articulated in the RSA. According to Atkinson (1998:17), the system of 'co-operative government' will pertain to all three spheres of government, which are distinctive, independent and interrelated, as stipulate by Section 40 of the Constitution, Act 108 of 1996.

> "The system of intergovernmental relations delineated in the new Constitution differs significantly from that of the previous political dispensation, particularly in its ambitions to advance democracy and improve service delivery to all South Africans" (Levy and Tapscott, 2001:1).

Co-operation between the spheres of government, according to Levy and Tapscott (2001:1), is the one characteristic that defines the South African system best and he continues to argue that this is the case because the Constitution itself was a product of multi-party negotiations.

Co-operative government, as stated in the Discussion Document of the Department of Constitutional Development (1999:4), is about "the cardinal values on Government for the Republic contained in the principles of Chapter 3 and other provisions of the Constitution, and encompassing the institutional enablement of these values through appropriate intergovernmental structures and institutions to be established by the act envisaged in Section 41(2) of the Constitution".

REPUBLIC OF SOUTH AFRICA

CONSTITUTIONAL DISPENSATION / DESIGN

Sec 40(1): " government is constituted as national, provincial and local
SPHERES
of government which are distinctive, interdependent and interrelated"
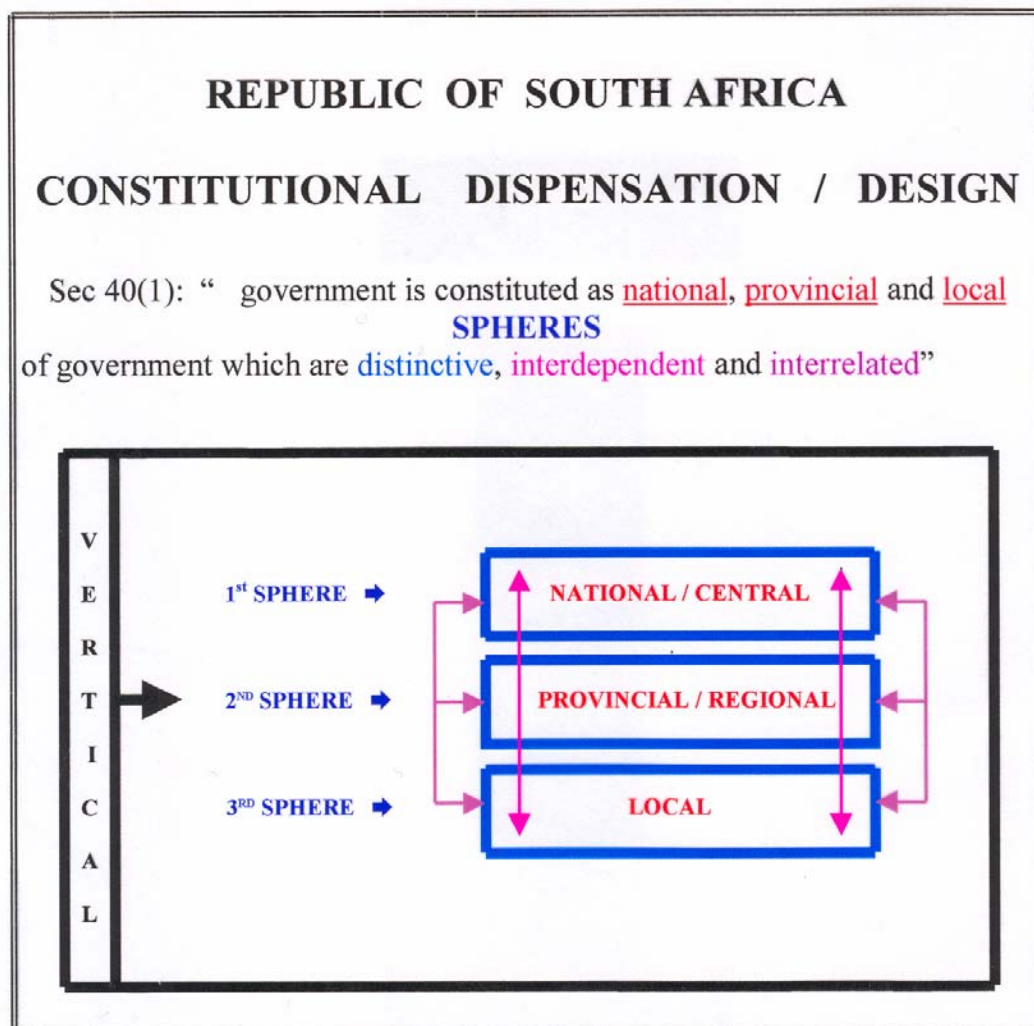
Co-operative government is an innovative concept designed to resolve problems related to intergovernmental relations. It attempts to address the difficulties experienced by most large bureaucracies in co-ordinating their government functions and streamlining their administrative activities. In order to monitor and regulate the relationships between the three spheres of government, the competency of each is stipulated in the Constitution of the Republic of South Africa (Ismail, Bayat and Meyer, 1997:139).

The evolving intergovernmental system should be understood as a dynamic and interdependent system in which influence and power will have to be continually negotiated. Relationships amongst the three spheres of government will be influenced by their power resources, goals and values (Atkinson, 1994:17).

According to Ismail, Bayat and Meyer (1997:138), intergovernmental relations assume importance where there is a division of power among different tiers or spheres of government at both administrative and legislative levels. These relations are creative mechanisms to maintain co-operative relationships and co-ordination among and between vertical and horizontal sites of power within a polity.

As stated by Atkinson (1994:19), national and provincial governments and departments have a fundamental choice to make. They can subscribe to the ethos of local 'governance', and therefore place an emphasis on empowering local authorities' ability to choose, to exercise discretion, and to encourage innovation. Or, they can subscribe to the ethos of local administration, in which case they will circumscribe local authorities' activities by means of detailed and rigid regulations. This creates a situation in which the position of local government can be greatly influenced by strong personalities and ideological outlooks in different departments and at different levels of government.

Section 154 of the Constitution of the Republic of South Africa, Act 108 of 1996, stresses co-operative governance and places a capacity-building obligation on national and local governments. There has to be good working relations between the different spheres of government with each taking responsibility for the obligations directed to it.

Provincial government, within a system of co-operative government, has adjunct powers of monitoring and supervising local government. Both national and provincial governments have legislative and executive powers to see to the effective performance of functions by municipalities, by regulating municipal executive authorities (Primstone, 1998:3).

The system of co-operative governance, as stated by Atkinson (1994:1), cannot function dogmatically. Crucial terms, which appear in the Constitution will have to be given content by national and provincial departments. Such terms include monitoring, the obligation to support, effective local functioning, the capacity to administer functions, and the right to exercise any power reasonably necessary for the effective performance of a function. Levy and Tapscott (2001:84), adds to this by noting that the basic components on co-operative government would be, an enabling constitution, sound instruments of intergovernmental

relations and sufficient consensus as to the social and political path to a democratic, developmental dispensation.

According to Levy and Tapscott (2001:85), capacity-building, training, the installation of appropriate systems and rigorous monitoring are all essential for a viable Intergovernmental Relations System (IGR).

5.3   LOCAL GOVERNMENT IN SOUTH AFRICA

Local government in South Africa has been, in a process of radical transformation and democratisation since 1994 and a lot of processes had to be managed properly and monitored continuously.

5.3.1   Historical Background

South African cities have a legacy of geographical fragmentation; racially-defined institutional differences, inclusion and exclusion; different political cultures resulting, in part, from differential participation within and outside formal social, political and economic structures; and, unequal resource distribution (Reitzes, 1998:129).

This history reflected by the diverse nature of organisations of public participation or civil society in South Africa, which have been largely influenced by circumstances peculiar to societies experiencing a transition from exclusive authoritarian rule to inclusive democratic governance.

South Africa's historical baggage reflects a mixed tradition of local government autonomy and powerlessness. The erstwhile 'white local authorities', which were still, in many places, the *de facto* backbone of municipal government, always had a robust sense of their own autonomy and importance. Under the previous government, however, this autonomy was increasingly eroded.   In contrast, the erstwhile 'black authorities', as well as local governments in the 'homelands', had virtually no meaningful autonomy (Atkinson, 1998:17).

In the past, South African constitutions said very little about local government. The most distinctive feature of South African local government has been the existence of a racial division of power. In practice, according to Cameron (1999:76), with the exception of limited coloured and Indian representation in the Cape Province, only whites could vote for and stand

for election at local government level, before the election of 1994. Black people, from 1913, according to the Land Act of 1913, were not allowed to own property in 93% of the country that was designated as 'white' South Africa. They could only acquire land in 7% of the country termed 'reserves'. In 1936 the total surface area of the territory, which was earmarked for African reserves, was increased to 13,7%.

The South Africa Act of 1909, in terms of which the Union of South Africa was established, contained one sentence in Section 85(vi) enabling the four provincial councils of the time, to make ordinances in relation to "Municipal institutions, divisional councils and other local institutions" (Municipal Demarcation Board, 1999:1).

It was therefore left to the provincial councils, through the enactment of municipal ordinances to deal with the establishment of municipal structures.

According to Cameron (1999:75), South Africa became a Union in 1910 in terms of the South Africa Act of 1909, which created a three-tier unitary system of government. Firstly, there was a parliament based on the British Westminster system in terms of structure, procedure and practice. The second tier consisted of four provinces, whereby power was shared between a centrally appointed Administrator and the elected provincial council. The third tier of government was that of local government. Local authorities were created by provincial authorities, which defined the scope of their local operation.

At the time of the Union, in 1909, all four colonies already had well-developed forms of local government.

As stated by Cameron (1999:75), the regulation and control of local government affairs occurred through provincial ordinances. Some national legislation, such as the Health Act, also directly affected the operation of local authorities. Local authorities could only make by-laws within the parameters of the framework. Traditionally, local government by-laws had to be approved by the Provincial Administrator. No differentiation was made between the powers granted to larger cities and smaller local authorities. There was a uniform policy in respect of control measures, which did not take cognisance of the various capacities of local authorities.

Local authorities were single-tier, multi-purpose authorities with both legislative and executive powers. No metropolitan form of government existed. According to Cameron (1999:76), this led to a fragmentation of urban areas, which caused disparities in the standards of service provision and expenditure, particularly on rural lines.

After the election of the NP on the apartheid manifesto in 1948, a number of important apartheid acts were introduced, which affected the spatial patterns of local government. The Population Registration Act of 1950 divided South Africa into four racial groupings, namely, Whites, Blacks, Coloureds and Indians. The Group Areas Act of 1952 provided for the demarcation of suburbs into different racial groups. Thousands of people were forcibly moved in terms of the Act. Influx control in respect of black people was tightened in 1952. This was controlled through pass laws. All black people had to possess pass-books. Regulating the uncontrolled flow of black people into urban areas formed a major component of the policies of successive NP governments (Cameron, 1999:77).

The 1961 Constitution, which created the Republic of South Africa, similarly, in Section 84(1)(f), merely authorised provincial councils to legislate on municipal institutions (Municipal Demarcation Board, 1999:1).

The 1980's saw the NP retreat from strict apartheid. As stated by Cameron (1999:78), there was a realisation amongst NP reformers that there had to be both political and economic reform to ensure greater stability in the country.

The Republic of South Africa Act of 1983, replaced the Westminster system with a tri-cameral parliament which made provision for limited, power-sharing for Coloureds and Indians. It was premised on the need to incorporate significant elements of the Coloured population into the ruling white minority camp and to win them away from future alliances with black people (Cameron, 1999:78).

The 1990s saw some major changes in the status and structural make-up of political organisations, most notably the ANC, who were un-banned by the new FW De Klerk's administration. As stated by Cameron (1999:81), the government also committed itself to negotiating a new constitution with all relevant parties on the political scene.

Preliminary discussions took place in 1993, with the then Minister of Local Government, Leon Wessels, on national housing, local government and the provision of municipal services, as well as the desirability of holding joint discussions with organised local government, with a

view to establish a local government forum. This led to the formation of the Local Government Negotiating Forum (LGNF), which was established to deal with the democratisation of local government as well as the ongoing rent and service boycotts (Cameron, 1999:84).

Local government was formally democratised through the provisions of Chapter 10 of the Interim Constitution, Act 200 of 1993, and the Local Government Transitional Act (LGTA) was promulgated on 2 February 1994.

Unlike previous South African constitutions, which contained very little about local government, the present constitution (Act 108 of 1996) contains a large number of fundamental basic principles, which are important guidelines for local government reform.

Following the first democratic national elections on 27 April 1994, the then new President, Nelson Mandela, in July 1994, signed a proclamation, which allowed the nine provincial premiers, to implement the provisions of the Local Government Transitional Act of 1993 (Camay and Gordon, 1996:17).

Speaking at the Local Government Election Summit of 14 March 1995, the then President, Nelson Mandela, said that South Africa needed legitimate local government structures working together with civil society to address the pressing needs of the community and so pledged to "… have local government elections on Wednesday 1 November 1995.There will be elections …" (Camay and Gordon, 1996:17).

As already said above, local government is undergoing a process of transformation and democratisation and the elections held on 5 December 2000, actually completed the process. This process gives significance to local government elections.

The following sketch shows the transformation from the previous system to the new system:

Previous system	New system
(top – down)	(co-operation among spheres)

Previous system (top – down): National → Provincial → Local
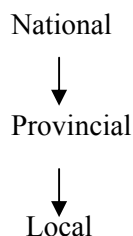
New system (co-operation among spheres): National, Provincial, Local
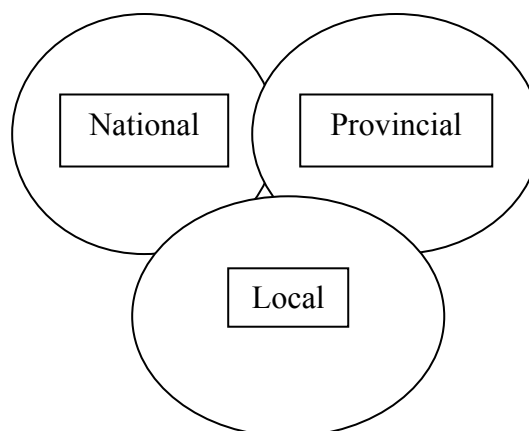
(Municipal Demarcation Board, 1999:4)

The previous system of government was a top-down approach and decision-making was more centralised. The tiers of government operated in a hierarchical form. After 1994, the structure was transformed to suite the new dispensation. The emphasis of the new system is on co-operation among the three spheres (previously tiers) of government. Decision-making is more decentralised and every sphere has the power to make decisions.

5.3.2   Towards a New Local Government Dispensation[13]

5.3.2.1   The Interim Phase

The local government transformation and democratisation process was divided into three phases: the pre-interim phase, the interim phase and the final phase (Cameron, 1999:85).

- the pre-interim phase: This phase commenced with the passing of the Local Government Transitional Act (LGTA) in February 1994 and was operative until the first local government elections, which were held in November 1995 in seven of the provinces, and in May 1996 in the Western Cape and June 1996 in Kwa-Zulu Natal.

---

[13] **Research was mainly done through the various Acts covering the numerous aspect of the "electoral chain": that is, the voting; the electoral system; and the structural institutionalisation of the outcome of the vote. In-text referencing therefore consist of a reference and analysis of the Acts referred to.**

- the interim phase: This phase started with the first local government elections in 1995 and ended with the implementation of the final constitutional model at local level in 2000. This phase lasted between three and five years.

- the final phase: This phase commenced with the implementation of the final constitutional model, which was drawn up by the Constitutional Assembly (consisting of the National Assembly and Senate).

For the purpose of this study, the interim phase will at first, be discussed in more detail.

In South Africa, a need for effective decentralised democratic local government was very strong. Such local government was imperative to serve, as a vehicle for public participation, development and national integration (Reddy, 1999:201).

In 1995/6, local government elections took place, but only to elect Transitional Regional Councils (TRCs). The Interim Constitution, Act 200 of 1993, was still in place and it made, among others, provision for a transitional process to create and establish 850 transitional non-racial and democratic local authorities. This, according to Reddy (1999:201), was the last chapter in the democratisation of the South African state.

The interim phase commenced with elections for Transitional Metropolitan Councils (TMCs), Transitional Local Councils (TLCs), Transitional Metropolitan Substructures (TMSs), and Rural Local Government Structures (Cameron, 1999:95).

5.3.2.1.1   Establishment and Status of Local Government in the New Dispensation

Section 174 of the Interim Constitution stipulates that:

1. Local government shall be established for the residents of areas demarcated by law of a competent authority.

2. A law referred to in subsection (1) may make provision for categories of metropolitan, urban and rural local governments with differentiated powers, functions and structures according to considerations of demography, economy, physical and environmental conditions and other factors which justify or necessitate such categories.

3. A local government shall be autonomous and, within the limits prescribed by or under law, shall be entitled to regulate its affairs.

4. Parliament or a provincial legislature shall not encroach on the powers, functions and structure of a local government to such an extent as to compromise the fundamental status, purpose and character of local government.

5. Proposed legislation which materially affects the status, powers or functions of local government or the boundaries of their jurisdictional areas, shall not be introduced in Parliament or a provincial legislature unless it has been published for comment in the Government Gazette or the Provincial Gazette, as the case may be, and local governments and interested persons, including organised local government, have been given a reasonable opportunity to make written representations in regard thereto.

Notes on Section 174 of the Interim Constitution have been made and according to Basson (1994:238-241), the input was as follows:

(a) Local government, is identified by Basson (1994:238) as a third tier of government, to distinguish this grassroots system of democracy from the upper two levels of government, that is, provincial government and national government.

(b) A local government will be autonomous in the sense that it can regulate its own affairs without constitutional interference from the other levels of government if it derives its powers and functions directly from the Constitution, and when these powers and functions are furthermore entrenched and protected constitutionally. Although the Interim Constitution states that a local government shall be autonomous, Section 174(3), it proceeds to declare that a local government 'shall be entitled to regulate its own affairs (only) within the limits prescribed by or under the law'. In such event, there is no question of constitutional autonomy because the other levels of government (in particular, parliament and the provincial legislatures) can prescribe the limits to local government powers and functions.

(c) Accordingly, local governments merely enjoy administrative autonomy, that is, administrative discretionary competence to exercise the powers and functions, which are accorded to local governments in terms of an enabling act of parliament or an enabling law of a provincial legislature.

(d) An act, which had a decisive effect on the development of local government, is the Local Government Transitional Act, 209 of 1993. This Act provided for the establishment of a Local Government Demarcation Board to assist in such demarcation of jurisdictional areas for local government (see Section 11(1) of the Act)

As stated by Kerley (1994:196), the transition that local government in South Africa was going through was not dissimilar to the changes that occurred in Eastern Europe in the early 1990s, in a number of different ways. There was a transition from the former model of a command economy, where decisions made in the centre (the council or committee) would be implemented by subordinate bodies (officials) through a vertically integrated structure (the directly employed workforce) on a programmatic basis, to grateful recipients with limited choice.The management of the uncertainty caused by the change from such a regime to one that is far removed from it is demanding and unsettling for all those involved … but, it is inevitable and it is necessary. That adjustment of practice and attitude takes several different forms:

- Councils would have to adjust to the expectation that they can no longer instruct and expect obedience. Alexander and Orr (1994), in Kerley (1994:197), are said to have demonstrated the extent to which councils of all types, whether in areas of multiple urban stress or rural tranquility, are now increasingly dependent upon a network of working relationships for the development and implementation of their ambitions.

  Kerley (1994:197) states that initiating and progressing change through this network would require a very different range of management and information systems to those in place within many councils. It will also require a change of attitude among councillors and council leaders. The assumption that council and its committees are at the centre of the known universe will come under increasing pressure. If councillors are increasingly reliant upon sustaining this policy network, then they would have to improve the level of support drastically and also assistance that is provided to those who represent them within that network.

- Councils would have to create information systems, which would enable them to scan their working environment effectively; in effect, to keep an eye on the various organisations the council must relate to the members of the communities, which the council serves and represents. Large bureaucracies are often badly equipped to look outside the organisation, either for information or example – they will need to develop or acquire the capacity to do so. They will also need to recognise that.

- Councils would also have to put considerable energies and investment into managing the policy network within the organisation itself. It is very rare today for a new challenge to be of a type that is comfortably handled within the confines of one department or one committee. The alternative and historically popular recourse of setting up another committee is discouraged in many councils, for reasons of cost and maintaining corporate cohesion.   So the organisational dilemma is often to find ways of tackling multifunctional issues in a co-ordinated manner. Maintaining organisational cohesion and integration has always been a dilemma for complex organisations in a turbulent and rapidly changing environment.

- It would also become more necessary for local authorities to develop clear and explicit policy strategies for their various interests and service programmes … Effective planning and strategy development may prove to be messy and iterative in form, rather than the neatly wrapped and tied process that has been implied in the past. Nonetheless, such planning has to start somewhere, particularly if it is to be the subject of complex and articulated negotiation with a variety of other potential beneficiaries of, and stakeholders in, the policy process.   Such negotiation implies flexibility as to the means, but requires clarity of intended outcomes.

- Just as it was suggest that councils would have to develop new ways of exercising their duties as the only elected representative body for the community, so it will also be necessary to assess effectively their internal capacity for acknowledging the demands of the individual as a consumer of council services.

5.3.3   The Present and New Design

The December 2, 2000 election, completed the process of political transformation and democratisation in South Africa. The Constitution of the Republic of South Africa, Act 106 of 1996, was giving directives.

As stated by the IEC (2000:1), and according to Brigalia Bam, Chairperson of the IEC, the municipal elections of 2000 differed from the 1995/6 local government elections in a number of ways:

- First, these elections marked the completion of South Africa's transition to full democratic government;

- Second, South Africa was able to conduct these elections on the basis of the country's constitutionally mandated common voters' roll; and

- Finally, South Africa's constitution demands that all levels of government – national, provincial and local – must be fully, proportionally, representative.

For the first time in history, Section 152 of the Constitution, Act 108 of 1996 prescribed the objectives of local government (Gildenhuys, 1996:6). These objectives are 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; and
- encourage the involvement of communities and community organisations in matters of local government.

Section 151 of the Constitution, Act 108 of 1996, provides for the establishment of municipalities with legislative authority vested in its municipal councils. Municipalities have the right to govern, on their own initiative, the local government affairs of the community, subject to national and provincial legislation.

National or provincial government may not compromise or impede a municipality's ability to exercise its powers or perform its functions.

Section 153 of the Constitution of the Republic of South Africa, Act 108 of 1996, elaborates further on the development duties of local government. Municipalities have to structure and manage their administration, budgeting and planning processes, to give priority to the basic needs of the communities and to promote the social and economic development of the community. The communities should also participate in national and provincial development programmes.

As stipulated by Section 155(1) of the Constitution of the Republic of South Africa, Act 108 of 1996, there are the following categories of municipalities:

- **Category A:** a municipality that has exclusive municipal executive and legislative authority in its area. These would be the Metropolitan Councils in areas such as Greater Johannesburg, Cape Town, Durban, Greater East Rand, Pretoria and Greater Port Elizabeth.

- **Category B:** a municipality that shares municipal executive and legislative authority in its area with a Category C municipality within whose area it falls. These are known as Local Councils.

- **Category C:** a municipality that has municipal executive and legislative authority in an area that includes more than one municipality. These are District Councils.

In South Africa, there are 6 Metropolitan Councils, 231 Local Councils and 47 District Councils.

According to Reddy (1999:210), in terms of the new constitution, Act 108 of 1996, local government is a sphere of government in its own right and not a function of national or provincial government. The roles of organised local government and horizontal relations between municipalities are highlighted, as well as a summary of national developmental programmes that impact on local government. This is increasingly being seen as a point of integration and co-ordination for the delivery of national programmes.

As the sphere of government closest to the people, local government is regarded as the agency, which will bring democracy to the doorstep, and put government in the hands of the people.

This new system of local government allows for public participation. According to Reitzes (1998:128), the idea of public participation is deeply embedded in, and a fundamental part of, the discourse of democracy and development in South Africa. The role of the local government is similarly defined in the Constitution, Act 108 of 1996, in terms of participatory democratic development.

5.3.3.1 Law and Local Government

In this part, legal aspects pertaining to local government will be discussed from the following sources. The Constitution, Act 108 of 1996, the Local Government Transitional Act (Act 209 of 1993), the Municipal Demarcation Act (Act 27 of 1998), and the Municipal Structures Act (Act 117 of 1998).

5.3.3.1.1 The Constitution (Act 108 of 1996):

The Constitution of the Republic of South Africa, Act 108 of 1996, was drafted in terms of Chapter 5 of the Interim Constitution, Act 200 of 1993. The criteria for democratic governance are highlighted in Section 195 of the constitution, which introduced the basic values and principles governing public administration, and they permeate the entire local government. According to Reddy (1999:203), democratic governance is also committed to the notion that all people are treated equally. Constitutional provision has been made for addressing the deep socio-economic inequity that has impacted on local government:

First, it contains a pledge to redress past discrimination. Second, it commands the state (which includes local government) to satisfy a variety of what could loosely be termed economic and social rights. Third, it lays stress on the duty of local government to address the basic needs of communities, to provide services and to engage in social and economic development (Primstone, 1998:11).

Zybrands in Venter (2001:201) confirms that local government can only be coherently studied against the background of the Constitution of the Republic of South Africa. This Constitution is the supreme law of the country and Section 2 of this Constitution continues to say that law or conduct inconsistent with it, is invalid, and obligations imposed by it must be fulfilled.

Chapter 7 of the Constitution stipulates the status, role, powers and functions of local government and municipalities. In addition to the Constitution, the Local Government

Transitional Act, 209 of 1993, is the other legislative measure that significantly affected local government (Zybrands in Venter, 2001:201).

5.3.3.1.2   Local Government Transitional Act (Act 209 of 1993):

The purpose of this legislation was to progressively transform an old dispensation into a new one that is compatible with the Constitution. It was of an *ad hoc* nature. This legislation is in the process of being phased out, according to Zybrands in Venter (2001:201), and therefore limited attention will be paid to it.

5.3.3.1.3   Municipal Demarcation Act (Act 27 of 1998):

The Municipal Demarcation Act (Act 27 of 1998) was promulgated in the Government Gazette dated 3 July 1998. According to Reddy (1999:214), it was one of the most important pieces of legislation in the process of transforming local government and implementing the White Paper on Local Government. The objective of the act is to establish criteria and procedures for the determination of municipal boundaries by the municipal demarcation board as required by the Constitution of the Republic. The act provides for the establishment, status, functions and general powers of the board.

5.3.3.1.4   Municipal Structures Act (Act 117 of 1998):

The Municipal Structures Act (Act 117 of 1998) regulates the political and institutional arrangements for local government, including the determination and definition of categories and types, the election and composition of municipal councils, arrangements for committees of council, a code of conduct for councillors and the disestablishment of councils. A category is a constitutional brand of municipality, depending on the existing situation in the area. 'Type' is a way of structuring the municipality introduced by provincial government. In terms of the Constitution, parliament has to define the type of municipalities that can be established. Provincial legislation can in turn determine which type of municipalities can be established in the province (Reddy, 1999:215).

5.3.3.2 Demarcation of Local Government

Demarcation and delimitation are processes of drawing the municipal and ward boundaries. It is the responsibility of the Municipal Demarcation Board. It is a constitutional mandate, which is explained in the Municipal Demarcation Act of 1998. The process of demarcation is

seen as the drawing of outer municipal boundaries of jurisdiction (Delimitation Guide, 2000:6).

Delimitation on the other hand, is the process of drawing inner wards and voting district boundaries. References to delimitation therefore relate to the drawing of electoral districts (Delimitation Guide, 2000:6).

Wards and voting districts: wards are electoral districts within a municipality as prescribed by the constitution. Wards must have an equal number of eligible voters in a municipality. A 15% deviation in voters is allowed between wards in a municipality.

Voting districts are the administrative districts used by the Independent Electoral Commission to manage elections. Voting districts have limits on the number of eligible voters as well as the geographic extent of the district. Voting districts are, in most cases, smaller than wards. Wards may therefore contain one or more voting districts (Delimitation Guide, 2000:6).

Voting districts in urban areas ideally have 3000 eligible voters located in an area the maximum walking distance of which is 7,5 km to a voting station. Voting districts in rural areas ideally consists of 1200 eligible voters within a maximum walking distance of 10 km to a voting station (Delimitation Guide, 2000:6).

One may pose a question as to why should the voting districts be demarcated?

According to Section 24 of the Municipal Demarcation Act (27 of 1998), it is important to demarcate so as to be able to establish an area within which:

- a municipality can fulfil its constitutional obligations;
- democratic and accountable government for communities can be provided;
- social and economic development can take place;
- a safe and healthy environment can be promoted;
- effective local governance can take place;
- integrated development can be done; and
- there will be a tax base as inclusive as possible for users of municipal services.

Demarcation and delimitation is an essential part of democratic elections. Demarcation is defined as "the art of making a boundary or limits", and delimitation as "fixing the territorial

boundaries of "an area". In this context, the two terms refer to the determination of boundaries for the purpose of allocating political authority and responsibility to the local governments. In a democracy, several key principles are generally accepted to guide the demarcation process (Camay and Gordon, 1996: 189).

The fundamental principle of demarcation is that it should result in each vote having equal weight. Therefore, each ward should have virtually an equal population and an equal number of seats allocated to it (Camay and Gordon, 1996:189).

Principles and clear criteria of demarcation are generally intended to prevent the "gerrymandering" of transitional local authorities or wards for party political purposes.

Other important principles underlying demarcation include the following as set out by Camay and Gordon (1996:190):

- Demarcation is a dynamic, not static, process; it must be changed as population patterns evolve;

- Long-term planning and maintenance of data are essential as the actual demarcation process is often conducted within tight time frames;

- Demarcation should not be part of the election process *per se*, but should be completed well in advance of elections;

- Demarcation should be conducted by, appointed (not elected) officials through an independent body with no party political involvement. A role for elected officials would create clear conflicts of interest;

- Demarcation decisions should be based on clear and agreed criteria;

- The analysis and decision-making process itself should be open and transparent; and

- All segments of civil society should be given an opportunity through public hearings, to comment on the proposed demarcation before final decisions are taken.

At this stage it becomes more important to know what the role of the Demarcation Board is because the responsibility to demarcate lies squarely on its shoulders.

5.3.3.2.1   Role of the Demarcation Board

According to a circular dated 6 August 1999, the objectives of the Municipal Demarcation Board, for the period up to 2001, were as follow:

- to determine municipal boundaries;
- to delimit wards;
- to work with other departments to align functional boundaries such as health, police, magisterial and educational boundaries with municipal boundaries; and
- to advise the Minister of Provincial and Local Government and the nine MEC's responsible for local government on issues provided for in the Municipal Demarcation Act of 1998 and the Municipal Structures Act of 1998.

A notice was further given by the Municipal Demarcation Board in the minutes dated 23/08/1999, under Section 26 of the Municipal Demarcation Act, 1998 (Act 27 of 1998), of the intention of the Municipal Demarcation Board to determine, in terms of Section 21 of the Act:

- the boundaries of all Category A municipalities (Metropolitan);
- the boundaries of all Category C municipalities (District); and
- to investigate the possibility of determining municipal boundaries which extend across provincial boundaries, throughout the Republic of South Africa.

The Constitution of the Republic of South Africa, Act 108 of 1996, identifies three categories of municipalities as previously defined in 5.3.3.   Category A being Metropolitan; B being Local; and C, the District (Delimitation Guide, 2000:7).

Category A municipalities have exclusive authority in their areas of jurisdiction. Category B and C municipalities share some authority as Local municipalities fall within District municipalities.

In cases where no municipality could be established due to lack of administrative or financial viability, district management areas (DMAs) would be declared. The relevant District Council will manage these (Delimitation Guide, 2000:7).

The Municipal Structures Act also makes provision for cross-boundary municipalities. The Free State province, for example, does not have such municipalities. These are municipalities that straddle provincial boundaries. The management and administration of these municipalities would be negotiated between the relevant provinces (Delimitation Guide, 2000:7).

For the purpose of demarcation, after considerable research was done, the Municipal Demarcation Board published a document titled "An integrated Framework of Nodal Points for Metropolitan and District Council Areas in South Africa: A preliminary framework", on 26 June, and 5 July 1999.

The key points proposed in the Preliminary Framework, with regard to District Councils, Metropolitan Councils, and cross-boundary municipalities, were as follows (Demarcation Board, 1999:2):

- **District Councils**

  The Board suggested four principles, which should underpin the determination of nodal points for District Councils:

  - whenever possible a coherent economic base should be identified around which the district would cohere;
  - the district should not be geographically too large; in settlement areas a radius of 50-100 km was utilised;
  - while the population of districts should not be too large for economies of scale, it was felt that districts should have a base population of at least 100 000 persons; and
  - whenever possible, there should be some coherence to the economic and social base of districts.

  In addition, the Board recognised that the effects of apartheid were such that some areas had been massively underdeveloped, and they required a nationally focused approach to develop their infrastructural, economic and social base. It would therefore not be possible in all cases to ensure that all districts had coherent economic bases.

- **Metropolitan Councils**

The Board made the following recommendations to the Minister for Provincial and Local Government, for the identification of possible nodal points for metropolitan areas:

- Nodal points which should <u>definitely</u> be considered as Metropolitan areas: Greater Johannesburg, Cape Town, and Durban, fulfilled all the requirements of being classified as Category A municipalities and had to be declared as such by the Minister;
- Nodal points which should <u>probably</u> be considered as Metropolitan areas: Greater East Rand and Pretoria, fulfilled to a large extent all the requirements of being classified as Category A municipalities and had to probably be considered as Category A municipalities;
- Nodal points which could <u>possibly</u> be considered as Metropolitan areas: Greater Port Elizabeth fulfilled to a large extent, many of the requirements of being classified as a Category A municipality, but does not score as highly as the 'definite' and 'probably' urban conurbations;
- Nodal points which should simply be regarded as aspirant Metropolitan areas: the analysis indicated that Greater Vereeniging, Bloemfontein, East London, Pietermaritzburg and Richard's Bay, were not in the same league as the urban conurbations analysed above, when defined as per the Municipal Structures Act, 117 of 1998, and were not to be considered as Metropolitan areas.

- **Cross-Boundary Municipalities**

The Constitution of the Republic of South Africa, Act 108 of 1996, and the Municipal Structures Act, 117 of 1998, make provision for an act of parliament to authorise the establishment of a cross-boundary municipality.

After conducting its research, the Board noted that there were a number of areas, which could become municipalities extending across provincial boundaries, like Vryburg in North West province and Kuruman in Northern Cape.

Apart from nodal points, there were other considerations to be taken into account. When proposing boundaries for Category A and C municipalities the following had to be taken into consideration:

- Section 152 of the Constitution of the Republic of South Africa (108/1996);
- Section 24 and 25 of the Demarcation Act, 1998 (27/1998);
- Section 83 and 84 of the Municipal Structures Act, 1998 (117/1998); and
- broadly the four principles for underpinning the demarcation of nodal points for district councils as identified in the Preliminary Framework as already mentioned above.

When demarcation is completed, the Independent Electoral Commission has to take over, to manage the electoral process.

At the end of the demarcation process, due to transformation, the number of municipalities decreased countrywide and provincially. The total number of municipalities was 843 and it is now 284: 6 Metro councils, 231 Local councils and 47 District councils.

In the Free State, there used to be 85 Transitional Local Councils and 15 Rural Local Councils. Now there are 20 Municipalities and 5 Districts. There is also 1 District Management Area (DMA), and that is Golden Gate resort in the Eastern Free State.

Apart from the number of municipalities decreasing, the municipalities were also renamed. In particular, in the Free State, all the municipalities have been renamed and given Sesotho names. According to the Demarcation Board in the Free State, a proper consultation process was followed.   The communities involved were consulted and time was allowed for people to submit their suggestions and queries, before the final decision was made.   This process was necessary because people would be able to associate themselves with the name they chose, which would be symbolic (Demarcation Board, 1999:3).

5.3.3.2.2   The Demarcation Process

The demarcation process is composed of several stages and they are:

(1)   The Rationalisation of Municipalities

The demarcation of Category B municipalities needed to proceed in terms of the specifications as described in Section 25 of the Municipal Demarcation Act, Act 27 of 1998. Some degree of rationalisation of municipalities was required and it was the Board's view that, being aware of the situation, key principles for rationalisation (and/or amalgamation) of municipalities should include the following aspects:

(2)   Geographical coherence

With the knowledge that municipal government is closely tied to local identity and its accessibility to local representatives, rationalisation would generally have to follow what is known as the 'nearest-neighbour' principles, that is, there would have to be geographically coherent consolidated Category B municipalities, and not 'leap frog' amalgamations of areas. Geographically fragmented municipalities are not only impractical with regard to service delivery, but the functions of local government in building a local, developmental identity and a sense of common civic purpose, would be disregarded.

(3)   Capacity development

Another objective of rationalisation and/or amalgamation would be to develop a minimum 'critical mass' of municipality capacity (staff, assets, finance), especially where vulnerable and under-capacitated TLCs (Transitional Local Councils) and TRCs (Transitional Rural Councils) exist. Small municipalities lack the potential to develop specialised and dedicated capacity that is necessary to effect good town planning, engineering and development management and general service delivery, in a country which is in a process of significant modernisation and transformation in its settlement systems. Moreover, getting access to capital markets and the ability to provide high quality service is considerably hampered in small towns and rural areas, where municipalities are not equipped with the necessary knowledge or specialised skills and material resources.

(4)   Resource sharing

Wherever possible, TLCs, TRCs and other areas would be combined with a view to create financially sustainable units; financially weaker areas being paired with financially stronger areas, so as to promote a sense of sharing of existing and potential resources. Without this

strategy, many of the smaller municipalities would collapse, or there would be an emergence of a system of exclusive development, leading to some areas not getting services and unplanned settlements mushrooming.

(5)   Manageable size

As stated by Mepha (2001:30), a statistically derived indicator of 3 500km^2 and 80 000 persons was suggested as the probable norm for Category B municipalities. However, deviations from such a norm are possible, given the uneven geographical distribution of population and economic activity throughout South Africa.

Illustratively, there are some cities/large towns, which need to be treated as functional units with populations in excess of 1 million. At the other end of the scale, there are sparsely settled rural/small-town areas where a population of 80 000 would require undesirably extensive geographical areas. The Demarcation Board's empirical research suggests that a population of less than 20 000 is generally undesirable for Category B municipalities given the objectives of realising economies of agglomeration and scale in municipalities. On the other hand, given the need for geographical coherence and local identity, areas greater than 10 000 km^2 are also desirable. It should however be recognised that there will often be an inverse relationship between the geographical size of Category B municipalities. Sparsely settled areas will have Category Bs of relatively large geographical area, but relatively small population size. Densely settled areas, such as cities, will be relatively small in geographical size, but will have large populations. This is a logical result of the uneven pattern of population distribution and settlement size that occurs throughout the world.

(6)   Functionality

Category B municipalities had to be aggregates of places with significant internal linkages. Such linkages are evident shopping, work and travel patterns. Patterns of social interaction, economic interdependence, and shared transportation networks are amongst other considerations. However, functional linkages are never entirely discrete and there will always be some degree of functional linkage across Category B municipal boundaries. The aim is to maximise the internal linkage whilst minimising the external linkages.

It is recognised that in any alignment of wall-to-wall (or near wall-to-wall) boundaries for Category B municipalities, tradeoffs will arise as to whether some area 'X' might be allocated to adjacent municipal areas 'Y' or 'Z'. In such circumstances, the most important

consideration would be the functional links between places, that is, whether such an area 'X' is interdependent or whether it interacts more with the places in areas 'Y' or 'Z'.

To some extent, functional interdependence is a result of geographical proximity (or distance), but not always. Illustratively, the alignment of transportation routes and physical features (such as a coast) can alter patterns of functional interdependence of some places into a more linear than a circular pattern. In yet other cases, places which may be close together, might be divided by an impassable mountain range and as a result, they interact very little. Maximising the internal functional linkages between places can therefore mean a different matter than simple distance difference between places.

The above-mentioned framework was developed with due regard to the provisions of Section 24 and 25 of the Municipal Demarcation Act and provided the Demarcation Board with a means to evaluate broad areas for demarcation purposes. However, in the evaluation of submissions, in terms of Section 26 of the Act, the Board specifically took into account the factors provided for in Section 25 of the Act.

(7) Legal Process – Section 26 Notice

In terms of Section 26(1) of the Local Government Municipal Demarcation Act, Act No. 27 of 1998, before the Board considers any demarcation of a municipal boundary in terms of Section 21 of the Act, it must be published in a newspaper circulating in the area concerned. The notice must state the Board's intention to consider boundaries and invite written representations and views from the public. The stipulated period for such response may not be less than 21 days. Section 26 notices for Category B municipalities, was published on 11 October 1999, with the closing date, 2 November 1999. The Board received eighteen submissions from the Free State, being 8,2% of the national submissions.

Every submission was assessed in accordance with the relevant legal provisions and the Board's Category B policy framework. On the whole, a substantial effort was made on the part of the public and demarcation stakeholders to complete the questionnaire provided by the Board, to consult relevant stakeholders in the area and to provide the required information.

Valuable information on municipal finance and administrative resources was identified and was extracted during December 1999 into a database to assist with the drafting of notices in terms of Section 12 of the Municipal Structures Act, 1998. Category B submissions which

were deemed to meet the criteria as outlined in the legislation and policy framework, were carefully considered when preparing the boundaries for Category B areas.

(8) Boundary Assessment

In order to facilitate the process of Category B determination, the Board prepared a number of boundary options for examination. In order to adequately map the boundaries, additional data sets were purchased and/or obtained by the Board.

A number of workshops were held in which the Category B framework and Sections 24 and 25 of the Municipal Demarcation Act, No. 27 of 1998, were outlined, as well as the process to be followed by the Board when deliberating the boundaries. It was also stated that when the period for written representations and views has expired, the Board would consider all representation and views submitted to it and only thereafter will the Board take a decision on the boundary determination or, before it takes such a decision, the Board may hold a public meeting, conduct a formal investigation or do both.

It had to be mentioned that the Board was not obliged to hold public meetings or undertake an investigation, but may do so at its own discretion. For the purpose of further participation in addition to the 21 days provided for in Section 26, and the 30 days provided for in Section 21 of the Act, the Board decided to conduct both investigations and to hold public meetings. In this process, views and representations were obtained in addition to the information already at the disposal of the Board, on which determinations could have been made.

(9) Public Hearings

In the Free State, thirteen hearings were held, with a total distance of 911 representing 70,1% of national hearings. Given the intention of the hearings, which was to enhance public participation and to gather public views and comments on the boundary options, it was decided by the Board to use community facilitators as chairpersons. Consultants provided technical assistance to the chairpersons. An intensive training session was held with both chairpersons and support consultants. Comprehensive documentation packs, such as relevant legislation, policy approaches and base information maps, were provided. On the whole, the Board believes the hearing process was successful, although there were some weaknesses.

One weakness is that, Category B hearings tended to focus on one geographical area, which appeared to cause confusion for the people attending from elsewhere in the district. The

Demarcation Board's policy was to hold the hearings in disadvantaged areas. Whilst this appeared to have been a success in many instances, the quality of the venues varied greatly and often contributed to the late commencement of the hearing.

Concerns were raised with respect to the communication aspect of the hearings. Throughout the country, there were complaints that people were not aware of the hearings in spite of all the MECs, municipalities, South African Local Government Association (SALGA) affiliates, House of Traditional Leaders and political parties having been contacted. In addition to that, the dates, times and venues, as stated by Mepha (2001:34), were widely advertised in the press.

Again, there was insufficient understanding of the legal provisions pertaining to Category B and C municipalities and DMAs. In some areas, according to Mepha (2001:34), people experienced difficulties in reading the maps and queried the statistics used by the Board.

(10) Boundary Investigation

The investigation was done on a provincial basis with leaders appointed per province to explain the Category B framework, the terms of reference for the investigation and the expected reporting procedures. Base information, such as staffing and financial information, was gathered from most municipalities. Each boundary was examined to confirm the configuration of the existing TLCs/TRCs in the proposed Category B municipalities and to confirm that settlements towards the edges of the boundaries are appropriately located according to their functionality linkages.

The information from Section 26 submissions was once again assessed and the outcomes from the public hearings made available to the investigation consultants.

(11) Boundary Determination

The Municipal Demarcation Board meeting to consider Category B municipal boundaries was held on 15 December 1999. The purpose of the meeting, as stated by Mepha (2001:35), was to determine the Category B boundaries throughout South Africa. Again, the Board applied the Category A, B and C boundary frameworks in addition to Sections 24 and 25 of the Local Government Municipal Demarcation Act, No. 27 of 1998, in the assessment of boundaries. A number of Category A and C boundaries were re-determined as a result of the Category B boundary process.

The Section 21 notices appeared in the relevant Provincial Gazettes from 20 - 22 December 1999. The closing date for objections was 31 January 2000.

(12) Objections

As at 15 February 2000, a total of 96 submissions and objections for the Free State had been received by the Demarcation Board. This total represented 6% of the national total of submissions and objections.

5.3.3.2.3 Establishing New Municipalities

The MECs for Local Government and Housing in each of the provinces issued an Establishment Notice for each category municipality (A, B and/or C), in their province. The only areas that did not require an Establishment Notice were District Management Areas.

The Establishment Notice addresses, *inter alia*, the following:

- category and type of municipality;
- description of outer boundaries;
- name of the municipality;
- number of councillors that may be elected;
- number of councillors designated as full-time;
- adjustment to the division of powers and functions between Category B and C municipalities;
- details of any exemptions, for example, procedure for the elections and appointment of political office-bearers, and their term of office; and
- the legal and practical matters relating to disestablishment and transfer of assets to new municipalities (Mepha, 2001:36).

As stated by Mepha (2001:36), in making the aforementioned transitional measures, the MECs created forums (Facilitation Committees), consisting of members drawn from existing councils or political parties in the area of a new municipality, the sole purpose of which was to facilitate and assist him/her with the transformation process.

Facilitation Committees, according to Mepha (2001:37), assisted the MEC with drafting Section 12 notices by:

- advising on decisions to be taken with regard to the shape and nature of a new municipality; and

- providing the information necessary for the drafting of a Section 12 notice, particularly in relation to staff, assets and liabilities and local legislation.

Facilitation Committees further assisted the MECs by endeavouring to ensure that existing municipalities did not take actions, which may prejudice the establishing of the new municipalities. They sought to get an agreement among municipalities to implement a moratorium on actions that may affect the establishment of a new municipality and to monitor such a moratorium (Mepha, 2001:37).

Example: Demarcation of the Free State Province

The 20 Municipalities in the Free State, with the new names and towns involved are as follows:

(1)   DC16   Xhariep

FS161 – Letsemeng (Koffiefontein):   Koffiefontein

Luckhoff

Jackobsdal

Oppermansgronde

Petrusburg

Oranje West RLC

FS162 – Kopanong (Trompsburg):   Bloem Area 204

Bethulie

Edenburg

Fauresmith

Gariepdam

Jagersfontein

Phillipollis

Reddersburg

Springfontein

Trompsburg

Oranje West RLC

Central South

FS163 – Mohokare (Zastron):   Zastron

Smithfield

South East RLC

(2)   DC17   Motheo

FS171 – Naledi (Dewetsdorp):   Dewetsdorp

Van Stadensrus

Wepener

South East RLC

FS172 – Mangaung (Bloemfontein):   Bloemfontein RLC

Thaba 'Nchu RLC

Botshabelo

FS173 – Mantsopa (Ladybrand):   Ladybrand

Hobhouse

Excelsior

Tweespruit

Thaba Phatsoa

Maluti RLC

(3)   DC18   Lejweleputswa

FS181 – Masilonyana (Theunissen):   Sandriver RLC

Moddervaal RLC

Brandfort

Soutpan

Verkeerdevlei

Winburg

FS182 – Tokologo (Dealesville):   Moddervaal RLC

Boshoff

Dealesville

Hertzogville

FS183 – Tswelopele (Hoopstad):   Vetvaal RLC

             Bultfontein

             Hoopstad

FS184 – Matjhabeng (Welkom):   Sandrivier RLC

             Welkom

             Virginia

             Ventersburg

             Odendaalsrus

             Hennenman

             Allanridge

FS185 – Nala (Bothaville):   Wesselsbron

             Bothaville

             Vetvaal RLC

(4) DC19 Thabo Mofutsanyane

FS191 – Setsoto (Senekal):   Senekal

             Marquard

             Ficksburg

             Clocolan

             Drakensberg RLC

             Maluti RLC

FS192 – Dihlabeng (Bethlehem):   Bethlehem

             Clarens

             Mashae Fourie

             Mautsendal

             Drakensberg RLC

             Maluti RLC

FS193 – Nketoane (Reitz):   Arlington

             Lindley

             Petrus Steyn

             Reitz

Riemland RLC

FS194 – Maluti a Phofung (Qwa-Qwa):   Phuthaditjhaba

Qwa-Qwa

Kestell

Harrismith

Drakensberg RLC

FS195 – Phumelela (Vrede):   Vrede

Memel

Riemland RLC

Qwa-Qwa RLC

(5)   DC20   Northern Free State

FS201 – Moqhaka (Kroonstad):   Kroonstad

Steynsrus

Viljoenskroon

Koepel RLC

Kroonkop RLC

Riemland RLC

FS203 – Ngwathe (Parys):   Parys

Vredefort

Koppies

Heilbron

Edenville

Koepel RLC

Kroonkop RLC

Vaaldam RLC

FS204 – Metsimaholo (Sasolburg):   Deneysville

Oranjeville

Sasolburg

Vaaldam RLC

FS205 – Mafube (Frankfort):   Villiers

Frankfort

> Tweeling
>
> Cornelia
>
> Vaaldam RLC
>
> Riemland RLC

5.3.4 Views of the Main Political Parties on Demarcation

The new municipal areas were determined throughout the Republic of South Africa. The views of the main political parties were recorded in the Mail and Guardian of August 11-17, 2000 and this is what they said:

ACDP: The ACDP believed that the new municipal structure was going to take away the responsibility of individuals, and communities would fail to manage their affairs. The new structure would also hinder service delivery as the distance in relationship between the provider and receiver of services would become greater, and the needs and aspirations of the people would not be quantitatively understood or provided for. The party recommended that demarcation should be carried out where stronger municipalities would incorporate smaller and weaker areas and promote their own distinct system of operation, and be accountable to the provincial and local government.

ANC: The ANC supported the new municipal structures as they are more financially viable and part of a more effective local government model. The party also supported the consideration of a one-off grant for costs of transition to the new municipal structures and also the maximum consultation in addressing the initial problems of the new municipal structures around redeployment of local staff, assets and liabilities; re-orientating the administration; re-aligning IDP's and budgets; distributing powers and functions between district and local municipalities; restructuring municipal services; and establishing performance management systems. The party also supports practical and financial supports from national and provincial government to make new municipalities more effective.

DA: The DA believed in small, efficient, cost-effective and freestanding municipalities, responsive and sensitive to the needs of their communities. That would avoid expensive restructuring and enable the provision of municipal governance on an accessible, human scale. The party opposed the "one-size-fits-all" policies advocated by the ANC, which would be impossible to apply to all municipal structures, in the light of South Africa's disparate levels of development.

The DA believed mega-city and district councils would be cumbersome, inefficient, unresponsive to local needs, and would lend themselves to waste and greater opportunities for corruption. Therefore, they advocated maximum devolution of powers and functions to sub-councils, mandated by the Municipal Structures Act, which were sustainable for optimum service delivery.

FF: The Freedom Front (FF), opposed the idea of mega-cities or uni-cities and large municipal areas. The party supported governance that is closer to the people. The party believed that the new municipal areas would be too large to manage, reaction time would be too long and service delivery would be slower and fragmented. A smaller executive structure was supported by the party although that would need additional control and managerial measures.

IFP: The IFP opposed aspects of the new local municipal structure, particularly in relation to the type of municipalities that had been determined nationally as well as the excessive centralisation of political control. The party opposed the creation of mega-cities as if that was the only option for all big cities. The party believed that there had to be greater flexibility in determining the shape of local government, as one size does not fit all.

The IFP anticipated that the merging of towns and rural areas would be a problem, particularly when traditional areas are included. The party believed that there would be a great deal of dislocation in the restructuring of municipalities. The party suggested that "transformation fatigue" might slow down delivery.

PAC: The PAC supported the consolidation of small towns and rural areas then and in the future so that they could be self-sustaining and viable economic entities. The party believed that problems would only emerge where consolidation was done without adequate consultation and also where communities fell under traditional leadership or traditional authorities. The party supported the empowerment of traditional authorities and their enlightenment about the advantages of efficient municipal services. The party also believed that there should be a clear distinction between rural areas under traditional rule and small urban municipalities.

UDM: The UDM supported the administration of municipalities, which would benefit the communities through the joining of rural areas and small towns into larger municipal units. The party opposed the leaving out of traditional leaders in the process of demarcation as they represented a way of life; they were not supposed to be marginalised.

Consulting with traditional leaders was necessary to ensure their participation in decision-making.

The UDM believed that cross-border metropolitan areas would result in complicated governance, however, co-ordinated and integrated solutions could be developed.

It is very clear from the view of the political parties that, governance at local government level is crucial.

5.4   CONCLUSION

Local government is the government closest to the people and therefore, it is most vital and influential. To be effective and efficient, it is important that democratic principles are upheld and governance is at its optimum. Public participation is necessary and vital at this level because this is the government that affects the lives of the people most intinately. The society's concerns, interests and needs should therefore be taken into account when decisions are taken.

In South Africa, local government had to go through a process of transformation and democratisation. Historically, local government was not taken seriously and certain sectors of society were excluded from being part of the system. The most distinctive feature of local government was the apartheid policies that promoted a racial division of power. The new system that is currently in place, encourages participation of all citizens and also, strives for accountability. It is a system of local government that is democratic, non-racial and inclusive. The representative role of local government is enhanced and the elected councillors are expected to live up to their mandate.

Local government is a government in its own right, unlike it was historically in South Africa. It has some level of autonomy and has the power to govern within its jurisdiction. The Constitution of the Republic of South Africa, Act 108 of 1996, gave a boost to the status of local government and its role is clearly stipulated in Chapter 7. The principle of co-operative governance is also encouraged among the different spheres of government, as a mechanism to build stronger working relationships. Co-operative governance will, in the process, benefit the three spheres of government because service delivery will be efficient and at the same time, the citizen will build up a relationship of trust because their involvement in decision-

making will be welcome, and their needs will be met. That will also help the government to keep in touch with the changing needs of society.

Finally, local government had to be re-demarcated. The boundaries had to be defined for the purposes of local government elections and also for better management of the municipalities. This also marked a new beginning for South Africa; a more interactive system of government that gives equal opportunities to all its citizens and which is bound by the Constitution to treat all citizens equally before the law.

CHAPTER 6

LOCAL GOVERNMENT ELECTIONS: 5 December 2000

6.1   INTRODUCTION

The focus of this chapter will be on the local government elections of 2000 and these will be discussed in detail, from the pre-election period throughout the election day, to the post-election period. The electoral system designed for local government elections will be a focal point of this chapter.

The purpose of this chapter is to emphasise the importance of competitive elections at local level. For democracy to prevail, there is a need to improve governance at local government level. Further, other spheres of government in a co-operative system will be compared. In general, this chapter will clarify the importance of the role played by an electoral system and its functions, in order to determine the issues of power and of making democratic governance a reality at local government level.

For the best understanding of the electoral system designed for local government, the role of the Independent Electoral Commission will be discussed first. Then a brief explanation of the electoral system for national and provincial government for the 1994/1999 election, will be given to provide a clear background.

6.2   THE INDEPENDENT ELECTORAL COMMISSION (IEC)

6.2.1   Creation and Purpose of the Independent Electoral Commission (IEC)

The Independent Electoral Commission (IEC) is a creation of the Constitution and is entrusted with running elections freely and fairly. It is what is known as a 'Chapter 9 Institution', because Chapter 9 of the Constitution deals with several institutions for strengthening constitutional democracy (IEC, 2000:8).

The Electoral Commission Act states that the IEC is independent, subject only to the Constitution and the law, functioning without fear, favour or prejudice. The IEC is tasked with managing all elections, national, provincial and municipal.

The vision of the IEC is to strengthen constitutional democracy through the delivery and management of free and fair elections and referenda in which every eligible citizen is able to record his or her informed choice (IEC, 2000:1).

The Electoral Commission is a permanent body created by the Constitution, as already stated, with a mission to promote and safeguard democracy in South Africa. Its task is the impartial management of free and fair elections and referenda at all levels of government. Although publicly funded and accountable to parliament, the Commission is independent of government (IEC, 2000:1).

- **Creation**

    The first South African Electoral Commission was established by the Electoral Commission Act, 1993, as part of the country's transitional process. The Commission was responsible for administering, organising, supervising, conducting, monitoring and adjudicating South Africa's first democratic election held between April 26 and 27, 1994. The local government election of 1995/6 were regulated and managed by the provincial executives and administrations and co-ordinated by a Local Government Election Task Group (IEC, 1999:11).

    An Electoral Steering Committee was comprised from both the Electoral Commission of 1994 and the Local Government Election Task Group of 1995/6 in 1996. This Committee was to oversee the functioning and planning of all electoral activities until the appointment of a new Electoral Commission as required by Chapter 9 of the Constitution, Act 108 of 1996. Through this process, the Electoral Steering Committee developed options for the new Electoral Commission to consider and evaluate its establishment, which occurred with the appointment of the members of the Commission in terms of the Electoral Commission Act, 1996 on July 1, 1997 (IEC, 1999:11).

    Section 190 of the Constitution describes the three primary functions of the Electoral Commission as being to:

- manage elections of national, provincial and municipal legislative bodies in accordance with national legislation;

- ensure that those elections are free and fair; and

- declare the results of those elections within a period prescribed by national legislation.

- **Appointment of Commissioners**

The chairperson and the vice-chairperson of the Commission are designated by the President. To be eligible for appointment as a commissioner a person must be a South African citizen who does not have a high party-political profile and who passes through the appointment process (Craythorne, 1997:129).

The Commission must as soon as possible after its composition, appoint a Chief Electoral Officer to be the head of the Commission's administration, its accounting officer, and to exercise the powers and perform the duties and functions entrusted or assigned to him or her by the Commission or the Act. The Chief Electoral Officer, in consultation with the Commission, must appoint as many officers and employees as may be necessary to enable the Commission to exercise its powers and perform its duties and functions effectively. The Commission determines the conditions of service, remuneration, allowance, subsidies and other benefits for its staff (Craythorne, 1997:130).

On July 9, 1997, the President appointed Judge Johann Kriegler, Dr Brigalia Hlope Bam, Ms Thoko Mpumlwana, Prof. Herbert Vilakazi and Mr Fanie van der Merwe as the members of the Electoral Commission.
Judge Kriegler was designated Chairperson and Dr Bam Vice-Chairperson (IEC, 1999:11).

During February 1999, Judge Kriegler resigned and Judge Ismail Hussain was appointed as a member of the Commission in his place. The President also designated Dr Bam as Chairperson and Prof. Vilakazi as Vice-Chairperson. The Chief Electoral Officer is Prof. Mandla Mchunu. This team, together with the other officers and employees, prepared and delivered the local government elections of December 5, 2000 (IEC, 2000:2).

Building the organisation occurred concurrently with the planning and implementation of the June 1999 election. The time frame of the two years from the date of appointment of the Commission until the election, proved a daunting challenge. In that time period, the Commission was required to establish its head office, provincial and local infrastructure, delimit voting districts, identify registration stations, undertake a complete registration of the South African populace, compile the nation's common voters' roll, prepare the logistics and train staff for the election day, June 2, 1999, educate the voters about the electoral process, manage the election efficiently and cost-effectively from a central location and announce the results seven days after voting (IEC, 1999:13).

All the above tasks were covered within the time frame provided and also within the framework of legislation governing elections.

6.2.2   Functions of the IEC

The IEC is responsible for several functions as stated earlier. Some of those functions are reviewing electoral legislation or regulations, compiling and maintaining the national common voters' roll, drawing the election timetable, promoting voter education and also promoting conditions conducive to free and fair elections. Some of these functions will be discussed here:

- **Regulations**

   The Electoral Commission has wide powers to make regulations, which may include penalties for the contravention of a regulation, in respect of the following matters (Craythorne, 1997:134):

   (a) the time limits within and manner in which appeals may be noted or decisions
        may be brought under review by the Commission in terms of this Act;
   (b) the compiling and maintaining of voters' rolls;
   (c) the registration of parties in terms of this Act;
   (d) the regulation of the conduct of all persons, parties and candidates   in so far as
        such conduct may promote or inhibit the conduct of a free and fair election;
   (e) any matter required or permitted to be prescribed in terms of this Act;
   (f) the holding of a referendum declared under Section 2; and

(g) generally, all matters which are necessary or expedient to be prescribed in order
     to achieve the objects of the Act.

- **Registration and voters' roll**

Elections require the existence of some list or record of those entitled to vote, and this in turn requires that certain statutory qualifications must be met. The system of voters' roll thus has its roots in the early development of modern municipal government (Craythorne, 1997:135).

Pre-1994 legislation contained differing legislative rules for the compiling and approval or certification of voters' rolls. The Local Government Transitional Act, 209 of 1993, and the regulations made under it, changed this by providing overriding provisions on the franchise, the compilation and certification of the voters' roll and the conduct of elections.

The powers to do these things resided at the provincial and local levels, but the Electoral Commission Act, 51 of 1996, again changed the situation, as did Act 97 of 1997, which amended the Local Government Transition Act, 209 of 1996, and which shifted the regulatory powers to national level (Craythorne, 1997:135).

In fact, the Constitution of the Republic of South Africa, Act 108 of 1996, requires the Independent Electoral Commission to compile and maintain a national common voters' roll based on universal adult franchise. The nation's first post-apartheid voters' roll was compiled in 1998/9 and certified on April 30, 1999, ahead of the June national and provincial elections. This roll contained 18 438 002 voters' records and represented a monumental milestone in South Africa's electoral history. The bulk of the registrations took place over only three weekends at 14 500 voting stations across the country. A barcode-scanning technology was used (IEC, 2000:21).

Maintaining the voters' roll has proved challenging. The redrawing of municipal boundaries, and the resultant re-delimitation of some voting districts, have required some reworking of the roll. Voters who had registered earlier and were unaffected by voting district changes, merely needed to inspect the roll to make sure they were unaffected and did not need to re-register.

To increase ordinary citizens' access to the voters' roll for inspection purposes, the Independent Electoral Commission opened all of its voting stations for one weekend. Newly-qualified voters could register, while those already registered could check whether their details were correct.

To register as a voter, a person was required by the IEC (IEC, 1999:29) to be:

- A South African citizen, in possession of a South African bar-coded identity document; and
- Over the age of 18 years at the time of voting.

The voters' roll was closed for the municipal election on October 10, 2000. It covered 14 990 voting districts countrywide and represented the 284 new municipalities and 3 754 electoral wards. The voters' roll was certified at a Press Conference in Pretoria on October 12, 2000.

The hundreds of voters' rolls compiled at municipal level for the 1995/6 Local Government election and subsequently by-elections, have been replaced by a single national common voters' roll. The Independent Electoral Commission has been able to effectively draw on the technology developed in 1999 for the initial compilation; the barcode-scanning technology.

The whole process to be followed up to the stage where the voters' roll is certified, is clearly stipulated in Section 5 and 6 of the Municipal Electoral Act, 27 of 2000, as well as in Section 24 of the Electoral Act, 73 of 1998.

- **Election timetable**

Each time elections are scheduled, the date set out in the electoral calendar for each phase of the process must allow adequate time for effective campaigning and public information efforts, for voters to inform themselves, and for the necessary arrangements to be made. The electoral calendar should itself be publicised as part of the civic information activities, in the interests of transparency and of securing public understanding and confidence in the process (United Nations, 1994:12).

For the purpose of this research, it is important to note that for the local government election of December 5, 2000, the election date was announced by the Minister of

Provincial and Local Government, Sydney Mufamadi, and was published in Government Gazette No. 21620 of October 10, 2000.

The Election Calendar for that particular election was also published on the same day, in Government Gazette No. 21645. This had to happen after compiling the election timetable in consultation with the party national liaison committee (Lodge et al., 1999:23).

The above is supported by Section 20 of the Electoral Act, 73 of 1998 and it even goes further to stipulate in Section 20(2), that the Commission may amend the election timetable by notice in the Government Gazette –

- (a) if it considers it necessary for a free and fair election; or
- (b) if the voting day is postponed in terms of Section 21.

The contents of the timetable are set out in Schedule 1 of the Electoral Act. This timetable must indicate the following (Lodge, Jones and Ballington, 1999:23):

- (c) cut-off date for publication of voters' roll;
- (d) notification that the list of voting station addresses is available for inspection;
- (e) cut-off date for submission of candidate lists;
- (f) notification to parties of non-compliance with candidate list requirements;
- (g) availability of candidate lists for inspection;
- (h) cut-off date for submission of objections to candidates;
- (i) decisions on objections;
- (j) cut-off date for appeals against decisions;
- (k) deciding appeals;
    - publication of lists of parties and candidates entitled to contest elections;
    - certification of candidates;
    - determination of boundaries of voting stations;
    - setting voting hours;
    - notice of route of mobile voting stations.

- **Voter Education**

There is no element of the pre-election process more important than voter education (Goldstone Commission, 1993:15).

Voter education is very important to equip voters with all the information necessary to make a choice eventually; an informed choice. Implicit in the concept of free choice is that of an informed choice. As has been seen, if elections are to be genuine, they must reflect the political will of the people. Voters can neither formulate nor express that will without access to information about candidates, the parties and the process. A well-organised, non-partisan voter information programme and unhindered distribution of political propaganda are therefore critical elements of genuine elections (United Nations, 1994:13).

The involvement of the general population in the voting process is a cornerstone of any democracy. Since 1994, the large voter turnout has attested to the general enthusiasm that South Africans had in participating in the democratic process of elections.

To retain this participation, a comprehensive media and voter education strategy has to be embarked upon in partnership with civil society organisations. Special focus has been placed on women, rural and first-time voters (IEC, 1999:43).

The process of voter education involves the training of trainers, in an effort to achieve maximum impact for time and money, and the direct training of individual voters, as well as the development of educational materials, television programmes such as "Khululeka" (which means liberate yourself), developed and aired on SABC1 television and even theatre productions. Booklets, pamphlets, posters and comic strips have been used as well (IEC, 1999:43).

The voter education programmes must, of course, explain as clearly as possible the basics of the election process: the function of the national identity document, voter eligibility, the role of the parties, the nature and purpose of the campaign, the structure of the ballot, the technical aspects of voting, and how the votes will be counted and the results announced (Goldstone Commission, 1993:16).

Certain less tangible lessons must also be conveyed, for example:

- first and most importantly, there must be constant reassurance concerning the secrecy of the vote, including explanations of specific elements of the process, for

example, the marking of the identity document card. That might give rise to fear that the voter's choice would be revealed;

- second, there must be continuing reminders, by political leaders and voter educators, that in a democratic system there are winners and losers and that, whichever side the voter supported, he or she must accept the result. These reminders should include the fact that there will be future elections in which the people will have a chance to decide whether their elected representatives have done a good job;

- third, there must be regular exhortations, again politicians and community leaders as well as educators, against the use of violence, and voters must be encouraged to report threats and other misconduct to the IEC; and

- fourth, voters must be encouraged to participate in the political process by attending meetings and rallies, listening to television and radio, and campaigning for the parties of their choice.

After the elections all the nine provinces are visited to conduct debriefing and evaluation workshops with the service providers. Issues evaluated and discussed include the content and format of the voter education materials, access to rural communities, the attendance and response of participants, the support received from the IEC provincial and national offices, and proposed action plans for future elections (IEC, 1999:45).

The voter education programme should be as inclusive and effective as possible.

- **Party Liaison Committees**

Liaison with political parties in the planning and preparation stages, as well as during the election period, is considered essential. Under Section 5 of the Electoral Act, the IEC is to establish and maintain liaison and co-operation with political parties. It has done so by setting up party liaison committees.

Registered parties are entitled to representation on an IEC Party Liaison Committee and have free access to voters' rolls (IEC Regulations, R493, April 9, 1998).

IEC Regulations on Party Liaison Committees (R824, June 19, 1998), provides for the establishment of these bodies at national, provincial and municipal levels.

In each case, parties should have no more than two representatives on the committee. The committees are chaired by an IEC representative.

The Commission may help to pay travel and accommodation expenses for party representatives without the means to pay for such items, if Parliament votes funds for this purpose (Lodge, Jones and Ballington, 1999:17).

6.2.3 Legislation

Elections in South Africa are governed by a number of important laws that have been enacted since South Africa's first democratic elections. Thus the electoral process derives from, and is governed by, the very democratic process that it creates.

The laws that govern elections are the Constitution of the Republic of South Africa, Act 108 of 1996; the Electoral Commission Act; the Electoral Act; and Legislation on Municipal Elections (IEC, 2000:8):

6.2.3.1 The 1996 Constitution

The Constitution of the Republic of South Africa is the culmination of the negotiation process that brought apartheid to an end and represents the desire of South Africans to live in a democratic society without racism or prejudice. It is widely acknowledged to be one of the most advanced constitutions in the world: the drafters of the Constitution drew on the constitutions of other countries and also on international human rights documents such as the Universal Declaration of Human Rights. The Constitution is a symbol of the process of negotiation and compromise that created the new South Africa.

The importance of democratic elections is evident in the Preamble of the Constitution:

"The Republic of South Africa is one, sovereign, democratic state founded on the following values:

(a) Human dignity, the achievement of equality and the advancement of human rights and freedom.

(b) Non-racialism and non-sexism.

(c) Supremacy of the Constitution and the rule of law.

(d) Universal adult suffrage, a national common voters' roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness."

The constitution enshrines every South African's right to live in a free and democratic society. This right is formalised in Section 19 as follows

(1) Every citizen is free to make political choices, which includes the right –
- to form a political party
- to participate in the activities of or recruit members for a political party, and
- to campaign for a political party or cause

(2) Every citizen has the right to free, fair and regular elections for any legislative body established in terms of the Constitution.

(2) Every adult citizen has the right –
- to vote in elections for any legislative body established in terms of the Constitution, and to do so in secret; and
- to stand for public office and, if elected, to hold office".

Therefore the holding of elections is, by law, the fulfilment of a duty to every South African citizen.

The Electoral Commission is therefore one of the pillars of democracy and its independence and impartiality to carry out its duties are emphasised in Chapter 9 of the Constitution.

6.2.3.2   The Electoral Commission Act

The Electoral Commission Act of 1996 provides for the establishment and composition of an Electoral Commission to manage elections for national, provincial and local legislatures. While the Independent Electoral Commission is founded in the Constitution, its powers and functions are regulated by this particular Act.

This Act defines the duties and responsibilities of the Independent Electoral Commission. Most importantly, it requires, in Section 3, that the Commission be independent and subject only to the Constitution and the law, and that it be impartial and exercise its powers and perform its functions without fear, favour or prejudice.

According to Section 4 of the Act, the objects of the Commission are to strengthen constitutional democracy and promote democratic electoral processes.

The Act also clearly sets out the duties of the Commission. The most important duties include:

- managing any election;
- ensuring that any election is free and fair;
- promoting conditions conducive to free and fair elections;
- promoting knowledge of sound and democratic electoral processes;
- compiling and maintaining voters' rolls;
- compiling and maintaining a register or parties;
- reviewing electoral legislation and making recommendations in connection therewith;
- promoting voter education; and
- adjudicating administrative disputes which may rise in the course of elections

Some of these duties will be discussed in more length at a later stage in this dissertation.

6.2.3.3   The Electoral Act

The Electoral Act is much like an instruction manual for elections. It deals in detail with everything from that which is required to register as a voter, to the sealing of ballot boxes. It provides, among a host of topics, for election timetables, the administration of elections, procedures for voting, counting and determining results, the accreditation of observers and

voter educators, and formulae for determining the composition of the national and provincial legislatures.

6.2.3.4   Legislation on Municipal Elections

The Local Government Transition Act which, governed the 1995/6 municipal election, has now fallen away. The municipal election of 2000 were being run in terms of the Local Government Municipal Electoral Act, which was passed earlier in 2000, as Act 27 of 2000, to supplement the Electoral Act and add the detail which was required by the dual electoral system (voting for ward candidates and parties), used in the municipal election of December 5, 2000.

Local government in South Africa is in a process of transformation and restructuring, and the local government election held on 05 December 2000, completed this democratic process (Delimitation Guide, 2000:5).

This election marked the final step in the transformation and democratisation of local government and was therefore an important milestone in the country's agenda of deepening constitutional democracy. These elections formed the foundation and benchmark for future governing structures (IEC, 2000:1).

6.2.4   Municipal Elections of 2000

 The municipal elections of 2000 differed from the 1995/6 local   government elections in a number of ways (IEC, 2000:1):

- first, these elections marked the completion of South Africa's transition to a fully democratic government.

- second, the Independent Electoral Commission (IEC) was able to conduct the 2000 elections on the basis of a constitutionally mandated common voters' roll – the same voters' roll that was used in June 1999, but updated.

- third, the South African Constitution demands that all levels of government – national, provincial and local – must be fully proportionally representative. The 1995/6 local government elections were transitional elections, and special

arrangements agreed to by the negotiating parties resulted in councils that were not entirely proportionally representative.

The purpose of local government elections is to elect municipal councils. This process should be in accordance with national legislation, which according to Section 157(2) (a) and (b) of the Constitution of the Republic of South Africa, should prescribe a system:-

(a) of proportional representation based on that municipality's segment of the national common voters' roll, and which provides for the election of members from lists of party candidates drawn up in a party's order of preference; or

(b) of proportional representation as described in paragraph (a) above, combined with a system of ward representation based on that municipality's segment of the national common voters' roll.

The IEC conducted the municipal elections of 2000 in terms of a number of new pieces of legislation, including the Municipal Electoral Act, the Municipal Structures Act and the Municipal Demarcation Act. The Municipal Electoral Regulations were published as Government Notice number R.817 in the Government Gazette number 21478 of August 14, 2000.

These new structures resulted in a reduction in the number of municipalities and a new demarcation of electoral wards. For instance, municipalities were reduced from 843 to 284 countrywide. As for the Free State province, municipalities were reduced from 100 to 20.

As stipulated by Section 155(1) of the Constitution of the Republic of South Africa, Act 108 of 1996, there are (as previously mentioned/referred to) the various categories of municipality:

- **Category A:** A municipality that has exclusive municipal executive and legislative authority in its area. These would be the Metropolitan Councils in areas such as Greater Johannesburg, Cape Town, Durban, Greater East Rand, Pretoria and Greater Port Elizabeth.
- **Category B:** A municipality that shares municipal executive and legislative authority in its area with a Category C municipality within whose area it falls. These are Local Councils

- **Category C:**   A municipality that has municipal executive and legislative authority in an area that includes more than one municipality. These are District Councils.

In South Africa, there are 6 Metropolitan Councils, 231 Local Councils and 47 District Councils.

The division into Catgories A, B and C, therefore, imposed changes on a significant number of the voting districts, and consequently required all voters to check the voting station details on the voters' roll.

The responsibility and right of all adult citizens to participate in the affairs of their government is one of the cornerstones of democracy, according to Mandla Mchunu, Chief Electoral Officer. The most fundamental form of participation is the right to vote in free and fair elections (IEC, 2000:1).

Brigalia Bam, Chairperson of the IEC, went on to say that each vote would be a contribution to the finalisation of the institutional structure of local government so that it can take the challenges of democratic governance, effective and equitable service delivery and development head on (de Visser, Steytler and Mettler, 2000:4).

The holding of elections is, however, not the guarantee that a country's democracy is in a good state of health. Elections, with the possibility of bringing new leaders into office, are a critical part of any democratic system, but it is the interaction between the people and the various branches and levels of government during the intervals between elections, that is a more reliable indicator of the health of a democracy. Such interaction is most pronounced and visible at local level (IEC, 2000:1).

Since communities are the political building blocks of any society, local government is of key importance in promoting and reinforcing democratic values.

Thabo Mokoena who is the Chief Executive Officer (CEO) of the South African Local Government Association (SALGA), made a comment that the 1995/6 elections granted South Africans the right to vote for local representatives for the very first time. Those elections, he said, ushered in the second phase, the so-called "interim phase", with democratically elected councils, based on the amalgamation of previously white and black areas. The use of ward and proportional representation attempted to accommodate black majority and white minority interests. However, because the electoral system was still premised on boundaries that were

based on apartheid geography, representation was still skewed. This "interim phase" ended on the day of the local government elections, of 5 December 2000 (de Visser, Steytler and Mettler, 2000:5).

The elections of 5 December, 2000, marked the final step in the transformation and democratisation of local government in South Africa and are therefore an important milestone on the country's agenda of deepening constitutional democracy. These elections formed the foundation and benchmark for future governing structures (IEC, 2000:1).

For the first time in history, South Africans voted for their representatives on municipal councils in a fully democratic manner. Instead of a variety of transitional structures that made up the local sphere in the run-up to the elections, the institutional framework for local government is now uniform throughout the country. A uniform system of municipal elections was established to enable citizens to vote for their municipal councils.

6.3 BACKGROUND OF THE 1994 AND 1999 ELECTIONS IN SOUTH AFRICA

Firstly, a brief introduction on the elections of 1994 and 1999 will be given; then the election scene; the electoral system designed for the National Assembly and the National Council of Provinces (parliament), and provincial government; and the outcome of the election are going to be discussed.

6.3.1 The Electoral Scene

The national and provincial elections of April, 1994, were the first of several rounds of elections in which all South Africans were able to participate. The most recent elections in June, 1999, were peaceful and successfully managed (IEC, 2000:1).

Electioneering began in a sense, in June, 1993, immediately after the date of the election, was announced by the Multi-party Forum.

South Africa's first democratic election, which was held on 27 April, 1994, was an event many thought would never take place. There was a huge logistical task ahead and confusion and disorganisation on every side. The Independent Electoral Commission (IEC) had started its task of organising the national elections from December, 1993. As stated by De Klerk (1998:302), the IEC had only four months to complete arrangements that would normally

have taken at least a year to finalize. The Commission had to establish and administer electoral machinery as well as to put in place and give direction to the bureaucracies, which would monitor electioneering and adjudicate disputes (Lodge, 1999:10).

In addition Lodge (1999:10) states that the Commission was to supervise such agencies as the Department of Home Affairs in tasks such as issuing appropriate voter identity documents to those without officially recognised documentation. The Commission was required to train staff for 10 500 voting stations and nearly 700 counting stations, and a deployment of slightly fewer than 300 000 people. The Commission was working with an entirely unknown process and nobody knew for sure whether it would really be able to complete its work in time (De Klerk, 1998:302).

The Commission was charged with developing committees to facilitate party cooperation and was responsible for distributing public funding to parties (Lodge, 1999:10). Given the inherent difficulties posed by the Commission's mandate and the short time it had to execute its obligations, it was bound to have administrative breakdowns.

The period leading to the day of elections was plagued by violence, but quite soon, however, it became clear that the date already had a symbolic reality of its own, and that any attempt to change or postpone it, might lead to more violence.

As South Africa approached its founding elections, the possibility of separatism and partition was particularly apparent in Kwa-Zulu Natal, in the demands for a Boerestaat, and potentially even in the Western Cape too. But South Africa enjoyed three critical advantages according to Johnson and Schlemmer (1996:11-12):

- firstly, South Africa already had a long history (84 years) as an independent state, which meant its boundaries and political unity were almost universally accepted;

- secondly, South Africa had a long experience of a functioning, partial democracy; and

- finally, South Africa's attempt to launch democracy was attended by unprecedented international interest and involvement.

The election was inevitably in highly charged and partisan spirit. Although there was a multi-party election on 27 April, 1994, which was declared 'free and fair' by the Independent Electoral Commission (IEC) and many international observer groups, the political culture within which it took place was far from democratic and the election was not preceded by multi-party politics of a normal kind.

As stated by Lodge (1999:8), aside from the effects of intimidatory or coercive behaviour by activists, the content of the message communicated by political party electioneering might also in certain contexts have helped to limit rational or reflective decision-making by voters. Appeals which, were calculated to reinforce collective racial consciousness, may be said to fall into this category.

Adherence to procedure may seem an undemanding requirement. According to Lodge (1999:2), the conduct of South Africa's 1994 election was flawed even in meeting the simple test of fairness. Voters' rolls did not exist, parties certainly denied their competitors free access to 'their' territory, and in certain provinces party activists set up 'pirate' polling stations, and the calculation of results was a very opaque process.

The mixed verdict implicit in agency evaluations, according to Lodge (1999:6), reflected perceptions of an election which was characterised by major administrative shortcomings, coercive behaviour by political parties, and general exhilaration among voters. Whatever the imperfections, the election and its outcome were generally regarded as legitimate by citizens.

For the 1994 election in South Africa, the vast majority of voters were not merely registering their identity, expressing communal solidarity or responding to communal pressures, race-based fears or prejudices. It was certain that for a large proportion of voters, their values, perceived performances, had important effects on partisan support; effects that could not be merely reduced to race or ethnicity. These included, (Mattes, 1995:4):

> "Voters' economic and social status; voters' ideologies; voters' retrospective judgement of past incumbent and party performance; and voters' perception of the most pressing problems facing the nation and the parties best able to deal with these problems".

South Africa's first ever non-racial and multi-party election was perhaps the most significant global event of 1994. With the election result universally accepted and the triumphal inauguration of President Mandela on May 10, 1994 (with Thabo Mbeki and FW De Klerk as

his two vice-presidents), South Africa moved peacefully, almost miraculously it seemed, into a new post-election democratic world.

"The election was… a founding election, from which a new polity emerged" (Johnson and Schlemmer, 1996:11).

6.3.1.1 Principles of Electoral Law and Regulations

National electoral legislation and regulations are essential to set the statutory framework and to put in place the management structures to ensure the conduct of free and fair elections in South Africa or any other country. Several basic principles must underpin the legislation and regulations (Camay and Gordon, 1996:61):

- they must be fully consistent with the new Constitution (Act 108 of 1996) and the Bill of Rights;

- they must reinforce the rights and responsibilities prescribed in the constitution;

- they should be based on universal democratic values and principles such as freedom of association, assembly and speech;

- they must be based on a national election policy based on internationally accepted good practice and on South Africa's election experience since 1994;

- they should have a sense of permanence;

- changes to the law and regulations should be permitted after an indepth analysis against specific criteria, and no changes should be permitted within a fixed period prior to an election;

- electoral policy, law and regulations should be formulated in consultation with the various stakeholders, including election authorities at all levels, political parties, non-governmental organisations (NGO's) and communities themselves.

Electoral law and regulations, together with the electoral system, have to take minorities into consideration.

6.3.1.2   Minorities and electoral systems

Electoral systems have adopted methods to accommodate minorities in an effort to protect their interests. These methods include the following (Smith, 1960:109):

- limitation of the franchise: In South Africa there is no limitations. All citizens from the age of 18 may vote.

- communal representation: Communal representation does not apply in South Africa.

- 'gerrymandering' of constituencies: Constituencies are not used in South Africa; and

- Method of voting: Very important, as it is the adoption of a method of voting which gives minorities a reasonable chance of some kind of representation.

Proportional representation creates new avenues of political power for the people of 'colour' and the poor. Two groups traditionally denied fair access to power (Richie et al., www.barnsdle.demon.co.uk/vote/empower.htm).

Proportional representation ensures that any grouping of like-minded people – minorities and majorities – gets a fair share of power and representation in the legislative bodies of the state.

The method of voting can also be adopted in order to give some protection to minorities. For example, the list systems of voting, based on proportional representation, are more easily adapted for use in semi-literate communities, such as South Africa (Smith, 1960:115).

The easiest way of giving organised minorities in underdeveloped countries some chance at the polls, without adopting a form of proportional representation, is the system of a single-transferable vote (Smith, 1960:116).

Under this system, each elector can cast one vote only in a multi-member constituency. If voting is largely on communal lines, a minority of about one quarter of the electorate, would, with proper organisation, stand to gain one seat in a four-member constituency and would have a very good chance of gaining one seat in a three-member constituency. A system of this kind is as easy for the illiterate voter to understand, as simple plurality voting in a single-

member constituency. There has, however, been little use of the single non-transferable vote in parliamentary elections.

6.3.2   Electoral System Designed for the 1994 and 1999 National Elections.

South Africa's first democratic election moved away from a system of majority representation (first-past-the-post) to a system of proportional representation. The election of 27 April, 1994, was important as it had to serve as a guiding factor or template for the 1999 elections. The party list system of proportional representation was implemented at national and at regional levels, as well as the proportional allocation of seats.

The election took place for the allocation of 400 members for the National Assembly and 90 members of the Senate, that is, for the two houses of the national parliament. In addition to this a parallel election for the composition of the nine regional parliaments took place[14].

In compliance with Section 40(1) of the Constitution, Act 108 of 1996, the National Assembly was elected in accordance with the system of proportional representation, which provides that the number of seats a party is entitled to in parliament is directly related to the support it received in an election. Thus, a party that wins 20% of the votes in an election also receives 20% of the seats in parliament. In order to promote the nation-wide distribution of seats, half of the members of the National Assembly (200) were elected on a national list and the other half on a regional list.

In this election, votes were cast in favour of political parties, and not candidates. For participation in the election the different political parties had to submit candidate lists (national and regional lists), which collectively contained the names of no more than 400 candidates in a definite order of preference, fixed by the party. The candidate lists of a party consisted of a national as well as a regional list; or a list of every region (of Schedule 2(4) of the Constitution). At least 90% of the candidates on the provincial (or regional) lists have to be inhabitants of that territory. If the candidate lists of a party contained less than the number of seats for which it qualified, the number of seats for that party decreased accordingly, and the surplus seats were distributed proportionally among the other parties (cf. Rautenbach and Malherbe, 1994:19).

---

[14] **See appendix H for a diagram of South Africa's newly-designed constitutional dispensation.**

6.3.2.1   The National Executive:

The Executive is the authority with the power to execute laws and other legal rules.   The National Executive consists of the President, the Cabinet (ministers) and deputy ministers. The President is elected by the National Assembly[15] and the office bearers are elected in a joint sitting of the National Assembly and the Senate.   The President is elected by an ordinary majority of votes cast, that is, at least half of the votes plus one.   In connection with the Deputy Presidents, the following arrangement applies: Each party must have at least 80 seats in the National Assembly to qualify for the appointment of a Deputy President.   If only one party has 80 seats, or no party has 80 seats, the two largest parties each appoint a Deputy President.   The cabinet forms a Government of National Unity and consists of a President, the Deputy Presidents and no more than 27 ministers.   All parties with at least 20 seats in the National Assembly qualify for one or more portfolios in the cabinet.   The number of portfolios held by a party are calculated according to the following formula: A party receives a number of portfolios in ratio to the number of seats that the party holds in the National Assembly, against the number of seats held by other parties participating in the Cabinet or the Government of National Unity.   A party is also entitled to one or more Deputy Ministers in the same proportion and according to the same formula as that according to which portfolios in the Cabinet are allocated to a party (cf. Chapter 6 of the Constitution, Act 108 of 1996).

6.3.2.2   The National Council of Provinces (NCOP)

As already mentioned, there are 90 delegates in the NCOP. The NCOP was formerly the Senate.   There is a single delegation from each of the nine provinces and each delegation consists of ten delegates. The ten delegates, according to Wessels (1999:166), are:

(a) four special delegates consisting of:
  i.   the Premier of the province or, if the premier is not available, any member of the provincial legislature designated by the Premier either generally or for any specific business before the National Council of Provinces;

---

[15] **The procedure followed when electing a president is stated in the Constituton, Act 108 of 1996. Section 86(2) stipulates that the president of the Constitutional Court must preside over the election of the president or designate other judges to do so. The procedure set out in part A of Schedule 3 states that, if more than one candidate is nominated, a vote must be taken at the meeting by secret ballot; each member should be present, or if it is a meeting of National Council of Provinces, each province should be represented, at the meeting. The delegate may cast one vote; and the person presiding must declare elected the candidate who receives a majority of the votes.**

ii.   three other special delegates; and

(b) six permanent delegates appointed in terms of Section 61(2) of the constitution, Act 108 of 1996.

It is important to note, as Wessels (1999:166) states, that where the National Assembly consists of direct representatives of political parties, delegates of the NCOP represent the legislatures in each province; and the delegates should be nominated by the province and not simply elected by the members of the NCOP. This means they represent their provinces and do not represent the individual voters directly.

In this system, in essence, voters chose between parties not personalities, though parties may emphasise the qualities of individual leaders in their electioneering, as was the case with the ANC and the NP in 1994 (Lodge, 1999:20).

Seven parties enjoyed representation in the 1994-99 National Assembly: the ANC (242 members), the National Party (NP, 82), the IFP (43), the Freedom Front (FF, 9), the Democratic Party (DP, 7), the PAC (5), and the ACDP (2) (Lodge, 1999:21).

6.3.2.3   The Provincial Legislatures

The electoral system used for the provincial legislature and the provincial executive is as follows:

6.3.2.3.1   The Provincial Legislature:

Section 125(1) of the Constitution stipulates that a legislature must be elected, with the power to legislate for each of the nine provinces. A provincial legislature consists of at least 30 and at the most 100 members elected according to the system of proportional representation (as stipulated in Schedule 2 of the Constitution and the Electoral Act, 202 of 1993). The same voters and parties entitled to participate in elections for the National Assembly may participate in an election for a provincial legislature. The number of members for every provincial legislature is laid down by the Independent Electoral Commission.

Members of a provincial legislature have to satisfy the same requirements as members of the National Assembly, but at least 90% of the candidates on a party's provincial list must reside in that province. A member who leaves one party for another, must vacate his or her seat and

such a vacancy is filled by the party to which the member who vacated the seat originally belonged (cf. Rautenbach and Malherbe, 1994:48).

6.3.2.3.2   The Provincial Executive:

The executive of the province, in other words, the power to dispense provincial laws within the province, is vested in a Premier who exercises his or her powers in consultation with other members of the provincial executive. Each provincial legislature elects one of its members as Premier. The provincial executive consists of the Premier as Chairperson and at the most ten proportionally divided among the parties, which had each obtained at least 10% of the seats in the provincial legislature.

For the election, voters used two ballot papers, one for the Assembly and one for the province in which they live. Seats were allocated to each party in accordance with its share of the vote, using the 'Droop' quota[16], with surplus seats resulting from fractional shares of the vote distributed through the highest remainder method[17]. After the election, the Assembly elected a president and the provinces elected premiers. In practice both in 1994, and in 1999, most parties nominated their candidates for president and premiers before the poll. A National Council of Provinces (NCOP) functions as a second house of parliament in Cape Town; its 90 members – ten for each province – are not elected directly but are nominated by the provincial assemblies (Lodge, 1999:19).

6.3.3   Election Outcome:

> "The people spoke on 26, 27, and 28 April, 1994, and in overwhelming numbers they
> said 'Mandela'" (Reynolds, 1994:184).

By any objective standard the African National Congress won a resounding electoral victory in the first non-racial democratic parliamentary elections of South Africa. According to Reynolds (1994:184), in the face of the ANC's victory, FW De Klerk felt some satisfaction

---

[16] **Droop quota: Formula used to determine the award of seats in the list proportional representation system. The quota is calculated by dividing the total votes, by the number of seats plus one and then, adding one to the product. The party with the highest remainder of votes once this calculation has been completed may receive an extra seat if, that is, not all the seats have been allocated because of the fractions involved. On the other hand the extra seat might go to a party which fails to meet the quota but which has a higher number of votes than the highest remainder of parties which satisfy the quota.**

[17] **Highest remainder method: seats are awarded sequentially to parties having the highest 'average' number of votes per seat until the seats are allocated (Lijphart, 1994: 153).**

and basked in the knowledge that his party, the NP, had "successfully pulled off an illusion of Houdini-like quality to transform themselves into a majority non-white party, in respect to their electoral base, and retained a high degree of influence in the new democratic dispensation". The simple mathematical fact that only 15% of South Africa's electorate was white and that De Klerk's National Party managed to win over 20% of the popular vote immediately said that many people who had never voted Nationalist before, because they had never been allowed to vote before, did so in spite of years of repressive and blatantly racist apartheid legislation directed at them (Reynolds, 1994:185).

Chief Mangosuthu Buthelezi's Inkatha Freedom Party also felt well pleased with their efforts. Having rejoined the electoral process at such a late stage, they only had five days to campaign officially.

Even General Constand Viljoen's Freedom Front could take some comfort in their fourth place, despite the fact that their 400 000 plus (white) votes only translated to 2% (and 9 seats) of the national total. In the most important respect, General Viljoen achieved all he set out to do. According to Reynolds (1994:185), he split the white Right down the middle, thus mitigating the danger of Afrikaner anti-system violence, bred from exclusion, which certainly was a more pressing possibility before he brought his moderates into the democratic process.

The only clear losers in this watershed election were the minor parties, as shown in the table below.

In consequence, and in contrast to many 'emergent democracies', in 1994 South Africa's political parties enjoyed an unusual depth of experience and organisation, both of which were evident in the relative sophistication of election campaigning, and in the extent – in the case of former liberation movements – to which electioneering depended on high levels of activist mobilisation (Lodge, 1999:22).

Table 1. The results of the 1994 election were as follows (Wessels, 1999:241; De Klerk, 1998:335; Reynolds, 1994:183):

Party	Votes	Seats	%
ANC	12,237,655	252 seats	62.65%
NP	3,983,690	82 seats	20.39%
IFP	2,058,294	43 seats	10.54%
FF	424,555	9 seats	2.17%
DP	338,426	7 seats	1.73%
PAC	243,478	5 seats	1.25%
ACDP	88,104	2 seats	0.45%
AMP	34,466	0	0.18%
AMCP	27,690	0	0.14%
DPSA	19,451	0	0.10%
FP	17,663	0	0.09%
MF	13,433	0	0.07%
SOCCER	10,575	0	0.05%
ADM	9,886	0	0.05%
WRPP	6,434	0	0.03%
XPP	6,320	0	0.03%
KISS	5,916	0	0.03%
WLP	4,169	0	0.02%
LUSO-SA	3,293	0	0.02%
Total	19,533,498	400 seats	100%

Overall, the most striking fact was the size and extent of the ANC's sweep and the fact that its vote varied relatively little between the regional and national ballots.

Undoubtedly, most of its voters saw a vote for the ANC as a matter of principle, even of ideology. Though anecdotal evidence suggests that the ANC also benefited considerably from split-ticket voting by supporters of small parties, particularly the Democratic Party (DP) (Johnson and Schlemmer, 1996:307).

A "coalition" Government of National Unity was installed. The government's ambitious Reconstruction and Development Programme (RDP) foresaw an immense and wide-ranging effort in the fields of education, housing, health and economic development, and found virtually unanimous support.

Upon his election as President of the Republic of South Africa, Mr Nelson Mandela made the following statement:

> " My government's commitment to create a people-centred society of liberty, binds us to the pursuit of goals of freedom from want, freedom from hunger, freedom from deprivation, freedom from ignorance, freedom from suppression and freedom from fear. These freedoms are fundamental to the guarantee of human dignity" (Mandela, 1994:9).

The Government of National Unity did not survive the five years it was expected to cover. In May 1996, FW De Klerk told a press conference at parliament that he was taking the NP out of cabinet. It was clear that it was not a unanimous decision, because De Klerk (1998:360) states that there was tension and strong divergent views on the question of the National Party's continued role within the Government of National Unity (GNU). The one group was convinced that the time had come for the NP to leave the GNU and the other group strongly felt that they should not leave. A compromise had to be reached in favour of leaving. That apparently, would give the party a chance to develop as a fully-fledged opposition party. The NP had to learn the ropes of opposition politics while in the meantime sitting in cabinet, hence the decision (Reynolds, 1999:6).

The first five years was a dramatic story of intense change, as a radically restructured parliament cut its teeth as part of a wholly restructured system of constitutional government. South Africa's polity was truly reborn. The constitution, not parliament, became the supreme law of the country and was applied horizontally as well as vertically; that is to say, it was applicable between individuals as well as between individuals and the state (Reynolds, 1999:2).

The new South Africa is a democratic country, constitutionally based on liberal-democratic principles. According to Heywood (1997:28), "a liberal democracy is a form of democratic rule that balances the principle of limited government against the ideal of popular consent. Its 'liberal' features are reflected in a network of internal and external checks on government, which are designed to guarantee liberty and afford citizens protection against the state. Its

'democratic' character is based on a system of regular and competitive elections, conducted on the basis of universal suffrage and political equality".

The first term of government, 1994 –1999, put great milestones on the path of transformation in the following way:

- the final constitution which is the supreme law of the country and which puts emphasis on unity among South Africans:
  According to Wessels (2000:2) the acceptance of the Constitution of the Republic of South Africa, Act 108 of 1996, represented a fundamental split with the past and therefore serves as a bridge between the "old" and "new" South Africa. The Interim Constitution, Act 200 of 1993, states:

  "This Constitution provides a historic bridge between the past of a deeply-divided society characterised by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful coexistence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex".

- the Reconstruction and Development Programme (RDP) which immediately became a policy document for the political, economic and social transformation of South Africa: The "new" South Africa was driven by a commitment towards reconstruction and development; transformation with the aim of "deracialisation" as stipulated in the preamble of the final constitution.

  Wessels (2000:1) states that Thabo Mbeki, South Africa's current President, could also sense the opportunity for South Africa to shift away from political and economic identification in terms of race, colour and ethnicity:

  "We finally make a break with a past of three centuries of colonialism and apartheid when race and colour were a fundamental, all-encompassing condition of existence" (Mbeki, 1999a:64).

- the government's macro economic strategy for Growth, Equity and Redistribution (GEAR): giving an indication of government's shift towards an approach of a market economy or the free market system;

- the style of government also implied a shift away from a classical form – "to govern", towards – "governance" (Wessels, 2001:1): To add to the idea of "governance", the constitution regulates in favour of "co-operative governance" – which means "a model of governance, based on co-operation and partnerships between the spheres of government" (Tapscott, 1998:10-11).

"In 1999, electoral legitimacy represented a tougher political and administrative challenge because this was the most important election in terms of the free and fairness of it. The 1994 election was a turning point for South Africa, hence the flaws. It was a radical change and a learning curve. The 1999 elections had to ensure comparable but more eligible degrees of voter participation; to retain the impartiality of key institutions in a context in which the incumbent party was certain to win; to improve on administrative arrangements governing the conduct of the poll; and to encourage the kinds of political behaviour which would maximise freedom of choice" (Lodge, 1999:17).

Even in 1999, the ANC won the national elections. This time around, there was a great improvement in the DP votes. The DP became the official opposition party. The NP, which had then changed to the New National Party (NNP), lost some of its votes to other parties. President Mandela's predecessor Mr Thabo Mbeki, became South Africa's second democratically elected president (Lodge, 1999:17). Mandela's reasons for retirement were his health and mainly his respect for democratic principles. He did not want to cling to power as is the case with most African leaders. He wanted to lead by example, with the belief that his predecessors would continue to uphold democracy and its demands.

Table 2. Results of the South African National Assembly Elections, June 1999, according to Reynolds (1999:175):

Party	Votes	Seats	National %
ANC	10,601,330	266	66,35%
DP	1,527,337	38	9,56%
IFP	1,371,477	34	8,58%
NNP	1,098,215	28	6,87%
UDM	546,790	14	3,42%
ACDP	228,975	6	1,43%
FF	127,217	3	0,80%
UCDP	125,280	3	0,78%
PAC	113,125	3	0,71%
FA	86,704	2	0,54%
MF	48,277	1	0,30%
AEB	46,292	1	0,29%
Azapo	27,257	1	0,17%
AITUP	10,611	0	0,07%
GPGP	9,193	0	0,06%
SOPA	9,062	0	0,06%
Total valid votes	15,977	400	100%

6.4   LOCAL GOVERNEMENT ELECTIONS OF 1995/6 AND 2000

6.4.1   Preparations for the Elections

For an election to take place, a lot of preparations have to be done. Section 11 of the Local Government: Municipal Electoral Act, 27 of 2000, stipulates that:

(1) When an election has been called, the Commission must –

(a) compile a timetable for the election; and

(b) publish the election timetable in the Government Gazette, or, in the case of a by-election, in the Provincial Gazette of the province concerned.

In the case of the local government elections of 5 December 2000, the Minister of Provincial and Local Government, Sydney Mufamadi, announced the election date on October 10, 2000. The election would take place on December 5, 2000 throughout the country. This is also supported by Section 24(2) of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998). This announcement was made after consultation with the Independent Electoral Commission (IEC) and was published in the Government Gazette no. 21620 of October 10, 2000. The IEC also published the election timetable in the Government Gazette, no.21645 of October 10, 2000.

A national, common-voters' roll, based on universal adult franchise, and updated for the election, was declared and certified at a press conference in Pretoria, on October 12, 2000. The roll contained 18 438 002 voters' records and represented a monumental milestone in South Africa's electoral history. The bulk of the registration took place over only three weekends at 14 500 voting stations across the country.

6.4.2   Contesting the Elections

To contest the elections, there are procedures that have to be followed for political parties and also for ward candidates and these are stated in the Local Government: Municipal Electoral Act, 27 of 2000:

6.4.2.1   Parties Contesting Elections

Section 13 of the Act stipulates:
(1) Only registered parties may contest an election, and may contest the election either by –
    (a) submitting a party list containing names of candidates to stand as its representatives for the election of members of the council to proportionally represent parties in the council:
    (b) nominating a ward candidate to stand as a representative of the party in a ward; or
    (c) doing both.

A party may contest elections in terms of (1)(a), (b) or (c) only, if the party has submitted to the office of the Commission's local representative no later than the date stated in the timetable. For these elections of December 5, 2000, the deadline for submission was October 19, 2000.

A prescribed format required a notice of the party's intention to contest the election; party list (in order of preference); and a deposit equal to a prescribed amount (bank guaranteed cheques).

If it is an election in a district municipality, which has one or more district management areas, a party intending to contest the election in such an area, must submit a separate party list for the election in that area.

Documents to be attached to a party list, are:
- a prescribed acceptance of nomination signed by each candidate; and,
- a certified copy of the identification document (ID) (page with photo, name and ID number)

Failure do to the above, requires the Commission to notify the party in writing and allow the party to submit the outstanding documents to the office of the Commission's local representative, by no later than a date stated in the election timetable, in particular, October 19, 2000.

Finally, the Commission must remove from the party list, the name of the candidate who did not comply. Failure to comply, such as missing the deadline and signature irregularities (forgery), leads to disqualification.

During this process, if a candidate appears on more than one party list, the Municipal Election Officer (MEO) must notify concerned parties for administrative purposes.

6.4.2.2 Ward Candidate Nomination

Section 16 of the Electoral Act also stipulates that a person may be nominated to contest an election in a ward by a registered party; or be a person who is an ordinarily resident in the municipality in which that ward falls; and registered as a voter on that municipality's segment of the voters' roll.

For an independent ward candidate, a prescribed form with at least 50 signatures, whose names appear on the segment of the voters' roll for any voting district in the ward, should be submitted, together with a prescribed acceptance of nomination signed by the ward candidate and a copy of the identification document (ID) and a deposit.

After registration and submission of nomination lists, campaigning goes on a full-blown capacity throughout the country.

6.4.3   Campaigning and Conduct

Strengthening democracy in South Africa depends on a growing political maturity amongst the parties and their increasing tolerance of each other as rightful players on an open and even political field. It is essential for political parties, as main stakeholders, to adjust to political transformation.

6.4.3.1   Electoral Code of Conduct

The purpose of the Electoral Code of Conduct is to promote conditions conducive to free and fair elections. These include tolerance of democratic political activity, free political campaigning and open public debate (IEC, 2000:44).

Every registered political party, together with those who hold office in it, its representatives, candidates, members and supporters, is to comply with the Electoral Code of Conduct and any applicable electoral laws.

Every registered party and every candidate must publicly state that everyone has the right to:

- freely express their political beliefs and opinions;
- challenge and debate the political beliefs and opinions of others;
- publish and distribute election and campaign materials, including notices and advertisements;
- lawfully erect banners, billboards, placards and posters;
- canvass support for a party or candidate;
- recruit members for a party;
- hold public meetings; and
- travel to and attend public meetings (IEC, 2000:44).

Every registered party and every candidate must:

- publicly condemn any action that may undermine the free and fair conduct of elections;
- accept the result of an election or challenge the result in a court;
- liaise with other parties contesting an election and endeavour to ensure that they do not arrange a public political event at the same time and place;
- take all reasonable steps to ensure that women are free to engage in any political activities;
- recognise the authority of the Commission in the conduct of an election;
- assure voters of the Commission's impartiality; and
- respect the role of the media and take all reasonable steps to ensure that journalists are not subjected to harassment, intimidation, hazard, threats or physical assault by any of their representatives or supporters (IEC, 2000:44).

No registered party or candidate may:

- prevent access by journalists to public political meetings, marches, demonstrations and rallies;
- use language or act in a way that may provoke violence or the intimidation of candidates, members of parties, representatives or supporters of parties or candidates, or voters; and
- publish false or defamatory allegations in connection with an election in respect of a party, its candidates, representatives or members, or a candidate or that candidate's representatives (IEC, 2000:44).

No person may:

- offer any inducement or reward to another person, to join or not to join any party, to attend or not to attend any public meeting, march, demonstration, rally or other public political event, to vote or not to vote, or to vote or not to vote in any particular way, and to refuse any nomination as a candidate or to withdraw as a candidate;
- carry and display arms or weapons at a political meeting or in a march, demonstration, rally or other public political events;

- unreasonably prevent any other person's access to voters for the purpose of voter education, collecting signatures, recruiting members, raising funds or canvassing support for a party or candidate; and

- deface or unlawfully remove or destroy the billboards, placards, posters or any other election materials of a party or candidate; and

- abuse a position of power, privilege or influence to influence the conduct or outcome of an election" (IEC, 2000:44).

6.4.3.2   Campaigning for the Local Government Elections of December 5, 2000

Throughout South Africa, political parties and independent candidates campaigned for support for the local government elections. There were 690 political parties and independent candidates registered. According to Chris Mepha, Free State Provincial Electoral Officer, 3.4% of the candidates were disqualified due to non-compliance with the prescribed requirements (IEC Press Conference, December 4, 2000).

One third of the total number of candidates, were women, according to Brigalia Bam, who is the Chairperson of the IEC. This was applauded because women are said to be the ones who are directly affected by poor service delivery. This platform would give them an opportunity to be practical and to follow up on issues of concern within their societies (Radio Lesedi, November 6, 2000).

In the Free State in particular, 67 independent candidates were registered to contest the local government elections, and 11 of those were based in Bloemfontein.   Political parties registered to contest the election were 12. Among those, the Alliance 2000, the African National Congress (ANC), the Democratic Alliance (DA), the Inkhatha Freedom Party (IFP), the Pan Africanist Congress of Azania (PAC), the United Democratic Movement (UDM) and the Dikwankwetla Party (Radio Lesedi, November 6, 2000).

Competition was very strong among political parties. Some of the independents were not well known among their own communities and others were inexperienced when it came to service delivery and the general management of local government.

The demarcation process reduced the municipalities from 843 to 284. That in itself brought more competition among political parties, for fewer seats. Fewer seats to contest for, in return, caused conflict within political parties. This resulted in more movement of members

from one party to another, in search of better positions on the party lists. The DA came into existence around this period. The DA is a coalition of three parties, the New National Party (NNP), the Democratic Party (DP), which is the current official opposition party in Parliament, and the Federal Alliance (FA) (Radio Lesedi, November 6, 2000).

The main issues of focus during the campaign were, among others, HIV/AIDS and the provision of AZT; delivery of basic services such as water, garbage collection and electricity; corruption and crime in society; and the powers of traditional leaders. The ANC focussed on basic services, while the DA focussed on HIV/AIDS and AZT provision.
The IFP, which was contesting in KwaZulu Natal mainly, concentrated on the powers of traditional leaders (City Press, October 22,2000:2).

Some parties like the Dikwankwetla Party, which is based in Qwa-Qwa in the Free State, contested the local government elections mainly in their traditional areas of strength or support.

- **Independent Candidates**

    The intention of the new system of local government is to bring democracy closer to the people; to have councillors that are accountable to the electorate or communities; to have councillors who know and understand their needs, concerns and interests better; representatives who live amongst them and who are accessible. The system gave the electorate an opportunity to elect individuals, not just parties. The system allows for more representation and independent candidates were free to campaign for support.

    The Human Sciences Research Council (HSRC) conducted a survey on the local government elections and the result was that ANC support was at 58%, and the support for the DA was at 12%, nationally. The HSRC also found that trust in the national government had fallen from 60% to 43% and that of local government from 48% to 33% since the last poll in 1999 (Sunday Times, November 26, 2000:20).

    Coming back to campaigning for the local government elections of 5 December, 2000, political parties took off to launch their manifestos (City Press, October 22,2000:2).

The ANC launched its manifesto in the Karoo, in the Western Cape, two weeks earlier than all the other parties. During the launch of the ANC's manifesto, President Thabo Mbeki promised predominantly rural and poor residents of the area the minimum of free water and electricity.

The DA and PAC launched their manifestos on the same day, but in different areas. The DA launched their manifesto in Soweto. The DA's Chief Director of Policy, Shaun Vorster, said the party would campaign with a "comprehensive rescue package" for the six unicities, which would see the revival of local government. As part of the election platform, the Alliance promised to provide anti-retroviral therapy (AZT) to HIV-positive pregnant women and rape survivors in every municipality it won (Sunday Times, October 22, 2000).

The PAC launched its manifesto in Tembisa. Its campaign focused on countering the promises made by the ANC. The PAC also said it would bring about "quick, fair, and just restitution to those who have been dispossessed of their land" (City Press, October 22, 2000:2).

The UDM also launched its manifesto. The party said it would, in its campaign, prioritise local economic development programmes, which would bring about economic growth at local level. The party said, a "proper balance" between the roles of elected municipal functionaries and traditional structures, had to be found (City Press, October 22, 2000:2).

The IFP, which was contesting the local government elections in KwaZulu Natal, launched its campaign in Durban, amid fears by the party that the elections would be complicated for its grassroots support.

IFP national spokesperson, Rev. Musa Zondi, said that the manifesto would focus on the needs of the people and what South Africa needs, to take it forward (City Press, October 22, 2000:2).

In general, the campaigning period was peaceful, free and fair throughout the country.

Two days before the voting date the race in most major cities emerged as one between the ANC and the DA (City Press, December 3, 2000:2).

At the same time, there was a deep sense of apathy among black voters in urban areas, and that had been attributed to the perception that the ruling party, despite its apparent good intentions, had failed to live up to expectations on many fronts. Like many other areas, township roads were in a poor state; blocked sewerage was a common sight; there was uncollected garbage and health problems. These issues posed a daily reality in Soweto, KwaMashu, Mangaung and Langa (City Press, December 3, 2000:8).

In Pretoria, Defence Minister Mosioua "Terror" Lekota, former national chairperson of the ANC, urged the party leadership to serve the people with honesty and to fulfil the promises the party made when it took over government in 1994. Lekota said that the ANC was prepared to root out those local government candidates who did not want to work for the people and their constituencies (City Press, December 3, 2000:2).

As much as campaigning was going on, so was voter education. The electoral system was going to be more complex and therefore it was even more important that the electorate be educated on the system to avoid unnecessary spoils.

6.4.4 The Electoral System used for the Local Government Election of December 5, 2000, in South Africa

The aim of this section is to give a clearer understanding of what electoral systems are and how the calculations for free elections are done. The aim is also to make the reader aware of the importance of electoral systems as mechanisms of democratic governance, because of the weight they carry in determining the direction elections take.

The electoral system relates to the context in which councillors are elected, for example, whether according to wards or by some other system. According to Craythorne (1997:122), traditionally, large South African municipalities held elections according to wards, and smaller municipalities and apartheid institutions usually held elections 'at large', that is, without wards.

The world of local government has undergone dramatic changes in recent years, according to Krennerich and Nohlen (1998:53), and it is at the heart of the current restructuring process in many countries, including South Africa. As for newly-established democracies, opening up

local governments to free and fair electoral competition is regarded both as an integral part of democratising local government structures as well as an important step towards the consolidation of national democracy. Among them, South Africa is one of the prominent cases. Democratic elections have played a crucial role in the process of de-racialisation and democratisation of government structures at both local and national levels.

The change in the electoral system in South Africa commenced with the democratisation of the national and provincial levels of government. The negotiators of 1993 agreed that elections for these levels be held according to a particular system of proportional representation. The Local Government Transitional Act, 209 of 1993, provided for a mixed system in which 40% of councillors are elected according to the same system of proportional representation as applied to the elections for the national and provincial levels of government, and 60% of councillors are elected according to wards (Craythorne, 1997:123).

The technical aspects of elections and electoral systems are not easily understood. According to Krennerich and Nohlen (1998:53), this is largely because they are characterised by technical terms and mathematical formulae. These may be more complex at the local level, because local authorities are usually more heterogeneous, in terms of the number of inhabitants, size, structures, competences and functions.

The electoral system for the municipal elections, in South Africa, differs from the national and provincial elections, which were run on a party list system of proportional representation (PR). The percentage of votes a party received, determined the number of seats a party would receive. Political parties registered their candidates before the elections through 'closed' party lists. By closed, it is meant that the lists are decided on mainly by the leadership of a particular party only (Delimitation Guide, 2000:5).

The municipal elections consisted of a mixed electoral system of proportional representation (PR) and first-past-the-post (FPTP). The FPTP system relied on ward candidates winning the most votes cast in a ward. Wards would therefore need to be created. Ward candidates could stand as independent or party candidates.

The following diagram illustrates the electoral system used for the local government elections.

Electoral system

Local and metro councils

50% Ward councillors	|	50% PR councillors
	|	
Elected directly from wards	|	Top up to create overall
	|	proportionality

District councils

40% directly elected	|	60% indirectly elected
councillors	|	councillors
	|	
District residents vote for	|	Local municipalities appoint
Parties	|	representatives

(Municipal Demarcation Board, 1999:25/26)

Benefits of the new system of local government are:

- new functionally demarcated municipalities that will enhance viability, sustainability and the more effective utilisation of resources;

- new municipal structures allowing for a variety of council structures to suit provincial and local circumstances;

- an improved electoral system allowing for accurate representation of community interests;

- greater public participation in municipal affairs;

- a comprehensive system of integrated development planning for municipalities coupled with a performance management system;

- a new dispensation for the provision of municipal services and partnerships;

- sound financial management system and credit control measures to improve financial viability;

- measures for improved municipal administration;

- effective co-ordination between all spheres of government;

- access to the Local Government Transformation Programme (LGTP), a capacity building programme geared towards supporting and assisting municipalities;

- metropolitan municipalities are presented with opportunities of integrating cities and communities, providing services better through innovative service delivery approaches; and

- greater redirection of resources to rural development (Anon, 2000:5).

As indicated, the whole of South Africa has been divided into three categories of municipalities. In 2000 voters elected councillors for these three categories of municipalities. According to de Visser, Steytler and Mettler (2000:8), there are:

- o   6 Metropolitan municipal councils
- o   47 District municipal councils
- o   231 Local municipal councils

More detail about the three categories of municipalities has been provided here:

Metropolitan municipalities

The 6 metropolitan municipalities are: Johannesburg, Cape Town, Durban, Port Elizabeth, East Rand and Pretoria. The councils, as stated by de Visser, Steytler and Mettler (2000:8), consists of –

- 50% ward councillors (independent or nominated by a political party);

- 50% councillors that proportionally represent the parties, which participate in that municipality (PR councillors).

Local Municipalities

What a council in a local municipality consists of, as stated by de Visser, Steytler and Mettler (2000:8), is dependent on whether the municipality has wards or not. In general, local municipalities have wards. However, local municipalities that have fewer than seven councillors do not have wards.

- **Local municipalities** with wards: In local municipalities with wards, the municipal council consists of:

  - 50% wards councillors (independent or nominated by a political party);
  - 50% councillors that proportionally represent the parties which participate in that municipality (PR councillors).

- **Local Municipalities without wards**: In these municipalities, the council consists of PR councillors only.

District Municipalities

A district municipality covers the same area as the local municipalities within its district. In other words, a number of local municipalities together make up a district municipality.

- **District management areas:** In some parts of the country, huge areas of land are very sparsely populated and maintaining a local municipality in such an area would simply not be cost-effective. An example would be the Kruger National Park and parts of the Karoo, because there are too few taxpayers in those areas to sustain a local municipal administration. According to de Visser et al., (2000:8), those areas were declared by the Municipal Demarcation Board as District Management Areas (DMAs). There are at present only 26 DMAs throughout the country. A DMA is, governed by the district council only: there is no local municipality. People that live in a DMA have the right to vote for a party that represents the DMA on the district council. They therefore have two votes directly to the district council.

The function of a district municipality is to co-ordinate the activities in its area and to ensure development and services for the district as a whole (including any DMAs within its district). A district municipality must also exercise functions of a local municipality in case that local municipality does not have enough capacity to meet the needs of the local communities.

Because the activities of the district municipality affect all the residents of the entire district, every person that lives in the area of the district municipality is entitled to vote for the council of the district municipality as well.

District Councils consists of –

- 40% PR councillors (elected by all voters in the district area, including voters in a DMA); and
- 60% consisting of:

  - PR councillors elected by the voters in district management areas within the district, to represent that DMA in the district council; and
  - Councillors appointed by the local municipalities in the district to represent their local municipality in the district council.

Number of votes per voter

What the voter votes for and the number of votes he or she has, depends on whether the voter lives in a metropolitan municipality; a local municipality with wards; a local municipality without wards; or a district management area. The diagrams below (Section 6.4.4.1.2.and following) will outline the whole scenario:

6.4.4.1 Determining the Allocation of Seats[18]

How are votes translated into seats on the council? Different formulas are used for the allocation of seats to the various municipal councils. This part explains for every possible situation, how the votes are translated into seats. Here it is dealt with:

---

[18] **This portion on 'Determining the allocation of seats' has been take exactly as it is from De Visser et al., (2000:24-42) . This is because the processes demonstrates exactly what happened in the election of 5 December 2000.**

Elections in a metropolitan municipality;

Elections in a local municipality with wards;

Elections in a local municipality without wards;

Elections for district council;

(a) Number of seats for a party, representing the entire district;

(b) Number of seats for representative from DMAs or local municipalities;

(c) Number of seats for a party, representing the DMA;

(c) Election of local municipality's representatives to the district council.

6.4.4.1.1   Elections in a Metropolitan Municipality

Metro Council

50%	**50%**
Ward	**PR**
Councillors	**Councillors**

Election for a ward councillor: In the election for a ward councillor, according to de Visser, Steytler and Mettler (2000:24), the ward candidate who receives the most votes is the elected councillor for the ward. If two or more candidates receive an equal number of votes, the result will be determined by lot.

PR Elections: The allocation of seats to the parties that participated in the election for the PR seats in the council of a metropolitan municipality takes place in the four steps outlined below:

Step 1:   Determining the quota

A: To work out how many votes are needed for a party to win a PR seat on a metropolitan council, the following formula is used (fractions should be disregarded):

$$\text{Quota} = \frac{A}{B - C} + 1$$

A – represents the **total number of valid votes cast for all parties, that is:**

- all votes cast in the PR ballot; plus
- all votes cast in the ward ballot for ward candidates that represent parties.

B – represents the number of the seats in the metropolitan council

C – represents the number of independent ward councillors elected in the election.

Step 2:   Allocating seats

The allocation of seats to a party takes place according to the following formula:

$$\frac{\textbf{Votes cast for the party in the PR ballot + Votes cast for the party in the ward ballot*}}{\textbf{Quota}}$$

*Votes for the party's ward candidates

Examples as done by de Visser et al., (2000:25):

(1)   Quota for a seat on the council of Metropolitan Municipality A

Metropolitan Municipality A:

1 400 000 voters

70% turnout, which means that 980 000 voters voted (assume no rejected ballot papers)

200 council seats: 100 ward, 100 PR

40 ward elections won by independent ward candidates, 60 ward elections won by party aligned ward candidates

400 000 votes were cast for party aligned ward candidates

$$\textbf{Quota} = \frac{\textbf{980 000 + 400 000}}{\textbf{200 – 40}} + 1 = 8626$$

(2) **Allocating seats**

4 parties participated in the election for the council of Metropolitan Municipality A:

Party X: 260 000 PR votes

100 000 ward votes

15 ward councillors elected

$$\frac{260\ 000 + 100\ 000}{8626} = 41{,}73$$

Party Y: 245 000 PR votes

80 000 ward votes

9 ward councillors elected

$$\frac{245\ 000 + 80\ 000}{8626} = 37{,}67$$

Party Z: 200 000 PR votes

60 000 ward votes

8 ward councillors elected

$$\frac{200\ 000 + 60\ 000}{8626} = 30{,}14$$

Party Q: 275 000 PR votes

160 000 ward votes

28 ward councillors elected

$$\frac{275\ 000 + 160\ 000}{8626} = 50{,}42$$

Results: **Party X – 41 seats**

Party Y – 37 seats

Party Z – 30 seats

Party Q – 50 seats

158 seats

There are 160 'party seats' (all the PR seats + ward seats that were won by party aligned candidates), which means that 2 seats remain unallocated.

Step 3:   Allocating the remaining seats

It is possible that not all seats, belonging to parties in the council can be allocated to parties by applying the result of this formula, because, as stated by de Visser, Steytler and Mettler (2000:26), the formula can result in fractions of seats. In that case, the fractions of each party must be compared and the remaining seat must be allocated to the party that has the highest fraction. If more than one seat remain, one seat goes to the party with the highest fraction, one seat to the party with the second-highest fraction.

If the fraction of two or more parties are equal, the seat must be awarded to the party that received the most valid votes.

Example: Allocating the remaining seats

Fractions:

> **Party X -   ,73**
> **Party Y -   ,67**
> **Party Z -   ,14**
> **Party Q -   ,42**

The first remaining seat goes to Party X (highest fraction)
The second remaining seat goes to Party Y (second-highest fraction)

Results: Party X: 41 + 1 = 42 seats
Party Y: 37 + 1 = 38 seats
Party Z: = 30 seats
Party Q: = 50 seats
_____

160 seats

Step 4: **Deducting the ward councillors that represent parties**

The number of elected ward councillors that are aligned to the party must be deducted from the result of Step 3. This then gives the final number of seats to which a party is entitled.

Example: Deducting the ward councillors that represent parties

Final result:

Party X is entitled to 42 PR seats 'overall' and has 15 ward councillors elected. Therefore,

> **Party X: 42 – 15 = 27 PR seats**
> **Party Y: 38 – 9 = 29 PR seats**
> **Party Z: 30 – 8 = 22 PR seats**
> **Party Q: 50 – 28 = 22 PR seats**
> _____
>
> **100 seats**

Filling the seats:

The chief Electoral Officer determines who fills the PR seats from party lists, by taking from the party list a number of candidates that is equal to the number of seats a party is entitled to, starting with number one on the list. When a candidate is elected and assumes office, a vacancy on the party list arises.

According to de Visser, Steytler and Mettler (2000:27), a party may supplement, change or increase its list at any time. However, when a councillor vacates office after he or she has been elected from the PR list, the party concerned may supplement, change or increase its list by not later than 21-days after the councillor vacated office. Within 14 days after that 21 day period has expired, the Chief Electoral Officer must declare in writing whose name is at the top of the applicable party list and who will therefore fill the vacancy.

6.4.4.1.2   Elections in a Local Municipality With Wards
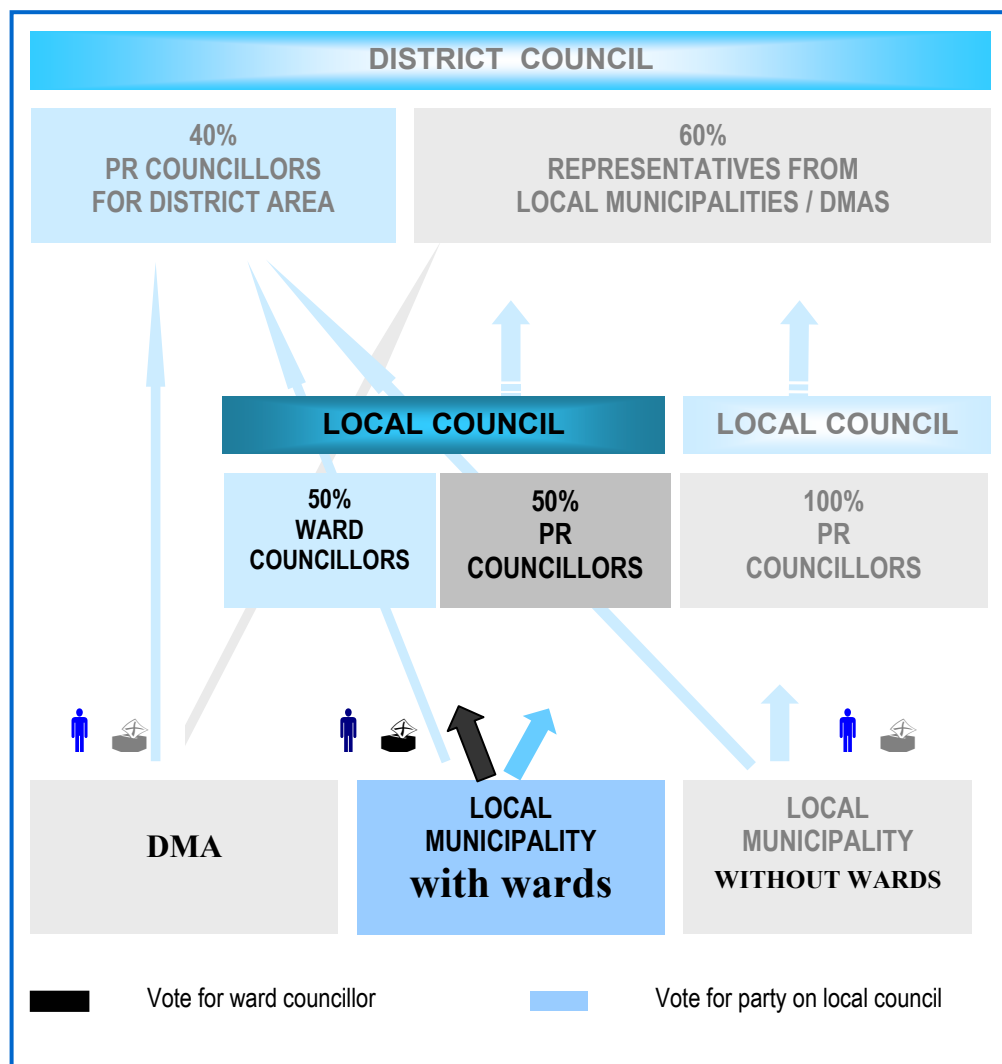
A ward councillor is appointed when he has received the most votes in that ward. If two or more candidates receive an equal number of votes, then the result will be determine by lot.

The allocation of seats to the parties that participated in the election for the PR seats in the council of a local municipality with wards, takes place as outlined in the four steps below:

Step 1:   **Determining the quota**

To work out how many votes are needed for a party to win a PR seat on a local council, the following formula is used (fractions should be disregarded):

$$\text{Quota} = \underline{\quad\quad A \quad\quad} + 1$$
$$B - C$$

A – represents the **total number of valid votes cast for all parties, that is:**

　　　All votes cast in the PR ballot; plus

　　　All votes cast in the ward ballot for ward candidates that represent

　　　the parties.

B – represents the number of seats in the local council

C – represents the number of independent ward councillors elected in the election.

Step 2:   Allocating the seats

The allocation of seats to a party takes place according to the following formula:

　　　　Votes cast for the party
　　　in the PR ballot + Votes cast
　　　for the party in the ward ballot*
　　　　　　Quota

*Votes for the party's ward candidates.

Step 3:   Allocating the remaining seats

It is possible that not all seats in the council can be allocated to the parties by applying the result of this formula as stated earlier, for the same reason that, the formula can result in fractions of seats. In that case, as in the previous example, the fractions of each party must be compared and the remaining seat must be allocated to the party with the highest fraction. If more than one seat remains, one seat goes to the party with the highest fraction.

If the fraction of two or more parties is equal, the seat must be awarded to the party that received the most valid votes (de Visser, Steytler and Mettler, 2000:29).

Step 4: **Deducting the ward councillors that represent parties**

The number of elected ward councillors that are aligned to the party must be deducted from the result of Step 3. This then gives the final number of seats to which a party is entitled.

Filling the PR seats is the responsibility of the Chief Electoral Officer as explained earlier. The Chief Electoral Officer determines who fills PR seats from party lists, by taking from the party list a number of candidates that is equal to the number of seats a party is entitled to, starting with number one on the list.

6.4.4.1.3 Elections in a Local Municipality Without Wards
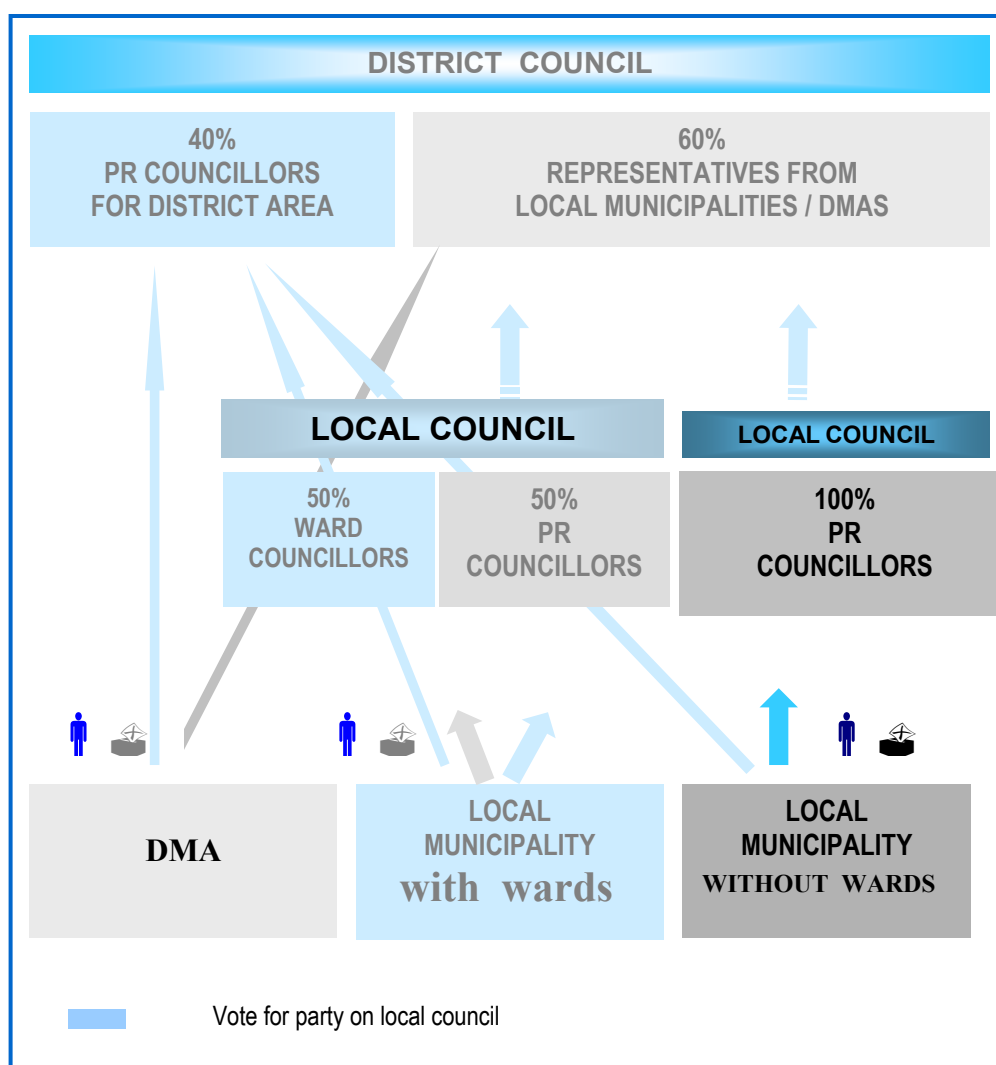
Local municipalities that have fewer than seven councillors do not have wards. The allocation of seats to the parties that participated in the election for the PR seats in a local council without wards, takes place in the three steps outlined below:

Step 1:   Determining the Quota

To work out how many votes are needed for a party to win a PR seat on a local council without wards, the following formula is used (fractions should be disregarded):

$$\text{Quota} = \frac{A}{B} + 1$$

A – represents the **total number of valid votes cast for all parties,** that is: all votes cast in the PR ballot; plus

B – represents the number of seats in the council

Example: Quota in Local Municipality C (without wards)
Local Municipality C:

9 000 voters, who all cast their votes (100% turnout)
6 council seats, all PR

$$\text{Quota} = \frac{9\ 000}{6} + 1 = 1501$$

Step 2:   Allocating seats

The allocation of seats to a party takes place according to the following formula:

$$\frac{\textbf{Votes cast for the party in the PR ballot + Votes cast for the party in the ward ballot*}}{\textbf{Quota}}$$

*Votes for the party's ward candidates.

Step 3:   Allocating the remaining seats

The allocation of the remaining seats is exactly as in the previous examples of Step 3 of Metropolitan Councils and Local Municipalities with ward allocations. The party with the highest fraction gets the seat.

6.4.4.1.4   Elections for a District Council

The first part of this section explains how to determine the number of seats for a party, which contests for the PR seats representing the entire district area on the district council. These seats make up 40% of the district council. The other 60% of the district council consists of representatives from the local municipalities in the district area and representatives of DMAs in the district area. The first are appointed by the council of the representative local municipalities after they have been elected and the latter are elected by the voters in the DMA on a PR basis. This will be discussed in the second part of this section.

- **Number of seats for a party representing the entire district on the district council**
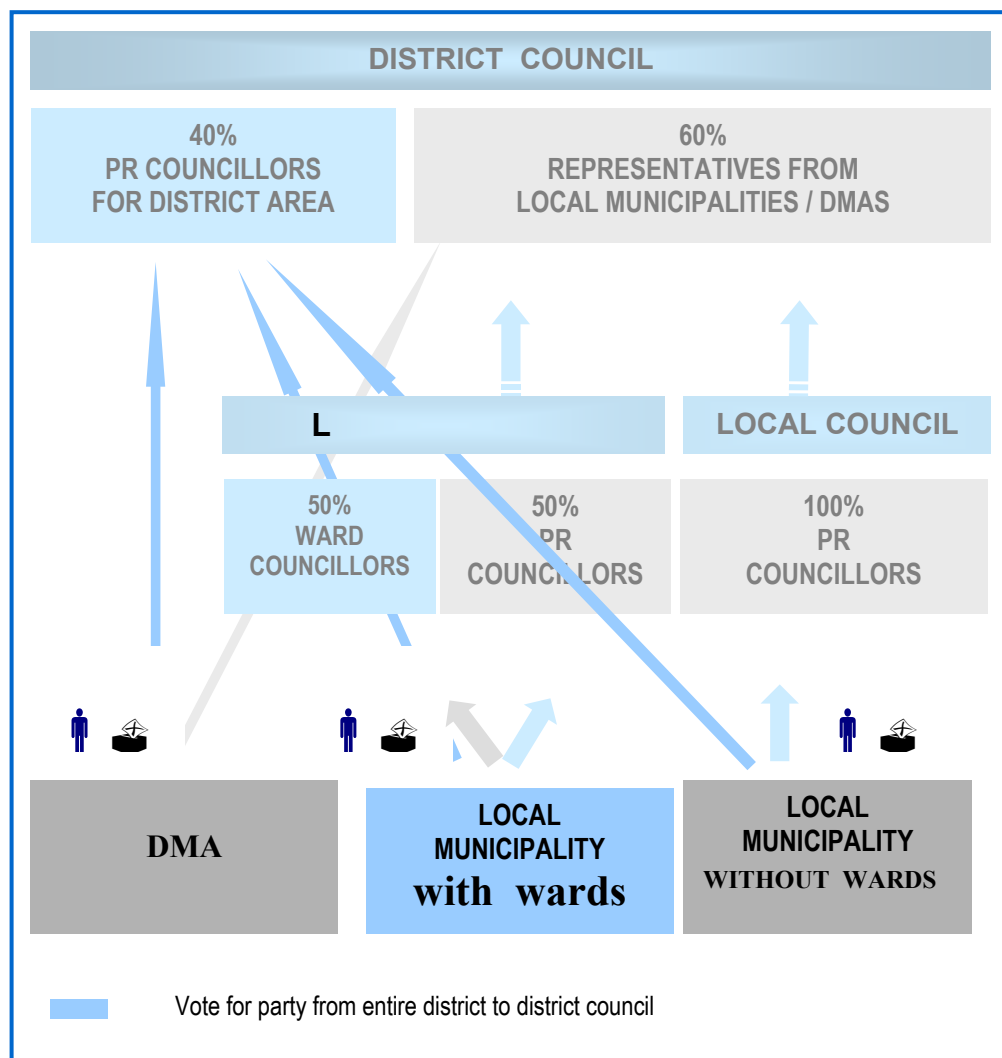
Step 1:   Determining the quota

The quota of votes for a PR seat (representing the entire district area) in the district council must be determined in accordance with the following formula:

$$\text{Quota} = \frac{\text{total number of valid votes cast for all parties}}{\text{Number of PR seats for the district area in the District Council*}} + 1$$

*= 40% of the total number of seats

Step 2:   Allocating seats

The allocation of seats to a party, is done by using the following formula:

$$\frac{\text{Total number of votes cast for the party}}{\text{Quota}}$$

In this case as well, the remaining seats are allocated as already discussed in the previous cases.

- **Number of seats for the representatives from DMAs or Local Municipalities to the District Council**

This part deals with a 60% segment of the district council, which consists of representatives from the local municipalities in the district area and representatives of DMAs in the district area. According to de Visser, Steytler and Mettler (2000:34), the first are appointed by the councils of the respective local municipalities after they have been elected and the latter are elected by the voters in the DMA on a PR basis.

- Number of seats for representatives from DMSs or local municipalities to the district council
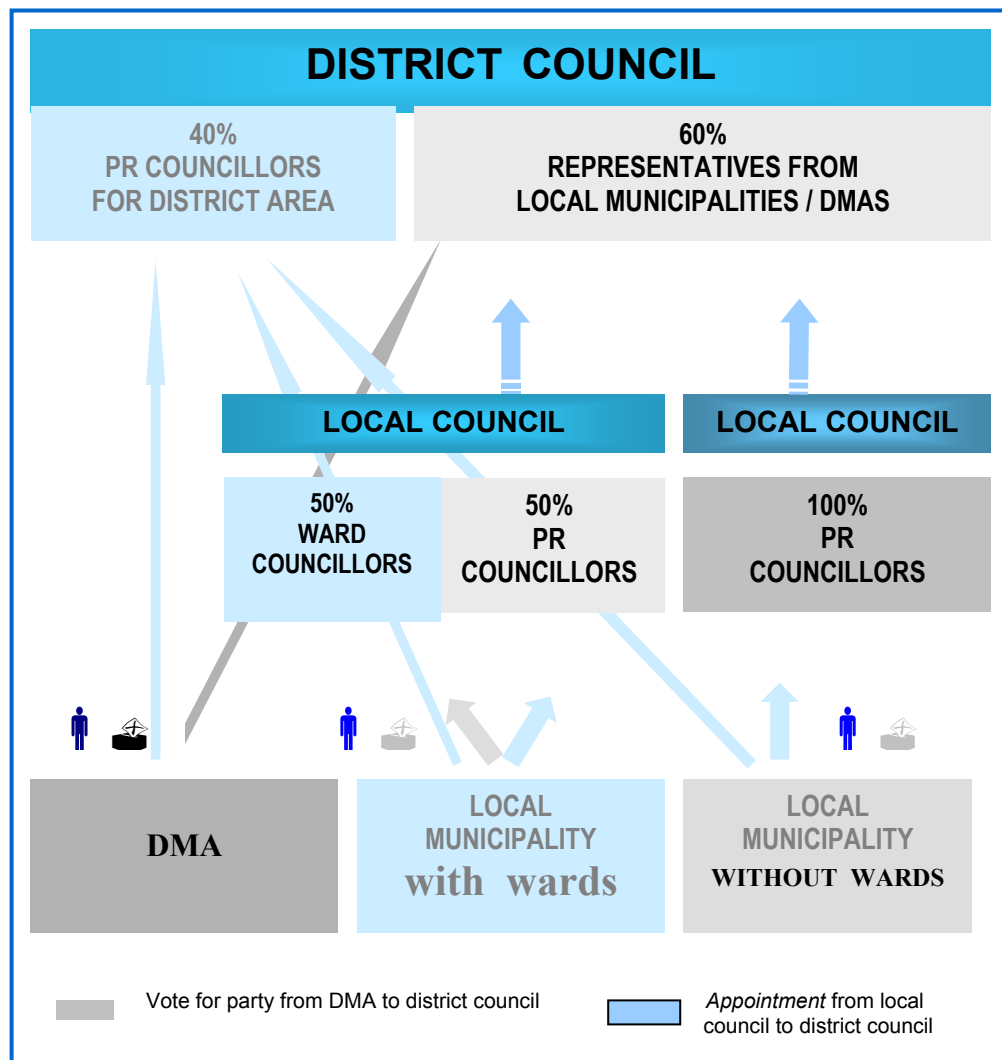
Before seats can be allocated to parties, representing a DMA or to councillors representing a local municipality on the 60% side of the district council, the IEC must first determine how many representatives a DMA or a municipality will have on the district council.

Once it is determined how many representatives a DMA or local municipality can send to the district council, the number of seats for that particular party can be determined. The number of representatives from a DMA or a local council is determined on the basis of the number of registered voters in the DMA or local municipality and takes place in three steps:

Step 1: Determining the quota of voters for DMA or a local municipality seat

The quota of registered voters that a DMA or a local municipality must have, in order to be entitled to one seat on the district council is determined in accordance with the following formula (fractions disregarded):

$$\text{Quota} = \frac{\text{\textbf{Number of voters on the voters' roll for the entire district}}}{\text{\textbf{Number of seats for representatives of DMA's and local councils on the district council*}}} + 1$$

*= 60% of the total number of seats

Example: Quota of voters for a DMA seat or local municipality seat on the council of District Municipality D

District Municipality D:

360 000 registered voters in the district

42 seats on the district council

25 seats for representatives of DMAs and local councils (60% of 42)

$$\text{Quota} = \frac{360\ 000}{25} + 1 = 14\ 401$$

Step 2: Allocating seats to the DMA or the local municipality

The allocation of the seats to a DMA or local municipality is done by the following formula:

$$\frac{\text{\textbf{Number of voters registered in the DMA or local municipality}}}{\text{\textbf{Quota}}}$$

If the calculation results in a figure less than 1, the DMA or local municipality is entitled to 1 seat only. In that case, it does not participate in any further allocation of remaining seats.

Step 3:   Allocating the remaining seats

This formula does not always result in the distribution of all the 60% of the seats being allocated to DMAs or local municipalities' representatives, simply by applying the result of this formula, because the formula can result in fractions of seats. In that case, the fractions of each local municipality or DMA must be compared and the remaining seat must be allocated to the local municipality or DMA that has the highest fraction. If more than one seat remains, one seat goes to the municipality of a DMA with the highest fraction, one seat to the municipality or DMA with the second highest fraction.

If a DMA or local municipality is entitled to 1 seat only because the number that results out of Step 2 is less than 1, it does not participate in any allocation of remaining seats.

    - **Number of seats for a party, representing the DMA**

Step 1:   Determining the quota

The quota of votes for a seat as a party representing a DMA is calculated as follows:

$$\text{Quota} = \frac{\text{Total number of valid votes cast for all parties}}{\text{The number of seats allocated to the DMA}} + 1$$

Step 2:   Allocating seats

The allocation of seats to parties takes place according to the following formula:

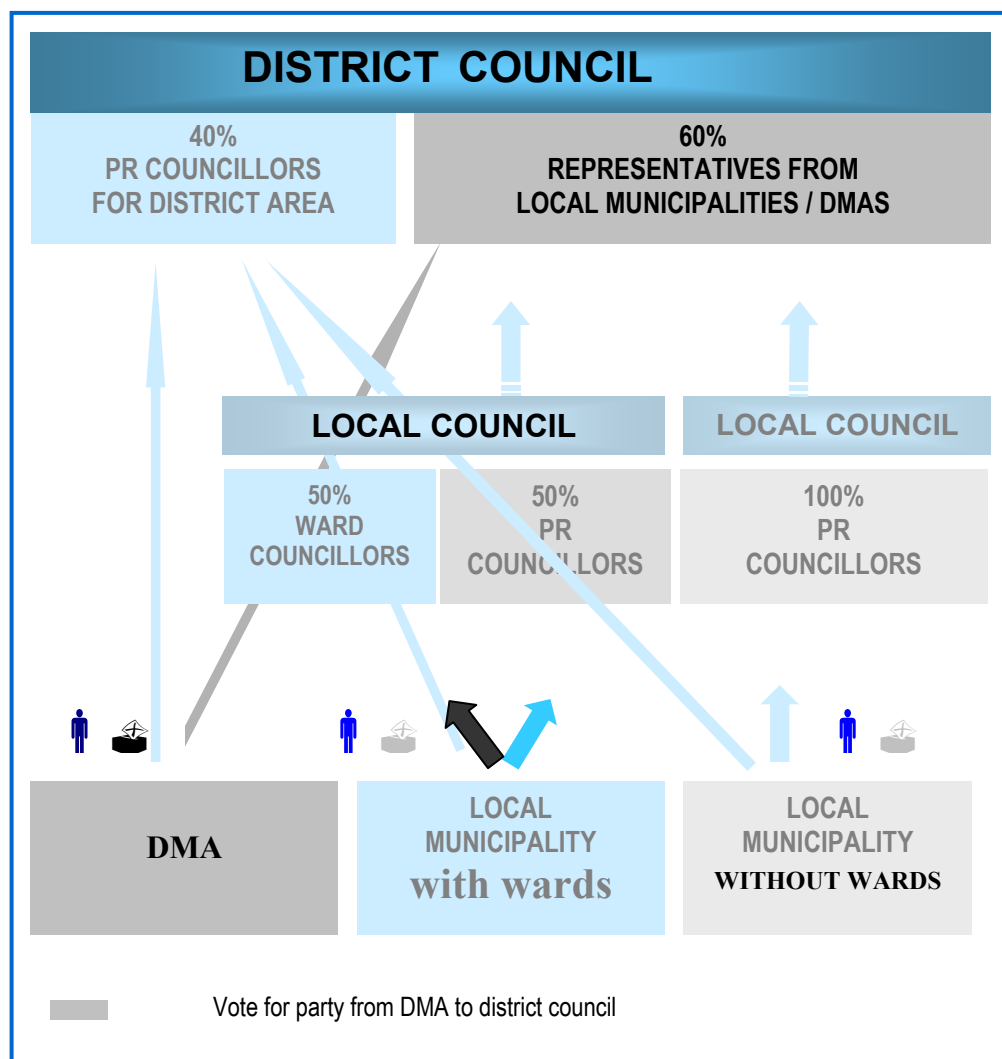$$\frac{\text{Total number of votes cast for the party}}{\text{Quota}}$$

If the calculation results in a figure less than 1, the DMA or local municipality is entitled to 1 seat only. In that case, it does not participate in any further allocation of remaining seats.

Example: Quota of votes for a seat, representing DMA H on the council of District Municipality D and the allocation of seats

District Municipality D:

360 000 registered voters in the district

DMA H: 5 000 voters (100% turnout)

DMA H is entitled to 1 seat on the council of District Municipality D

$$\text{Quota} = \frac{5\,000}{1} + 1 = 5\,001$$

3 parties participated in the election for the PR seats, representing the DMA on the council of District Municipality D:

Party X: 1 500 votes   **Party Y:** 55 000 votes

$$\frac{1\,500}{5\,001} = 0{,}29 \qquad\qquad \frac{1\,000}{5\,001} = 0{,}19$$

Party Z: 2 500 votes

$$\frac{2\ 500}{5\ 001} = 0,49$$

In terms of the formula, neither of the parties gets the seat[19]

- **Election of Local Municipality's representatives to the District Council**
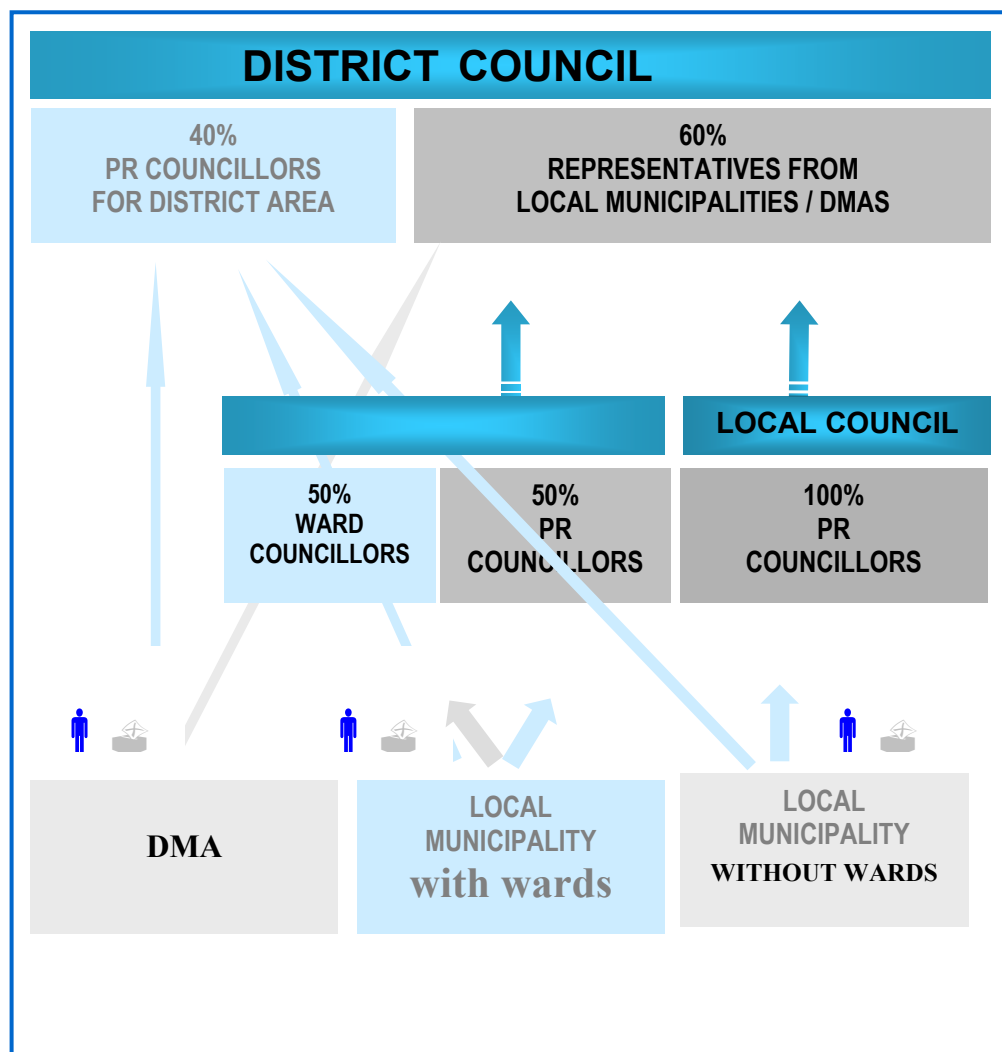
The Chief Electoral Officer must manage these elections (de Visser, Steytler and Mettler, 2000:40).

---

[19] **The fact that the DMA is entitled to 1 seat only, effectively disables the PR system (because the quota becomes higher than the number of votes cast) and that 1 seat is then awarded to the party with the highest number of votes. If the DMA would be entitled to more than 1 seat, the electoral system would allow the parties to contest on a PR basis.**

- any councillor may nominate a candidate;
- each councillor has one vote; and
- the candidate who receives the most votes is elected.

If the local council can send more than one representative, each party or individual councillor can submit one list with names of candidates in order of preference, together with the candidates' written acceptance of candidacy. As stated by de Visser, Steytler and Mettler (2000:40), a councillor cannot appear on more than one list. Parties and councillors must seek to ensure that 50% of the candidates are women and that women and men are evenly distributed throughout the list. Each councillor then casts one vote for one list.

The result of the election is determined as follows:

Step 1:   Determining the quota

The quota of votes for a seat on the council of a district municipality representing a local municipality is calculated as follows:

$$\text{Quota} = \frac{\text{Number of members of the local council}}{\text{Number of district council seats awarded to that local council}} + 1$$

Example: Quota of votes for a seat on District Council D representing Local Municipality B

Local Municipality B has been awarded 2 seats on District Council D
Local Municipality B has 18 councillors

$$\text{Quota} = \frac{18}{2} + 1 = 10$$

The seats are allocated as follows:

$$\frac{\textbf{Number of votes cast for the list}}{\textbf{Quota}}$$

6.4.4.2 Voter Education

As stated earlier, with this complex electoral system in place, voter education becomes even more important.

Responsibility is not solely on the IEC, but also political parties, contesting independent candidates because there were 3 ballot papers to be used in the District Councils and 2 ballot papers in the Metropolitan Councils.

Section 43 of the Electoral Act, 27 of 2000, stipulates the accreditation of persons providing voter education:

    i.   Any natural person or juristic person may apply to the Commission in the prescribed manner to provide voter education.

    ii.   The Commission may require further information in support of an application.

    iii.   The Commission may accredit an applicant to provide voter education after considering the application, any further information provided by the applicant, and whether –

        1.   the services provided by the applicant meet the Commission's standards;

        2.   the applicant is able to conduct its activities effectively;

        3.   the applicant or the persons appointed by the applicant to provide voter education will –

(i) do so in a manner that is impartial and independent of any party or candidate that is or may be contesting elections;

(ii) be competent to do so; and

(iii) subscribe to the Code of Conduct for Accredited Voter Education Providers governing persons accredited to provide voter education; and

(iv) the accreditation of the applicant will promote voter education and conditions conducive to free and fair elections.

6.4.4.3 Observers

Section 41(1) of the Electoral Act, states that, any organisation may apply to the Commission in accordance with the prescribed procedure to observe an election.

For the local government elections, several organisations observed the election and among those were, the Co-operative for Research and Education (CORE), Commission of Gender Equality (CGE), National Democratic Institute – International Affairs (NDI), and the South African Civil Society Observation Coalition (SACSOC).

Observers are permitted to be present in stations during voting, counting and declaration of results. They must wear a prescribed identification tag and also abide by the Code of Conduct for Accredited Observers (Lodge, Olivier and Venter, 2000:17).

All preparations had to be finished before the election day, including training and allocation of all staff necessary for the voting day.

The following are the statistics of the Free State Province (IEC, 2000:42):

Provincial Electoral Officer – Mr Chris Mepha

Location of Office: Bloemfontein

Number of Local Municipalities (with wards)	20
Number of District Councils	5
Number of Local Municipalities (without wards)	0
Number of District Management Areas	1
Number of registered voters	1 225 620
Number of wards	291

Number of voting stations	1 061
Number of urban voting districts	588
Number of rural voting districts	473
Number of Municipal Electoral Officers	141
Number of election staff	13 376
Number of voting streams	2 235
Number of voting compartments	5 700
Number of ballot boxes	5 400

6.5   ELECTION DAY

On election day, December 5, 2000, there were two types of votes to be cast, since South Africa has a mixed electoral system at municipal level.

One of the ballots was for an individual ward candidate. This candidate could be an independent person who does not represent any political party, or a political party candidate. Either way, the voter would be voting for a candidate, not a political party, on the ward ballot. The candidate who gets the most votes in a ward election wins that election. Where there were no wards, there was no ward election according to de Visser, Steytler and Mettler, 2000:43.

The second type of ballot was for political parties and on that the voter had to cast a vote for the political party of choice. The number of votes a party received determined how many council seats it gained. A party, which received 40% of all the votes in an election, would be entitled to 40% of the council seats. That is proportional representation – the same system used in the 1994 and 1999 national and provincial elections.

6.5.1   Security Materials for the Election Day

As required by the Electoral Act 73 of 1998, the Independent Electoral Commission determines the manner in which a voter's hand is to be marked. While the use of the voters' roll diminishes the necessity of this action, visible indelible ink was used, for the purpose of marking the thumbnail of voters (IEC, 1999:66).

Security material dispatched to presiding officers also included a unique stamp for each voting station as well as the seals for the ballot boxes.

6.5.2 Rules Pertaining to the Election Day

These rules pertaining to the election day were set to ensure that the election was free and fair. The rules are as follows (de Visser, Steytler and Mettler, 2000:43):

- On voting day, no billboards, placards, pamphlets or posters, which are aimed at influencing the outcome of the election may be put up, displayed or distributed within the boundaries of a voting station;

- On voting day, no persons may hold or take part in any political meeting or event or engage in any political activity (other than voting);

- It is prohibited to apply for a ballot paper in the name of another person, whether living, dead or made-up;

- It is not allowed to vote at a voting station, where a person is not entitled to vote or to cast more votes than a person is entitled to;

- Without permission from the IEC, no person may disclose information about voting or counting, open a ballot box or container or break its seal;

- No person may interfere with the voter's right to secrecy when casting a vote; and

- During voting hours, no person may print, publish or distribute the result of any exit poll taken in that election.

- Voting stations

Section 44 of the Municipal Electoral Act 27 of 2000, stipulates that on voting day, each voting station must be staffed by –

(a) the presiding officer and a deputy presiding officer appointed for that voting station; and

(b) the voting officers appointed for that voting station.

The official listing of voting stations, by province, were announced and published in the Government Gazette No. 21797, of November 27, 2000.

- Hours of Voting

The hours of voting are clearly set in Section 45 of the Electoral Act of 2000 and they are as follows:

(1) Unless the Commission determines other voting hours for an election in general or for a particular voting station, a voting station must –

    (a) Open for voting at 07:00; and

    (b) Remain open for voting until 21:00.

(2) If the Commission determines other voting hours for an election in general or for a particular voting station, it must make the voting hours known in a way that ensures sufficient publicity of those hours.

(3) No person may be admitted to a voting station for the purpose of voting after the voting station has closed for voting.

(4) Voting at a voting station must continue until every voter has voted who –

    (a) is entitled to vote at that voting station; and

    (b) had reported for voting at that voting station before the closing time.

(5) To ensure a free and fair election, the Commission may, on the voting day –

    (a) temporarily close a voting station for part of the day if it is temporarily impossible to conduct a free and fair election at that voting station; and

    (b) extend voting hours at a voting station until as late as midnight on that day.

6.5.2.1   Assistance of Voters

- Physical disability: If a voter needs assistance because he or she is physically disabled, the presiding officer can allow someone who is not an election officer to assist. The presiding officer can only allow this if the voter has requested assistance

from that person and the presiding officer is satisfied that the person giving assistance is at least 18 years old and not an agent or candidate.

- Illiteracy: If a voter is unable to read and requests assistance, the presiding officer or voting officer must assist that person in the presence of an observer (if available) and two agents (if available). The presiding officer or voting officer must try to maintain the secrecy of the voter as far as possible.

6.5.3   Problems Experienced at some Voting Stations

Voting day started normally. Voting stations reported to have opened on time, at least most of them. According to the IEC, there were 15 000 voting stations across the country. Security was very tight as the police and the military were deployed. No problems were expected and the day was peaceful, generally. The turnout at polling stations was a bit disturbing. In the Free State, by 18h30 the turnout was only 21%, as reported by Chris Mepha at a news release, that is, a press conference at the IEC provincial office in Bloemfontein (IEC Press Conference, December 5, 2000).

According to the IEC, it has become common practice that voters wait until the last few hours to vote, because by closing time the percentage had improved dramatically.

However, there was still a strong sense of apathy and disillusionment among the people. The electorate was dissatisfied with service delivery and expectations that had been raised beyond reality. Some did not realise the importance of voting. As for the youth, apart from apathy, the school vacation clashed with the election date and therefore most of them were not even registered as voters.

The apathy among the youth was of great concern during the run-up to the election day and the Kaiser Family Foundation/KLA decided to do a survey on the youth. Eighty eight percent (88%) of the youth thought that it was important to vote, while only twelve percent (12%) thought otherwise (Sunday Times, March 4, 2001:5).

According to the results of this survey, the problem is not apathy among the youth, but something else. More research is required to determine the problem. Their vote is imperative in shaping the future of South Africa.

In most instances problems experienced were technical and procedural. Clarification and basic advice was required at some voting stations. Examples of problems, which were experienced in the Free State, as reported over the telephone to IEC, by Lesedi National Community Radio and broadcasts on SABC2 on the day of elections, are as follows:

- In Welkom, ballot papers were mixed up by mistake. 600 people had already voted and the box had to be sealed immediately. To solve the problem, party agents were called in to decide whether to count those votes or not. Also, the legal section of the IEC in Pretoria was called to resolve the matter.

- In Kroonstad (Moqhaka), voters' names did not appear on the voters' roll, but it showed that they had registered. In such cases, the voters were allowed to vote.

- In Hennenman, the presiding officer left the voting station in order to vote at the voting station where he was entitled. In his absence, the deputy presiding officer was in charge and there were allegations that he collected 450 identification documents and voted for them. That allegation was practically impossible, given the time period.

- Chris Mepha, the Provincial Electoral Officer, received a call from Head Office reporting the matter as it happened within his jurisdiction. The MEO in Hennenman, together with the party agents did not know about the allegation and they had been at the said voting station. It appeared that the allegation had no basis.

- Power failure in Qwa-Qwa and Zastron was experienced at about 18:30. Plan B (contingency plan) was put into place. The IEC had emergency equipment and gas lamps were used.

- One of the independent candidates in Welkom (Matjhabeng) was disturbing the peace at one polling station. The person was disciplined in accordance with Section 80 of the Electoral Act of 2000, which deals with penalties and fines.

- In Odendaalsrus at Mohabo School (Kutlwanong), an elderly woman passed away while standing in a queue waiting to cast her vote. She was 76 years old and it was said that she died of natural causes. A moment of silence was held at that particular voting station and then proceedings continued.

- Qwa-qwa Radio also reported that the reason people did not appear on the voters' roll was due to demarcation and the splitting of districts; some people fell within new areas and that was resolved.

- With regard to candidates wearing political attire at voting stations, the Presiding officers had no problem with that. The matter was reported to the Provincial Electoral Officer (PEO), Chris Mepha, for advice. The PEO said he, as the IEC, did not encourage it but if a person is not intimidating, there was no problem (IEC Press Conference, December 5, 2000).

Basically, all problems reported throughout the day, were investigated and resolved peacefully.

When voting was completed, the boxes had to be sealed in the presence of party agents and observers. Soon afterwards, counting started.

6.5.4   Counting

Section 57 of the Electoral Act 27 of 2000, stipulates the place and time of counting of votes. It states that the votes must be counted at the voting station at which those votes were cast, except when the voting station is a mobile voting station, or in the interest of ensuring a free and fair election, the Commission determines that those votes be counted at another counting venue.

This arrangement of counting the votes where they were cast, increased the trust the electorate have in the IEC. It also reduced the level of disruption of normal operations, for instance, ballot boxes disappearing while they are in transit to the counting venue. The safety of ballot boxes was far more secure then had been previously.

Section 56 of the same Electoral Act provides the commencement of counting procedures, and they are as follows:

- The counting officer must ensure that the procedures provided for, commence as soon as practicable after the voting station is closed for voting and continues uninterrupted until they are completed.

- The procedures provided for, may be suspended only with the consent of the Commission and, if they are suspended, the counting officer must ensure the safe-keeping of all voting materials entrusted to the counting officer until the counting has been complete.

6.6   AFTER THE ELECTION

- **Determining the Results**

Section 57 of the Electoral Act, Act 73 of 1998, stipulates that the Commission must determine and declare the result of an election by adding together the results received from all voting stations. The determination and declaration of the result of an election must occur within seven days after the voting day, but not sooner than 21:00 of the second day after the voting day; or before all objections under Section 55 have been dealt with in terms of that section, other than an appeal to the Electoral Court in terms of subsection 5 of that section.

In addition, Section 64 of the Municipal Electoral Act, Act 27 of 2000, stipulates that on receipt of all the results of the count in respect of all ballots conducted at the voting stations within the municipality, the Commission must: determine the result of the election in the municipality; record the result on a prescribed form; and declare the result in public.

Objections on any aspect of the election, which might affect the results, must be submitted to the IEC no later than 21:00 on the second day after polling day, though the IEC may, with good cause, accept a late objection.

The Commission will decide on the objection and inform the objector, and any others involved in the objection, of the decision. Any objector, or any other party involved in the objection, who is not satisfied with the IEC decision may appeal to the Electoral Court. The result of the election is not suspended pending the Court's decision (Lodge, Jones and Ballington, 1999:52).

Democracy triumphantly marched forward when the new local government system was inaugurated by nine million South Africans who determined who the new leaders should be. After months of gnashing of teeth around the demarcation and integration of districts and

towns and the squabbling about the powers of traditional leaders, the elections were held on the appointed date (City Press, December 10, 2000:23).

When the final votes tally came in after the local government election, the casualties were more than just the smaller parties trampled on by the ANC and the DA.

For the ANC, victory came easily because anyone who wears the liberation mantle is guaranteed votes, but it was not an emphatic victory as more than 50% of South Africa's 18 million registered voters, mostly ANC supporters, stayed away from the polls. This gave the ANC a percentage poll of 59%. In 1999, the party had garnered 66% in an election in which 85% of registered voters had turned out (Sunday Times, December 10, 2000:2).

The DA invested a lot in breaking into the black voting market, allocating nearly a third of its advertising budget to this constituency. It actively recruited quality black candidates, rather than relying on the black 'riffraff' who flocked to traditionally white parties in the 1990s. According to Sekola Sello of the City Press, if statistics are anything to go by, it is obvious the DA still has a very long way to go before it can realistically consider itself a serious threat to the dominance of the ANC (City Press, December 10, 2000:9).

In the Free State, the ANC won seventy-one percent (71%) of the vote in the local government elections, a significant improvement from the sixty-seven percent (67%) it won in the 1995 municipal polls. The voter turnout was 49,51% (Sunday Times, December 10, 2000:2).

In Cape Town, the turnout in white areas averaged about 75%, with some voting stations reporting close to 100%. The huge white response offset the apathy of coloured areas, where turnout was low, but who favoured the DA. The national trend of the growth in DA support among minorities was marked in Cape Town (Sunday Times, December 10, 2000:2).

- **The Electoral Court**

The Electoral Act also established the Electoral Court, a body with the status of the Supreme Court.

Its members are appointed by the President on the recommendation of the Judicial Service Commission. They include the chairperson, who should be a judge of the Supreme Court's

Appellate Division, two other judges of the Supreme Court and two other South African citizens (Lodge, Jones and Ballington, 1999:15).

The Court is supported financially and administratively by the Department of Justice.

Under Section 20 of the Electoral Commission Act, the Electoral Court may:

- review any IEC decision concerning any electoral matter;

- consider an appeal against a decision by the Commission, but only if such a decision relates to the interpretation of any law, or concerns a matter for which an appeal is provided by law; and

- investigate any allegation of misconduct, incapacity or incompetence on the part of members of the Commission.

Appeal against Commission decisions may only be heard with prior approval of the Electoral Court chairperson.

This Court has final jurisdiction over infringements of the Electoral Act and its Code of Conduct. It makes the rules in terms of which disputes, complaints and appeals may be brought before the courts, and also decides which courts shall have jurisdiction to hear particular disputes, complaints and appeals (Lodge, Jones and Ballington, 1999:15).

6.6.1   Election Results of the Free State Province

Government Gazette, No. 21966 of January 19, 2001, published the results per province and per municipality. It was General Notice No. 42 of 2001, by which the Electoral Commission announced the proportional representation results, ward results and seat allocation in respect of the elections held on December 5, 2000.

The following parties are represented in the councils of the Free State and they are: the African Christian Democratic Party (ACDP), the Alliance 2000, the African National Congress (ANC), the Azanian People's Organisation, Bohlokong Civic Association, the Democratic Party (DA), Dikwankwetla Party of South Africa, the Inkhatha Freedom Party (IFP), the Independent Civic Organisation of South Africa (ICOSA), the Pan Africanist

Congress of Azania (PAC), the United Christian Democratic Party (UCDP), and the United Democratic Movement (UDM).

The Free State results were as follows, according to the IEC Election Results database, 2001:

Formula :   **[Q = <u>Total valid votes   </u>   + 1]**

                   (Total seats available – Independents)

FS 161   **Letsemeng (Koffiefontein)**

Quota: 1644

Total seats available: 10

Total valid votes: 16 436

ANC   8

DA   2

FS 162   **Kopanong (Trompsburg)**

Quota: 1738

Total seats available: 14

Total valid votes: 24 324

ANC   10

DA   4

FS 163   **Mohokare (Zastron)**

Quota: 1551

Total seats available: 10

Total valid votes: 15 501

ANC   8

DA   1

PAC   1

FS 171   **Naledi (Dewetsdorp)**

Quota: 1441

Total seats available: 8

Total valid votes: 11 525

ANC   7

DA   1

FS 172   Mangaung (Bloemfontein)

Quota: 3611

Total seats available: 86

Total valid votes: 310 537

ACDP 1

ANC   60

Alliance 2000   1

Azanian People's Organisation   1

DA   18

PAC   2

UCDP 2

UDM   1

FS 173   Mantsopa (Ladybrand)

Quota: 1500

Total seats available: 15

Total valid votes: 22 495

ANC   11

DA   4

FS 181   Masilonyana (Theunissen)

Quota: 1503

Total seats available: 19

Total valid votes: 28 538

ANC   14

Alliance 2000   1

DA   3

PAC   1

FS 182   Tokologo (Dealesville)

Quota: 1620

Total seats available: 7

Total valid votes: 11 334

FS 183   Tswelopele (Hoopstad)

Quota: 1440

Total seats available: 13

Total valid votes: 18 708

ANC   11

DA   2

FS 184   Matjhabeng (Welkom)

Quota: 2422

Total seats available: 72

Total valid votes: 174 357

ANC   56

DA   14

PAC   1

UDM   1

FS 185   Nala (Bothaville)

Quota: 1463

Total seats available: 23

Total valid votes: 33 640

ANC   15

DA   3

PAC   4

UDM   1

FS 191   Setsoto (Senekal)

Quota: 1560

Total seats available: 31

Total valid votes: 48 339

ANC   24

Alliance 2000 1

DA   5

PAC   1

FS 192   Dihlabeng (Bethlehem)

Quota: 1593

Total seats available: 34

Total valid votes: 54 157

ANC   21

Alliance 2000 1

Bohlokong Civic Association   1

DA   6

PAC   5

FS 193   Nketoane (Reitz)

Quota: 1487

Total seats available: 17

Total valid votes: 25 273

ANC   12

DA   3

PAC   2

FS 194   Maluti a Phofung (Qwa-Qwa)

Quota: 1966

Total seats available: 67

Total valid votes: 131 679

ANC   51

DA   3

Dikwankwetha 10

IFP   1

PAC   1

UDM   1

FS 195   Phumelelo (Vrede)

Quota: 1832

Total seats available: 14

Total valid votes: 25 634

ANC   11

DA   3

FS 201   Moqhaka (Kroonstad)

Quota: 1587

Total seats available: 48

Total valid voted: 76 159

ANC   37

Azanian People's Organisation   1

DA   9

PAC   1

FS 203   Ngwathe (Parys)

Quota: 1597

Total seats available: 36

Total valid votes: 57 464

ANC   26

Alliance 2000   1

DA   8

PAC   1

FS 204   Metsimaholo (Sasolburg)

Quota: 1646

Total seats available: 33

Total valid votes: 54 302

ANC   18

DA   9

ICOSA 4

PAC   1

UDM   1

FS 205   Mafube (Frankfort)

Quota: 1700

Total seats available: 15

Total valid votes: 25 495

ANC   12

DA   3

DC (Xhariep) 40% seats calculation:

Formula   [Q = Total valid votes   + 1]
                   Total seats allocated

Quota: 4767

Total seats allocated: 6

Total valid votes: 28 601

ANC   5

DA   1

These results had been accepted in the Free State and the next step was to hold the first meetings where the mayors and their deputies would be elected. First, it is important to consider a check-list for free and fair elections. It can assist the observers and analysts to evaluate the local government elections of December 5, 2000.

6.6.2   Check-list for Election Assessment

As the observers observe the conduct of elections, together with the IEC and party agents they should assess the election for freedom and fairness. This assessment covers the whole period of elections, from the period before elections up to the period after the result of the elections has been announced.

Here is a checklist (Hague and Harrop, 2001:130):

Before the election

Freedom would mean:

- freedom of movement
- freedom of speech (for candidates, the media, voters, and others)
- freedom of assembly
- freedom from fear in connection with the election and the campaign
- absence of impediments to standing for election (for both political and independent candidates)
- equal and universal suffrage

Fairness would mean:

- a transparent electoral process
- an election act and electoral system that grants no special privileges to any political party or social group
- absence of impediments to inclusion in the electoral register
- establishment of an independent and impartial election commission
- impartial treatment of candidates by the police, the army, and the courts of law
- equal opportunities for political parties and independent candidates to stand for election
- impartial voter-education programmes
- an orderly election campaign (observance of a code of conduct)
- equal access to publicly controlled media
- impartial allotment of public funds to political parties (if relevant)
- no misuse of government facilities for campaign purposes

On Election Day

Freedom would mean:

- the opportunity to participate in the election

Fairness would mean:

- access to all polling (voting) stations for representatives of the political parties

- secrecy of the ballot
- absence of intimidation of voters
- effective design of ballot papers
- proper ballot boxes
- impartial assistance of voters (if necessary)
- proper counting procedures
- proper treatment of void ballot papers
- proper precautionary measures when transporting election materials
- impartial protection of polling stations

After the election

Freedom would mean:

- legal possibilities of complaint

Fairness would mean:

- official and expeditious announcement of election results
- impartial treatment of any election complaints
- impartial reports on the election results by the media
- acceptance of the election results by everyone involved.

6.6.3 The Cost of Elections and Reports

The Independent Electoral Commission's financial reports are audited by the Auditor General. The Electoral Commission's financial statements and accounts are submitted to parliament by way of a statutory prescribed annual report.

At the end of each financial year, the Commission must report to the National Assembly on its activities during that year. It must provide the President with any information requested (Lodge, Jones and Ballington, 1999:14).

As soon as possible after the end of an election, the Commission must publish a report on it.

After the election and announcement of results, the elected representatives, councillors, are expected to take over.

6.6.4   The First Meeting of the Councils

After every election, a council needs to have what is termed a first meeting (Craythorne, 1997:165).

At the first meeting, a mayor or chairperson and their deputies must be elected, committees established and members appointed. The holding of the first meeting is prescribed in terms of prior provincial ordinances and legislation on local councils.

6.6.4.1 Election of the Executives and Mayors

After councils have been elected, if they are run according to the plenary system, at their first meeting, councillors must elect a Speaker or they can choose a Mayor. Speakers and Mayors usually serve for the full term of the Council, unless they resign or are removed by a resolution of the Council (Lodge, Olivier and Venter, 2000:25)

If councils are governed through the Executive Committee arrangement, the councillors must elect their executive or twenty percent (20%) of their number at their first meeting, whichever is less. All parties and interests represented on the Council must be represented on the executive in substantially the same proportions. Councillors must elect a member of the executive as the Mayor, and, subject to the approval of the Provincial MEC for Local Government, another executive member as the Deputy-Mayor. No person can hold either of these offices for more than two consecutive terms. On completing the second term, a Mayor may not serve as a Deputy-Mayor (Lodge, Olivier and Venter, 2000:25).

If the council is to be governed through an Executive Mayor, then at its first meeting it must elect an executive mayor as well as a deputy, subject to the approval of the Provincial MEC. These officials may not serve more than two consecutive terms. On completing a second term, a Mayor may not serve as a Deputy-Mayor. If a council has more than nine (9) members, the executive Mayor must appoint a Mayoral Committee, of at least twenty percent (20%) of the councillors or 10 councillors, whichever is less (Lodge et al., 2000:25).

The system of local governance, that is, whether the council uses a plenary system, executive committee system or executive mayoral system, is determined by several factors and among those, the size and the economic strength of a municipality and district (Mepha, 2000: Information session) are considered.

An example would be FS 172 Mangaung (Bloemfontein) municipality. As already listed in the local government election results, this particular municipality is the largest in the Free State, with 86 seats and its economy is highly viable when compared to other towns in this particular province. The system of governance is that of the Executive Mayor, who in turn has a Mayoral Committee.

The process of elections was a success for several reasons. Firstly, the election took place on the set date and the preparations were up to standard. The election day proceedings went on smoothly, with a bit of apathy, but free and fair. The election result was welcomed across the country, except for minor complaints here and there. The mayors had been elected and the councils were preparing to get started.

To top this success up, President Thabo Mbeki, in his State of the Nation Address, touched on the new structure of local government. South Africa is striving towards co-operative governance and therefore the President said: " The new structure of local government, in urban and rural areas, will be the focal institution of government to ensure the coordinated implementation of our programmes, within the Ministry of Provincial and Local Government acting as the national coordinating ministry". He continued to say that success in this work should have a positive impact on such areas as job creation, crime and violence, health and the general quality of life of millions of South African people who lead desperate lives (Mbeki, 2001:8)

6.7 CONCLUSION

The historical background of the democratic national elections of 1994 and 1999 have to be discussed to give a clear picture of elections in South Africa, in the past. The results have been tabled to show the actual victories of parties, which managed to gain representation in Parliament. South Africa has moved from a Government of National Unity with a resounding victory for the ANC in 1994 and the NP as the official opposition, to 1999's result, where the DP replaced the NP as the official opposition. More political parties were represented than in 1994. There was a smooth change in presidents from Nelson Mandela to Thabo Mbeki, both from the ANC.

The local government elections of 5 December 2000, was the final stage of transformation and democratisation at local government level. It was also the beginning of real co-operative governance among the levels of government, that is, national, provincial and local governments.

The whole process of these elections went according to plan. The period before the elections was peaceful and purposeful. For the IEC, it was preparation time; fixing deadlines and the election timetable, registration of political parties and independent candidates contesting the elections and generally over-seeing the whole process of elections.

For political parties, it was time for campaigning. Manifestos were launched and political parties continued to canvass for support.

Voter education occurred country-wide and observers were put in place. All these activity had to take place within the considerations of the Electoral Code of Conduct, to ensure free and fair elections.

Election day went smoothly and peacefully, with minor problems here and there. Voters who needed assistance were ensured the secrecy of their ballot. After the voting stations closed, it was time for counting. Counting took place at the voting stations, to avoid problems experienced in the past with ballot boxes being stolen or disappearing during transportation to the central counting point.

After counting and verification, the results had to be announced. The results of the local government election of December 5, 2000, were accepted by the vast majority of South Africans. After going through the check-list of Election Assessment, it was clear that the election was free and fair. That confirmed the acceptance by the electorate. The observers also confirmed their acceptance.

The Independent Electoral Commission has the responsibility to strengthen constitutional democracy through the delivery of free and fair elections in which every voter is able to record his or her informed choice.

For the Commission to function effectively, it needs to work together with the other organs of the state and foster friendly relations, co-ordinate actions, consult and inform.

As it has been stated earlier, elections in South Africa are governed by a number of important laws that have been put in place since the country's first democratic elections and therefore the Commission has several functions and duties to perform.

Among its functions, the Commission is responsible for: reviewing electoral legislation or making new regulations, which may include penalties; compiling and maintaining the national common voters' roll; drawing the election time-table as well as managing the whole election process; promoting voter education and also determining and declaring the results.

The Commission works closely with the Electoral Court, which is responsible for handling disputes, complaints and appeals. At the end of the whole process of elections, the Commission has to account to Parliament. Reports have to be submitted.

For genuine elections to take place, the Electoral Commission has to be independent and impartial in all its dealings.

The elected councillors then have to take over and at their first meeting, they have to elect the mayors and executive committees. The programmes of local government have to be set in motion. Service delivery would be a priority, as well as controlling crime and corruption.

Speeding up service delivery, would somehow, change the attitudes and perceptions the electorate or the society has about government, especially the ruling party, but including other political parties as well. The attitudes and perceptions of society are very important to direct government policy and also for political parties to gain support for the next election, that is the national election of 2004.

Performance of local government is going to affect the outcome of future elections. Therefore, it is importance for government at all levels to put the needs and interests of the people before self-enrichment.

As for the running of elections, the IEC is efficient. The technology used by the IEC and a well-trained staff composition ensures success even for the future. After the local government election of December 5, 2000, the IEC restructured which came with the reduction of staff, leaving a mere skeleton staff.

Preparations have already started for the 2004 national elections and again South Africa's democracy will be put to the test.

CHAPTER 7

EVALUATION OF THE STUDY

This chapter consists of a summary and final evaluation of the study, the findings, as well as recommendations for the future. It is essential because it expresses the core issues of the study.

7.1   SUMMARY

Constitutional transformation and democratisation started showing the seriousness for a new direction from 2 February 1990, with FW De Klerk's watershed speech. This process was finally completed with the local gvernment elections of 5 December 2000.

From 1990 to 2000 many changes took place. South Africa and its people worked tirelessly to achieve a representative democracy, non-racialism and non-sexism. They went through the negotiation process to build a strong foundation based on democratic principles, on which the 'new' South Africa would be built, and out of those negotiations an Interim Constitution (Act 200 of 1993) was drafted.

The Interim Constitution guided South Africa and its citizens through the transition period and managed the first democratic national elections of April 27, 1994. These elections were followed by the local government elections of 1995/6. The Interim Constitution continued to serve as a source of direction. These two elections were a radical turning point for South Africa: from an apartheid state, to a multi-party democracy.

When these elections took place, a new electoral system had already been put in place. It is this new electoral system, the party list system of proportional representation, which gave direction to a miracle: multi-party democracy.

It is said by many authors that an electoral system determines the outcome of an election. An electoral system deals with the power issues of the conversion of votes into seats. It is important to recognise the impact an electoral system has on who governs a country, in particular, in this instance, South Africa.

An electoral system is indeed a mechanism through which democratic governance can be promoted. For this to happen a strong support system, composed of political parties and voters who are knowledgeable and well-informed about the whole electoral process, is necessary.

This particular electoral system afforded South Africa the opportunity of experiencing a representative democracy. It is a system of governance which has allowed the citizens of the country to express their views and opinions freely, with a constitution (Act 108 of 1996), which for the first time in South Africa, gave recognition to human rights which are clearly stipulated in Chapter 2 of the Constitution.

Due to the party list system of proportional representation, a broader representation of the people of South Africa was achieved. Political parties with diverse ideologies had the opportunity to participate freely in the politics and elections in their country and they were all treated fairly when seats were allocated. The number of seats a party received was proportional to the percentage of votes received in the election. This was the electoral system agreed upon during the negotiations between 1990-1993, and therefore its rules had to be upheld for democracy to prevail.

In 1999 the second democratic national elections were held. These elections were crucial for South Africa as the world watched with great interest. It was the elections that would confirm the young democracy as a real democracy, based on free and fair electoral principles. The success of the 1999 elections put the country and the world at ease and it was already time to prepare for the local government elections.

The local government elections of 5 December 2000, was the final phase of completing the transformation and democratisation process. Local government was also undergoing its own transformation from the old system of exclusive representation during apartheid, to an inclusive system where all South Africans are represented.

Local government gained its status as a government in its own right as the closest government to the citizens/voters. The role of local government is clearly stipulated in the Constitution, Act 108 of 1996, and that in itself gave local government power to govern. The local government elections of 2000 completed the process and gave power to the new system of democratic governance, where the three levels of government, national, provincial and local

governments, will function in a co-operative manner, supporting one another in service delivery and developmental responsibilities and obligations.

The whole process of the local government elections of 5 December 2000 has been discussed, from the pre-election stage where preparations were made for voters as well as candidates to register, through to the election day when the actual voting took place and finally to when the outcome was announced and accepted. The process was smooth, free and fair.

In these elections, a mixed electoral system was used to allow for better representation. There were constituency-based candidates registered as independents, as well as party list candidates. The party list system of proportional representation was used, together with the first-past-the-post system. Although people were still not clear about the electoral system and the independent candidates, their parties still gained some votes.

7.2   FINDINGS AND CONCLUSION

It is made clear in this study that electoral systems play a crucial role in elections, in order to ensure democratic governance. Therefore, an electoral system needs to be better understood by the public. The public needs to be engaged in debates with the various party representatives to enable them to participate in designing a new, improved electoral system. The party list system of proportional representation has taken South Africa thus far. It was necessary, in order to direct and manage the radical transformation, which has occurred since 1994. A simple, more representative electoral system was needed and the party list of proportional representation was the best-suited system for a country with deep-rooted racial divisions and a terribly high level of illiteracy, such as South Africa.

Knowing the importance and impact of an electoral system on elections and government, it would be to the citizens' advantage to contribute to improving it with the aim of increasing the level of representation and enhancing the power of democratic governance. This would improve the relationship between government and its citizens, as well as inter-governmental relations with regard to co-operation among the three spheres of government.

An electoral system touches on all stakeholders in different ways, even though most people do not realise this. Voters, political parties, representatives, democracy, the elections and government, all refer back to the electoral system, i.e.: how the voters vote; the registration of political parties; the type of representation and the number of seats allocated; the type of democracy at play and how elections are held. The electoral system eventually determines

who governs. That is how powerful an electoral system is. Therefore, it is fair to say that it is necessary to educate all people about electoral systems, as a way of giving them more power and influence and thereby enhancing democratic governance. This gives the electorate an opportunity to make informed choices.

Right now, as this study comes to completion, there is a Working Group which has been appointed by the President of the Republic of South Africa, Thabo Mbeki, to come up with a better, more representative electoral system for the upcoming 2004 national elections. South Africa is striving to improve on governance and to uphold democratic principles, and an electoral system is the best way of achieving this, for it is the basis of democratic governance. The aim is to 'put the people first', therefore there is hope for a better, more constituency-based system of representation.

7.3 RECOMMENDATIONS FOR THE FUTURE

As this study progressed, the researcher identified a number of needs specific to our society. Some of the challenges facing the country can be remedied and it is important for South Africans, who are generally quite knowledgeable and well-informed on societal issues, to play an active role. Politicians, and all government institutions, should play an educational role within their society, bearing in mind the historical background of the electorate. It is important to have the people's support, when transforming from one system to another. They need to help them gain access to information as that is their constitutional right, and help them to understand the new system and how it operates.

- **Political education**

The people on the ground, i.e. the electorate, are in need of thorough education on the political environment of South Africa. This would assist them in making informed choices, in understanding the electoral system and electoral laws in operation.

Political education requires political parties to play an active role by taking the responsibility for educating their members and supporters. The general society should be included in this process, as this will benefit the political parties in the long run. Fewer spoiled papers will result during elections and in the process, they may gain loyalty from the people.

This kind of education is crucial for a young democracy like South Africa. All stakeholders should play a part in ensuring that political education reaches the ordinary people on the

ground as these are the people who need it most. The Independent Electoral Commission also has to share this responsibility, as it will make their work easier and more manageable.

Understanding the electoral system is very important and methods should be devised to simplify the transfer of this knowledge. It is necessary to demystify the myths surrounding electoral systems such as the complexity and difficulty involved. Apart from the mathematical calculations that are used, there is far more that can be done in order to educate the man in the street.

Some of the methods that can be used are workshops within the society. This education can also be dramatised in some areas to encourage attendance and reduce boredom. Radio and television programmes that are repeated throughout the year would also be successful, as this is not a process to be followed just for electioneering purposes.

When people understand clearly what implications the electoral system has on their lives, they will be able to influence the system in their favour, and for the sake of maintaining democratic governance. Democratic governance also does not come easily. As much as the electoral system plays its part as a means to an end, there are other forces at work that can strengthen or weaken the chances of democratic governance succeess. Some of the issues that need to be handled are the constitutional and political obligations of the elected representatives.

- **Constitutional and political obligations of the elected representatives**

With regard to elected representatives at local government sphere, the challenge for the success of imparting the necessary knowledge is greater. Efficiency has to be the order of the day. Reddy (1999:13) confirms that it is the closest form of government to the people and therefore is supposed to be the most influential and the most democratic.

When representing the electorate, it is important to realise that one is representing people with expertise in different fields, some with educational qualifications and some who are illiterate. Either way, it is necessary to note that one is representing people who know what they want and therefore need to be consulted and be actively involved in the decision-making processes of the country. Representatives need to work with the people, be informative and efficient in performing their work.

In order to achieve this, the elected representatives, councillors, mayors and executive mayors, should be very clear on what they are expected to do. They have to know their constitutional obligations and understand them clearly, and link them to their political responsibilities. This kind of knowledge will give the elected representatives power to do their work efficiently and also be effective in their endeavours to influence the people.

Local government in South Africa has undergone a process of transformation and democratisation. That implies that the elected representatives should be capable and well-equipped to take the process further. This is necessary if the country is to make the new system at local government sphere effective.

From the 1995/96 local government elections, through the transitional period, and until the 2000 local government elections, the elected representatives in most cases, did not have even the slightest idea of what was expected of them during their term of office. Their training had been neglected and it was taken for granted that they knew what their roles were. This led to frustration and arrogance and finally, their delivery failed.

A supportive system is necessary for councillors from the time they become potential candidates, until they are fully-fledged councillors. There should be continued, facilitated workshops, on the role of the councillors because the needs of society are forever changing. The elected representatives need to be empowered in order to perform their work as expected. They should understand why they are in office and what their purpose is. In this regard, academic institutions should play a role in ensuring that councillors know the theoretical aspects of their work. This will give them a stronger basis to work from. Again, this kind of training should be simplified to afford all the people a chance to learn.

The new system of governance encourages co-operation among the three spheres of government. National, provincial and local governments have to work together in harmony towards a common goal in order to serve the people. Among these three spheres of government, there should be continuous communication. This will be easier when all elected representatives have the same knowledge and understanding of their responsibilities. They will be able to communicate at the same level, without any communication gaps.

The kind of efficiency experienced by the voters, should actually give them an impression of the power their votes have, in relation to the electoral system, and in ensuring democratic governance in their country. Elected representatives should be aware of the relationship they are required to have with their society. Being in touch with their needs, interests and

concerns is of paramount importance. To foster this relationship, the government will have to make concerted efforts to take the masses along with them.

One step at a time will ensure success on the path to democratic governance. It all starts with education and in engaging society in debates about issues that affect their daily lives. Eventually, South Africa will have a politically literate society, actively participating in ensuring a democractic society.

BIBLIOGRAPHY

Abcarian G, and Masannat GS, 1970: **Contemporary Political Systems: An Introduction to Government.** New York: Charles Scriber's Sons.

ANC. 1994. **The Reconstruction and Development Programme**. Johannesburg: Umanyano Publishers.

Anon., 2000. **Your local government before and after the elections.** Pretoria: Department of Provincial and Local Government (Pamphlet).

Atkinson D, 1998. **Local government in intergovernmental relations: towards co-operative governance? (**In EISA, 1998. From a tier to a sphere: local government in the new South African constitutional order. Sandton: Heinemann Publishers).

Babbie E, 1998. 8th ed. **The practice of social research.** Belmont: Wadsworth Publishing Company.

Ball A. R, 1983. 3rd ed. **Modern politics and government.** London: MacMillan Press Ltd.

Baradat LP, 2000. 7th ed. **Political ideologies: their origin and impact**. New Jersey: Prentice-Hall, Inc.

Basson D, 1994. **South Africa's Interim Constitution: Text and Notes**. Kenwyn: Juta and Co. Ltd.

Bekker K, 1996. **Citizen participation in local government.** Hatfield: Van Schaik Publishers.

Berelson BR, Lazarsfeld PF, and McPhee WN, 1954. **Voting: a study of opinion formation in a presidential campaign.** London: University of Chicago Press.

Bless and Higson, 1995. **Fundamentals of social research methods**. Anon

Blondel J, 1990. **Comparative government**. Hertfordshire: Phillip Allan

Bogdanor V, and Butler D, 1983. **Democracy and elections: electoral systems and their political consequences.** Cambridge: University Press.

Bowman A O'M and Kearney RC, 1990. **State and Local Government.** Boston: Houghton Mifflin Company.

Busia KA, 1967. **Africa in search for democracy.** London: Routledge and Kegan Paul.

Camay P, and Gordon AJ, 1996. **There will be elections. An evaluation of the local government elections in South Africa.** Johannesburg: CORE.

Cameron R, 1999. **Democratisation of South African local government: a tale of three cities.** Hatfield: Van Schaik Publishers.

Clarke M and Stewart J, 1990. **General management in local government: getting the balance right.** London: Longman Group (UK) Ltd.

Cloete JJN, 1989. **South African local government and administration**. Hatfield: J. L van Schaik (Pty) Ltd

Coetzee T, 1995. **Die verrekening van die etnisiteitsfaktor in grondwetskrywing in Suid-Afrika: 'n politikologiese analise.** Bloemfontein: (MA-Research) University of the Free State.

Cord RL, et al., 1985. 2nd ed. **Political science: an introduction.** New Jersey: Englewood Cliffs

Craythorne DL, 1997. 4th ed. **Municipal administration: a handbook.** Kenwyn: Juta and Co. Ltd.

Davidson A, and Strand P, 1993. **The path to democracy: a background to the constitutional negotiations in South Africa.** Uppsala: Uppsala University

De Klerk FW, 1990. **Normalising the political process in South Africa: the time for negotiation has arrived.** Vital Speeches of the Day. LVI(10): 290-294.

De Klerk FW, 1998. **The last trek - a new beginning**. London: Macmillan Publishers Ltd.

Delimitation Directorate, 2000. **Delimitation guide for municipal electoral officers.** Pretoria: IEC.

De Ville J, and Steytler N, 1996. **Voting in 1999: choosing an electoral system.** Durban: Butterworth Publishers (Pty) Ltd.

De Visser J, Steytler N, and Mettler J, 2000. **Electing councillors: a guide to municipal elections.** Community Law Centre in Bellville: University of the Western Cape

Du Toit P, 1991. **Power plays: bargaining tactics for transforming South Africa.** Halfway House: Southern Book Publishers.

Eccleshall R, et al., 1984. 2nd ed. **Political ideologies: an introduction**. London: Unwin Hyman, Ltd.

Elcock H, 1994. **Government: policy and management in local authorities.** New York: Routledge.

Electoral Act, **No. 202 of 1993.**

Electoral Act**, Act 73 of 1998.**

Faure AM. et al., (eds). 1988. **Suid-Afrika en die demokrasie**. Pinetown: Owen Burgess.

Faure M and Lane J-E (eds). 1996. **South Africa. Designing new political institutions.** London: SAGE Publishers.

Fourie S, 1989. **Strategies for change.** Claremont: David Phillip Publishers (Pty) Ltd. (IDASA).

Fuller RH, 1977. **A government by the people.** New York: The Department of State.

Friedman S, and Atkinson D, 1994. **South African Review 7: The small miracle – South Africa's negotiated settlement.** Johannesburg: Ravan Press.

Gildenhuys JSH, 1996. **Restructuring your local government: a practical guide.** Pretoria: JL van Schaik Publishers.

Giliomee H, and Schlemmer L, 1989. **Negotiating South Africa's future.** Johannesburg: Southern Book Publishers.

Goldstone Commission, 1993. **Towards violence-free elections in South Africa.** Pretoria: HSRC.

Gudgin G and Taylor PJ, 1979. **Seats, votes, and spatial organisation of elections.** London: Pion Limited.

Hague R and Harrop M, 2001. 5th ed. **Comparative government and olitics: an introduction**. New York: Palgrave

Harris P, 1986. 2nd ed. **Foundations of political science.** London: Hutchinson and Co. (Publishers) Ltd.

Harrop M, and Miller WL, 1987. **Elections and voters: a comparative introduction.** London: MacMillan Education Ltd.

Held D, and Pollitt C, 1986. **New norms of democracy.** London: SAGE Publishers

Held D, 1987. **Models of democracy.** Oxford: Polity Press.

Held D, 1991. **Political theory today**. Cambridge: Polity Press.

Held D, 1993. **Prospects for democracy.** Cambridge: Polity Press.

Dupli cancelled

Heymans C and Totemeyer G, 1988. **Government by the people.** Cape Town: Juta.

Heywood A, 1997**. Politics**. London: Macmillan Press.

Himmelweit HT, et al., 1981. **How voters decide: a longitudinal study of political attitudes and voting extending over fifteen years.** London: Academic Press Inc Ltd.

Hough M, and Du Plessis A, 1994. **Selected documents and commentaries on negotiations and constitutional development in the RSA: 1989-1994.** (Ad hoc publication). Institute for Strategic Studies. Pretoria: University of Pretoria (31): 1-248 July.

Humphreys JH, 1911. **Proportional representation**. London: Methuen and Co. Ltd.

IEC, 1999. **Report-Electoral Commission of the Republic of South Africa: National and Provincial Elections, 2 June 1999.** Pretoria: Formeset Printers Cape (Pty) Ltd.

IEC, 2000. **Elections 2000: Reference Guide.** Pretoria: Independent Electoral Commission.

IEC, 2000. **Municipal Elections 2000.** Pretoria: IEC.

IEC, 2001. **Election results database** (website). Pretoria: Independent Electoral Commission.

IEC **Press Conference**, December 4, 2000. IEC Provincial Offices: Bloemfontein.

IEC **Press Conference**, December 5, 2000. IEC Provincial Offices: Bloemfontein.

Interim Constitution of the Repubic of South Africa, **Act 200 of 1993**, as published in Government Gazette No.15466 of 28 January 1994.

Ismail N, Bayat S and Meyer I, 1997. **Local government management.** Halfway House: International Thompson Publishers (Southern Africa) (Pty) Ltd.

Johnston A, 1993. **Introduction: South Africa since February 1990**. (In Johnston A, Shezi S, Bradshaw G (eds.). Constitution-making in the New South Africa. New York: Leicester University Press: 1-9).

Johnson RW and Schlemmer L, 1996. **Launching democracy in South Africa: the first open election, April 1994**. London: Yale University Press.

Kerley R, 1994. M**anaging in local government.** Hampshire: Macmillan Press**.**

Kotze H, 1992. **Let all votes count in South Africa: choosing an electoral system for a deeply divided society.** Centre for International and Comparative Politics. Stellenbosch: University of Stellenbosch (Research Report 2:92).

Krennerich M, and Nohlen D, 1998. **Local electoral systems: options for reform in South Africa.** (In EISA, 1998. From a tier to a sphere: Local government in the new South African constitutional order. Sandton: Heinemann publishers).

Lakeman E, 1970. **How democracies vote: a study of majority and proportional electoral systems.** London: Faber and Faber.

Lee R, et al., 1991. **Speaking or listening? Observers or agents of change? Business and public policy: 1989/90.** In Lee R, and Schlemmer L, 1991. **Transition to democracy: policy perspectives 1991.** Oxford: Oxford University Press.

Levine HM, 1982. **Political issues debated: An Introduction.** Englewood cliffs: Prentice-Hall, Inc.

Levine HM, 1987. 2nd ed. **Political issues debated: an introduction to politics.** New Jersey: Prentice-Hall, Inc.

Levy N and Tapscott C, 2001. **Intergovernmental relations in South Africa: the challenges of co-operative government**. Cape Town: IDASA

Lijphart A, 1984. **Democracies: majoritarian and consensus governmnets in twenty-one countries.** London: Yale University Press.

Lijphart A, 1994. **Electoral systems: a study of twenty-seven democracies, 1945 –1990.** New York: Oxford University Press.

Local Government: **Municipal Electoral Act,** Act 27 of 2000.

Local Government: **Municipal Structures Act,** Act 117 of 1998.

Local Government: **Transition Act,** No. 209 of 1993.

Local Government: **Transition Second Amendment Act**, No. 97 of 1996.

Local Government: **Municipal Demarcation Act**, No. 27 of 1998

Local Government: **Municipal Demarcation Board Minutes**, August 23, 1999

Lodge T, 1999. **Consolidating democracy: South Africa's second popular election**. Johannesburg: Witwatersrand University Press.

Lodge T, Jones B and Ballington J, 1999. **A handbook of South African electoral laws and regulations.** Johannesburg: Electoral Institute of South Africa.

Lodge T, Olivier L and Venter A, 2000. **Handbook on legislation and regulations for South Africa's local government elections.** Johannesburg: Electoral Institute of South Africa.

Mackenzie WJM, 1958. **Free elections.** London: George Allen and Unwin Ltd.

Matlosa K, 1999. Electoral system, stability and democratic governance in Southern Africa: the case study of Lesotho. **SADC/EU conference proceedings: strengthening and consolidating democracy in SADC through the electoral process.** Gaborone, Botswana: June, 20th –22nd.

Marais D, 1993**. South Africa: constitutional development. A multi-disciplinary approach**. Pretoria: Southern Book Publishers.

Mattes R, 1995. **The election book: judgement and choice in South Africa's 1994 election**. Cape Town: IDASA.

Mbeki M, 1991. **Can South Africa's conflicts be solved by negotiation?** (In Naidoo G, 1991. Reform and Revolution: South Africa in the nineties. Johannesburg: Skotaville Publishers).

Mbeki T, 2001. **State of the Nation Address: unity in action for change.** Cape Town: Government Communication and Information System (GCIS).

McLean I, 1987. **Public choice: an introduction.** Oxford: Basil Blackwell Ltd.

McNair B, 1995. **Introduction to political communication.** London: Routledge.

Mepha JC, 2000. **Information session**. Bloemfontein: IEC.

Mepha JC, 2001.**The management of elections in South Africa: the 1999 national/provincial elections and the 2000 local government elections.** Bloemfontein: University of the Free State.

Merkl PH, 1972. **Political continuity and change.** New York: Harper and Row Publishers, Inc.

National Peace Accord, 1992. Pretoria: Vand R Printers. September 14.

Nieuwmeijer L, and Cloete F, 1991. **The dynamics of negotiation in South Africa.** Pretoria: Sigma Press (Pty) Ltd.

Pennock JR, 1979. **Democratic political theory.** New Jersey: Princeton University Press.

Pomper GM, 1974. **Elections in America: control and influence in democratic politics.** New York: Dodd, Mead and Company, Inc.

Powell GB. Jnr, 2000. **Elections as instruments of democracy: majoritarian and proportional visions.** London: Yale University Press.

Pretoria Minute, 6 August, 1990. Pretoria.

Primstone G, 1998. **The constitutional basics of local government in South Africa, Occasional Papers.** Johannesburg: Konrad Adenauer Foundation.

Radio Lesedi, 2000. November 6 (Morning Programme).

Rae DW, 1967. **Political consequences of electoral law.** London: Yale University Press.

Ranney A, 1993. **Governing: an introduction to political science.** New Jersey: Prentice Hall.

Ranney A, 1996. 7th ed. **Governing: an introduction to political science.** Englewood Cliffs: Prentice Hall.

Rautenbach IM, and Malherbe EFJ, 1994. **Wat staan in die grondwet?** Aucklandpark: Randse Afrikaanse Universiteit.

Rautenbach IM, and Malherbe EFJ, 1994. **What does the constitution say?** Auckland Park: Rand Afrikaans University

Rebehn M, 1999. **Learning to trust democracy.** Dulwich: Arnold-Bergstraesser-Institut.

Reddy PS, 1999. **Local government democratisation and decentralisation: a review of the Southern African region.** Kenwyn: Juta and Co. Ltd.

Reitzes M, 1998. **Democratic consolidation: local government and civil society. (**In EISA, 1998. From a tier to a sphere: local government in the new South African constitutional order. Sandton: Heinemann Publishers).

Reynolds A, 1994. **Elections '94 South Africa: the campaigns, results and future prospects.** Cape Town: David Phillip Publishers.

Reynolds A, 1999. **Election '99 South Africa: from Mandela to Mbeki**. Claremont: David Philip Publishers (Pty) Ltd..

Robertson C, 1993. They Brought Disgrace on us all. In Cameron-Dow J, 1994. South Africa 1990-1994: **The Miracle of a freed nation**. Cape Town: Sunday Times.

Rose R, 1983. **Elections and electoral systems: choice and alternatives. (**In : Bogdanor V, and Butler DE, Democracy and elections: electoral systems and their political consequences. Cambridge: Cambridge University Press).

Roskin MG, et al., 1991. 4th Ed. **Political Science: an introduction.** New Jersey: Prentice-Hall, Inc.

Ross JFS, 1955. **Elections and electors: studies in democratic representation.** London: Eyre and Spottiswoode.

RSA 1996. Constitution of the Republic of South Africa, **Act 108 of 1996**. Pretoria: Government Printers.

Sampson A, 1999. **Mandela: the authorised biography**. London: HarperCollins Publishers.

Sarakinsky I, 1994. **Rehearsing joint rule: the transitional Executive Council.** (In Friedman S and Atkinson D, 1994. South African Review 7. The Small Miracle: South Africa's negotiated settlement**.** Randburg: Ravan Press (Pty) Ltd.

Smith C, 2002. **Patricia de Lille**. Kenilworth: Spearhead

Smith HR, 1960. **Democracy and the public interest.** Athens: University of Georgia Press.

Smith TE, 1960. **Elections and developing countries.** New York: St Martin's Press Inc.

Sparks A, 1994. **Tomorrow is another country: the inside story of South Africa's negotiated revolution.** Sandton: Struik Book Distributors.

Spitz R, and Chaskalson M, 2000. **The politics of transition: a hidden history of South Africa's negotiated settlement**. Johannesburg: Witwatersrand University Press.

Tapscott C, 1998. **Intergovernmental relations in South Africa – A comparative analysis.** Pretoria: Department of Constitutional Development and Provincial Affairs (in collaboration with the National Democratic Institute for International Affairs and School for Government, University of the Western Cape: 9-28).

Taylor PJ, and Johnson RJ, 1979. **Geography of elections.** London: Hazell Watson and Viney Ltd**.**

The Rockefeller Panel Report on American Democracy. 1960. **The power of the democratic idea.** New York: Doubleday and Company, Inc.

Thompson DF, 1976. **John Stuart Mill and representative government.** New Jersey: Princeton University Press.

United Nations, 1994. **Human rights and elections.** Geneva: Centre for Human Rights.

Van Zyl Slabbert F, 1991. **The basis and challenges of transition in South Africa: a review and a preview.** (<u>In</u> Lee R, and Schlemmer L, 1991. **Transition to Democracy: Policy perspectives 1991.** Oxford: Oxford University Press)**.**

Venter A, 2001. 2nd ed. **Government and politics in the new South Africa.** Pretoria: Van Schaik Publishers.

Waldmeir P, 1997. **Anatomy of a miracle**. Englewood: Norton and Company, Inc.

Wessels DP, 1992. **Die hervormingsinisiatief en transformasieproses in Suid-Afrika.** Joernaal vir Eietydse Geskiedenis. Vol. 17:2 pp. 187-212

Wessels DP, 1994. **Electoral system and system of representation − Election of 27 April 1994.** Journal for Contemporary History. Vol. 19:2, pp. 141-178.

Wessels DP, 1996. **Staatbou met besondere verwysing na die fases van staatbou in Suid-Afrika**. (<u>In</u> Kriek DJ, and Labuschagne P, 1996. Staatboufase: politieke verandering in Suid-Afrika. Vol. 1. Pretoria: RGN-Uitgewery)

Wessels DP, 1999. **South Africa's reconstruction and development programme**: **"a better life for all".** Journal of Social Sciences. Vol. 3: 4, pp. 235-243.

Wessels DP, 1999. **Election of 2 June 1999: contextual overview and statistical profile.** Journal of Contemporary History. Vol. 23, pp. 159-167.

Wessels DP, 2000**. Die Struktuur en dinamika van die Suid-Afrikaanse politieke omgewing: 'n post-apartheidsperpektief**. Joernaal vir Eietydse Geskiedenis.

Winter HR, and Bellows J. J, 1992. **Conflict and compromise: an introduction to politics.** New York: Harper Collins.

Wiseman JA, 1990. **Democracy in black Africa: survival and revival.** New York: Paragon House Publishers.

WEBSITES:

www.barnsdle.demon.co.uk/vote/listPR/htm

www.barnsdle.demon.co.uk/vote/PR.htm

www.barnsdle.demon.co.uk/vote/empower.htm (Richie et al.)

SPEECHES:

De Klerk FW, 2 February 1990. Address at the Opening of the second session on the ninth parliament of the Republic of South Africa. Cape Town (Appendix B).

Mandela NR, 20 December 1991. Address to CODESA (Appendix E).

Mandela NR, 17 November 1993. Address to the plenary session of the Multi-party negotiations process. World Trade Centre. Kempton Park (Appendix H).

Mandela NR, April 1994. Speech upon being elected as President of the Republic of South Africa.

Mbeki TM, 1999a. Speech at the National Anti-Corruption Summit, Cape Town, 14 April 1999:1-3. <http://www.anc.org.za/ancdocs/history/mbeki/1999/tm0414,html>

GOVERNMENT GAZETTES:

No. 21478 of 14 August 2000. **Municipal Electoral Regulations**
No. 21620 of 10 October 2000. **Announcement of Election Date**
No. 21645 of 10 October 2000. **IEC Election Time table**
No. 21797 of 27 November 2000. **Official Listing of Voting Stations**
No. 21966 of 19 January 2001. **Local Government Election Results**

NEWSPAPERS:

Anon., 1992. **SA awaits outcome of Codesa labours**. Pretoria News. May 13:6.

Anon., 1992. **Day of high drama at Codesa**. The Citizen. May 14:1.

Anon., 2000. **Local Government**. Mail and Guardian. August:11-12.

Cargill J, 1992. **Codesa 2 in focus**. Finance Week. May 14:48.

City Press Comment, 2000. **Go vote – staying away won't help.** City Press. December 3, 2000:8.

Fabricius P, 1991. **'We're sorry for apartheid': NP apologises as Codesa paves way for new SA.** The Star. December 21, pg. 2.

Gordhan P, 1991. **Shaping, the 'new' South Africa. There'll be a lot at stake at Codesa.** Natal Post, 17 December:18.

Kaizer Family Foundation, 2001. **South African National Youth Survey.** Sunday Times. March 4,2001:13.

Mkhabele M, and Mahlangu D, 2000. **Political parties pledge to root out crime, corruption.** City Press. October 22, 2000:2.

Modise T, 2000. **Mark my Words.** City Press. December 10, 2000:9.

Nqayi Z, and Mokoena M, 2000. **Last-ditch fight for the city vote.** City Press. December 3, 2000:2.

Paton C, 2000. **Leon shops for cheap AIDS drugs.** Sunday Times. October 22, 2000:2.

Paton C, 2000. **Run-up to poll may lack spark, but the result promises to pack a punch.** Sunday Times. November 26, 2000:20.

Sapa, 2000. **UDM vows to crush criminals.** City Press. October 22, 2000:2.

Sello S, 2000. **DA did well, but no threat to ANC.** City Press. December 10, 2000:9.

Zwane S, 2000**. ANC on track in Free State.** Sunday Times. December 10, 2000.

APPENDICES

APPENDIX G:

APPENDIX H:

APPENDIX I:

APPENDIX A:

Draft Declaration of the OAU ad hoc Committee on Southern Africa on the Question of South Africa (Harare Declaration), 21 August 1989.

DRAFT DECLARATION OF THE OAU AD HOC COMMITTEE ON SOUTHERN AFRICA ON THE QUESTION OF SOUTH AFRICA (HARARE DECLARATION), 21 AUGUST 1989

Preamble

The people of Africa, singly, collectively and acting through the OAU, are engaged in serious efforts to establish peace throughout the continent by ending all conflicts through negotiations based on the principle of justice and peace for all.

We reaffirm our conviction, which history confirms, that where colonial, racial and apartheid domination exists, there can neither be peace nor justice.

Accordingly, we reiterate that while the apartheid system in SA persists, the peoples of our continent as a whole cannot achieve the fundamental objectives of justice, human dignity and peace which are both crucial in themselves and fundamental to the stability and development of Africa.

With regard to the region of Southern Africa, the entire continent is vitally interested that the processes in which it is involved, leading to the complete and genuine independence of Namibia, as well as peace in Angola and Mozambique should succeed in the shortest possible time.

Equally, Africa is deeply concerned that the destabilisation by SA of all the countries of the region, whether through direct aggression, sponsorship of surrogates, economic subversion and other means, should end immediately.

We recognise the reality that permanent peace and stability in Southern Africa can only be achieved when the system of apartheid in SA has been liquidated and SA transformed into a united, democratic and non-racial country.

We therefore reiterate that all the necessary measures should be adopted now, to bring a speedy end to apartheid system, in the interest of all people of Southern Africa, our continent and the world at large.

We believe that, as a result of the liberation struggle and international pressure against apartheid, as well as global efforts to liquidate regional conflicts, possibilities exist for further movement towards the resolution of the problems facing the people of SA.

For these possibilities to lead to fundamental change in SA, the Pretoria regime must abandon its abhorrent concepts and practices of racial domination and its record of failure to honour agreements, all of which have already resulted in the loss of so many lives and destruction of much property in the countries of Southern Africa.

We reaffirm our recognition of the right of all peoples, including those of SA to determine their own destiny, and work out for themselves the institutions and the system of government under which they will, by general consent, live and work together to build a harmonious society.

The OAU remains committed to doing everything possible and necessary to assist the people of SA, in such ways as the representatives of the oppressed may determine, to achieve this objective. We are certain that, arising from its duty to help end the criminal apartheid system, the rest of the world community is ready to extend similar assistance to the people of SA.

We make these commitments because we believe that all people are equal and have equal rights to human dignity and respect, regardless of colour, race, sex or creed.

We believe that all men and women have the right and duty to participate in their own government, as equal members of society.

No individual or group of individual has any right to govern others without their consent.
The apartheid system violates all these fundamental and universal principles.

Correctly characterised as a crime against humanity, it is responsible for the death of countless numbers of people in SA.

It has sought to dehumanise entire peoples.

It has imposed a brutal war on the whole region of Southern Africa, resulting in untold loss of life, destruction of property and massive displacement of innocent men, women and children. This scourge and affront to humanity must be fought and eradicated in its totality.

We have therefore supported and continued to support all those in SA who pursue this noble objective through political, armed and other forms of struggle. We believe this to be our duty, carried out in the interest of all humanity.

While extending its support to those who strive for a non-racial and democratic society in SA, a point on which no compromise is possible, we have repeatedly expressed our preference for a solution arrived at by peaceful means. We know that the majority of the people of SA and their liberation movement who have been compelled to take up arms, have also upheld this position for many decades and continue to do so.

The positions contained in this declaration are consistent with and are continuation of those elaborated in the Lusaka Manifesto, two decades ago. They take into account the changes that have taken place in Southern Africa since that manifesto was adopted by the OAU and the rest of the international community.
They constitute a new challenge to the Pretoria regime to join in the noble effort to end the apartheid system, an objective to which the OAU has been committed from its very birth.

Consequently, we shall continue to do everything in our power to help intensify the liberation struggle and international pressure against the system of apartheid until this system is ended and SA is transformed into a united democratic and non-racial country, with justice and security for all its citizens.

In keeping with this solemn resolve, and responding to the wishes of the representatives of the majority of the people of SA, we publicly pledge ourselves to the positions contained hereunder.
We are convinced that their implementation will lead to a speedy end of the apartheid system and therefore the opening of a new dawn of peace for all the peoples of Africa, in which racism, colonial domination and white minority rule on our continent would be abolished forever.

Statement of Principle

We believe that conjuncture of circumstances exists which, if there is a demonstrable readiness on the part of the Pretoria regime to engage in negotiations genuinely and seriously, could create the possibility to end apartheid through negotiations.

Such an eventuality would e an expression of the longstanding preference of the majority of the people of SA to arrive at a political settlement.

We would therefore encourage the people of SA, as part of their overall struggle, to get together to negotiate an end to the apartheid system and agree on all the measures that are necessary to transform their country into a non-racial democracy.

We support the position held by the majority of the people of SA that these objectives, and not the amendment or reform of the apartheid system, should be the aim of the negotiation.

We are at one with them that the outcome of such a process should be a new constitutional order based on the following principles, among others:

16.1 SA shall become a united, democratic and non-racial state;

16.2 All its people shall enjoy common and equal citizenship and nationality, regardless of race, colour, sex or creed;

16.3 All its people shall have the right to participate in the government and administration of the country on the basis of a universal suffrage, exercised through one person one vote, under a common voters' roll;

16.4 All shall have the right to form and join any political party of their choice, provided that this is not in furtherance of racism;

16.5 All shall enjoy universally recognised human rights, freedoms and civil liberties, protected under an entrenched bill of rights;

16.6 SA shall have a new legal system which shall guarantee equality of all before the law;

16.7 SA shall have an independent and non-racial judiciary;

16.8 There shall be created an economic order, which shall promote and advance the well-being of all South Africans;

16.9 A democratic SA shall respect the rights, sovereignty and territorial integrity of all countries and pursue a policy of peace, friendship, and mutual beneficial cooperation with all peoples.

We believe that agreement on the above principles shall constitute the foundation for an internationally acceptable solution which shall enable SA to take its rightful place as an equal partner among the African and world community of nations.

Climate for Negotiations

Together with the rest of the world, we believe that it is essential before any negotiations can take place, that the necessary climate for negotiations be created.
The apartheid regime has the urgent responsibility to respond positively to this universally acclaimed demand and thus create this climate.

Accordingly, the present regime should, at the very least:

19.1 Release all political prisoners and detainees unconditionally and refrain from imposing any restrictions on them;

19.2 Lift all bans and restrictions on all proscribed and restricted organisations and persons;

19.3 Remove all troops from the townships;

19.4 End the state of emergency and repeal al legislation, such as, and including the Internal Security Act, designed to circumscribe political activity; and

19.5 Cease all political trials and political executions.

These measures are necessary to produce conditions in which free political discussion can take place – an essential condition to ensure that the people themselves participate in the process of remaking their country.

The measures listed above should therefore precede negotiations.

Guidelines to the Process of Negotiation

We support the view of the liberation movement that upon the creation of this climate, the process of negotiations should commence along the following lines:

21.1 Discussions should take place between the liberation movement and the South African regime to achieve the suspension of the hostilities on both sides by agreeing to a mutual binding ceasefire;

21.2 Negotiations should then proceed to establish the basis for the adoption of a new constitution by agreeing on, among others, the principles enunciated above;

21.3 Having agreed on these principles, the parties should then negotiate the necessary mechanism for drawing up the new constitution;

21.4 The parties shall define and agree on the role to be played by the international community in ensuring a successful transition to a democratic order;

21.5 The parties shall agree on the formation of an interim government to supervise the process of drawing up and adoption of a new constitution; govern and administer the country, as well as effect the transition to a democratic order, including the holding of elections;

21.6 After the adoption of the new constitution, all armed hostilities will be deemed to have formally terminated;

21.7 For its part, the international community would lift sanctions that have been imposed against apartheid SA.

The new SA shall qualify for membership of the Organisation of African Unity.

Programme of Action

In pursuance of the objectives stated in this document, the OAU hereby commits itself to:

23.1   Inform governments and inter-governmental organisations throughout the world, including the Non-aligned Movement, the UN General Assembly, the Security Council, the Commonwealth and others of these perspectives, and solicit their support;

23.2   Mandate the Frontline States, acting as the representatives of the OAU, to remain seized of the issue of political resolution of the South African question;

23.3   Step up all-round support for the South African liberation movement and campaign in the rest of the world in pursuance of this objective;

23.4   Intensify the campaign for mandatory and comprehensive sanctions against apartheid SA. In this regard, immediately mobilise against the rescheduling of Pretoria's foreign debts; work for the imposition of a mandatory oil embargo and the full observance by all countries of the arms embargo;

Ensure that the African continent does not relax existing measures for the total isolation of apartheid SA.

Continue to monitor the situation in Namibia and extend all necessary support to SWAPO in its struggle for a genuinely independent Namibia.

Extend such assistance as the Governments of Angola and Mozambique may request in order to secure peace for their peoples; and

Render all possible assistance to the Frontline States to enable them to withstand Pretoria's campaign of aggression and destabilisation and enable them to continue to give their all-round support to the people of Namibia and SA.

We appeal to all people of goodwill throughout the world to support this Programme of Action as a necessary measure to secure the earliest liquidation of the apartheid system and the transformation of SA into a united, democratic and non-racial country.
The declaration acknowledges it is based upon a draft adopted by the African National Congress, Lusaka, August 10, 1989, in a concluding footnote.

APPENDIX B:

ADDRESS BY THE STATE PRESIDENT, MR FW DE KLERK, DMS, AT THE OPENING OF THE SECOND SESSION OF THE NINTH PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA CAPE TOWN,
2 FEBRUARY 1990

Mr Speaker; Members of Parliament.

The general election on 6 September 1989, placed our country irrevocably on the road of drastic change. Underlying this is the growing realisation by an increasing number of South Africans that only a negotiated understanding among the representative leaders of the entire population can ensure lasting peace.

The alternative is escalating violence, tension and conflict, which is unacceptable and in nobody's interest. The well-being of all in this country is linked inextricably to the ability of the leaders to come to terms with one another on a new dispensation. No-one can escape this simple truth.

On its part, the Government will accord the process of negotiation the highest priority. The aim is a totally new and just constitutional dispensation in which every inhabitant will enjoy equal rights, treatment and opportunity in every sphere of endeavour - constitutional, social and economic.

I hope that this new parliament will play a constructive part in both the prelude to negotiations and the negotiating process itself. I wish to ask all of you who identify yourselves with the broad aim of a new South Africa, and that is the overwhelming majority:

Let us put petty politics aside when we discuss the future during this session.

Help us build a broad consensus about the fundamentals of a new, realistic and democratic dispensation.

Let us work together on a plan that will rid our country of suspicion and steer it away from domination and radicalism of any kind.

During the term of this new Parliament, we shall have to deal, complimentary to one another, with the normal processes of legislation and day-to-day government, as well as with the process of negotiation and renewal.

Within this framework I wish to deal first with several matters more closely concerned with the normal process of government before'l turn specifically to negotiation and related issues.

1.   FOREIGN RELATIONS

The Government is aware of the important part the world at large has to play in the realisation of our country's national interests.

Without contact and co-operation with the rest of the world we cannot promote the well-being and security of our citizens. The dynamic developments in international politics have created new opportunities for South Africa as well. Important advances have been made, among other things, in our contacts abroad, especially where these were precluded previously by ideological considerations.

I hope this trend will be encouraged by the important change of climate that is taking place in South Africa.

For South Africa, indeed for the whole world, the past year has been one of change and major upheaval. In Eastern Europe and even the Soviet Union itself, political and economic upheaval surged forward in an unstoppable tide. At the same time, Beijing temporarily smothered with brutal violence the yearning of the people of the Chinese mainland for greater freedom.

The year 1989 will go down in history as the year in which Stalinist Communism expired.

These developments will entail unpredictable consequences for Europe, but they will also be of decisive importance to Africa. The indications are that the countries of Eastern and Central Europe will receive greater attention, while it will decline in the case of Africa.

The collapse, particularly of the Marxist economic system in Eastern Europe, also serves as a warning to those who insist on persisting with it in Africa. Those who seek to force this failure of a system on South Africa, should engage in a total revision of their point of view. It should be clear to all that it is not the answer here either. The new situation in Eastern Europe

also shows that foreign intervention is no recipe for domestic change. It never succeeds, regardless of its ideological motivation. The upheaval in Eastern Europe took place without the involvement of the Big Powers or of the United Nations.

The countries of Southern Africa are faced with a particular challenge: Southern Africa now has an historical opportunity to set aside its conflicts and ideological differences and draw up a joint programme of reconstruction. It should be sufficiently attractive to ensure that the Southern African region obtains adequate investment and loan capital from the industrial countries of the world. Unless the countries of Southern Africa achieve stability and a common approach to economic development rapidly, they will be faced by further decline and ruin.

The Government is prepared to enter into discussions with other-Southern African countries with the aim of formulating a realistic development plan. The Government believes that the obstacles in the way of a conference of Southern African states have now been removed sufficiently.

Hostile postures have to be replaced by co-operative ones; confrontation by contact; disengagement by engagement; slogans by deliberate debate.

The season of violence is over. The time for reconstruction and reconciliation has arrived.

Recently there have, indeed, been unusually positive results in South Africa's contacts and relations with other African states. During my visits to their countries I was received cordially, both in private and in public, by presidents Mobutu, Chissano, Houphouet-Boigny and Kaunda. These leaders expressed their sincere concern about the serious economic problems in our part of the world. They agreed that South Africa could and should play a positive part in regional co-operation and development.

Our positive contribution to the independence process in South West Africa/Namibia has been recognised internationally. South Africa's good faith and reliability as a negotiator made a significant contribution to the success of the events. This, too, was not unnoticed. Similarly, our efforts to help bring an end to the domestic conflict situations in Mozambique and Angola have received positive acknowledgement.

At present the Government is involved in negotiations concerning our future relations with an independent Namibia and there are no reasons why good relations should not exist between

the two countries. Namibia needs South Africa and we are prepared to play a constructive part.

Nearer home I paid fruitful visits to Venda, Transkei and Ciskei and intend visiting Bophuthatswana soon. In recent times there has been an interesting debate about the future relationship of the TBVC countries with South Africa and specifically about whether they should be re-incorporated into our country.

Without rejecting this idea out of hand, it should be borne in mind that it is but one of many possibilities. These countries are constitutionally independent. Any return to South Africa will have to be dealt with, not only by means of legislation in their parliaments, but also through legislation in this Parliament. Naturally this will have to be preceded by talks and agreements.

2.   HUMAN RIGHTS

Some time ago the Government referred the question of the protection of fundamental human rights to the South African Law Commission. This resulted in the Law Commission's interim working document on individual and minority rights. It elicited substantial public interest.

I am satisfied that every individual and organisation in the country has had ample opportunity to make representations to the Law Commission, express criticism freely anti make suggestions. At present, the Law Commission is considering the representations received. A final report is expected in the course of this year.

In view of the exceptional importance of the subject of human rights to our country and all its people, I wish to ask the Law Commission to accord this task high priority.

The whole question of protecting individual and minority rights, which includes collective rights and the rights of national groups, is still under consideration by the Law Commission. Therefore, it would be inappropriate of the Government to express a view on the details now. However, certain matters of principle have emerged fairly clearly and I wish to devote some remarks to them.

The Government accepts the principle of the recognition and protection of the fundamental individual rights which form the constitutional basis of most Western democracies. We acknowledge, too, that the most practical way of protecting those rights is vested in a declaration of rights justiciable by an independent judiciary. However, it is clear that a system

for the protection of the rights of individuals, minorities and national entities has to form a well-rounded and balanced whole. South Africa has its own national composition and our constitutional dispensation has to take this into account. The formal recognition of individual rights does not mean that the problems of a heterogeneous population will simply disappear. Any new constitution which disregards this reality will be inappropriate and even harmful.

Naturally, the protection of collective, minority and national rights may not bring about an imbalance in respect of individual rights. It is neither the Government's policy nor its intention that any group -- in whichever way it may be defined -- shall be favoured above or in relation to any of the others.

The Government is requesting the Law Commission to undertake a further task and report on it. This task is directed at the balanced protection in a future constitution of the human rights of all our citizens, as well as of collective units, associations, minorities and nations. This investigation will also serve the purpose of supporting negotiations towards a new constitution.

The terms of reference also include:

- the identification of the main types and models of democratic constitutions which deserve consideration in the aforementioned context;
- an analysis of the ways in which the relevant rights are protected in every model; and

- possible methods by means of which such constitutions may be made to succeed and be safeguarded in a legitimate manner.

3.   THE DEATH PENALTY

The death penalty has been the subject of intensive discussion in recent months. However, the Government has been giving its attention to this extremely sensitive issue for some time. On 27 April 1989, the honourable Minister of Justice indicated that there was merit in suggestions for reform in this area. Since 1988 in fact, my predecessor and I have been taking decisions on reprieves which have led, in proportion, to a drastic decline in executions. We have now reached the position in which we are able to make concrete proposals for reform. After the Chief Justice was consulted, and he in turn had consulted the Bench, and after the

Government had noted the opinions of academics and other interested parties, the Government decided on the following broad principles from a variety of available options:

- that reform in this area is indicated;
- that the death penalty should be limited as an option of sentence to extreme cases, and specifically through broadening judicial discretion in the imposition of sentence; and
- that an automatic right of appeal be granted to those under sentence of death.

Should these proposals be adopted, they should have a significant influence on the imposition of death sentences on the one hand, and on the other, should ensure that every case in which a person has been sentenced to death, will come to the attention of the Appellate Division.

These proposals require that everybody currently awaiting execution, be accorded the benefit of the proposed new approach. Therefore, all executions have been suspended and no executions will take place until Parliament has taken a final decision on the new proposals. In the event of the proposals being adopted, the case of every person involved will be dealt with in accordance with the new guidelines. In the mean time, no executions have taken place since 14 November 1989.

New and uncompleted cases will still be adjudicated in terms of the existing law. Only when the death sentence is imposed, will the new proposals be applied, as in the case of those currently awaiting execution.

The legislation concerned also entails other related principles which will be announced and elucidated in due course by the Minister of Justice. It will now be formulated in consultation with experts and be submitted to Parliament as soon as possible.

I wish to urge everybody to join us in dealing with this highly sensitive issue in a responsible manner.

4.   SOCIO-ECONOMIC ASPECTS

A changed dispensation implies far more than political and constitutional issues. It cannot be pursued successfully in isolation from problems in other spheres of life which demand practical solutions. Poverty, unemployment, housing shortages, inadequate education and training, illiteracy, health needs and numerous other problems still stand in the way of progress and prosperity and an improved quality of life.

The conservation of the physical and human environment is of cardinal importance to the quality of our existence.

For this the Government is developing a strategy with the aid of an investigation by the President's Council.

All of these challenges are being dealt with urgently and comprehensively. The capability for this has to be created in an economically accountable manner. Consequently, existing strategies and aims are undergoing a comprehensive revision.

From this will emanate important policy announcements in the socio-economic sphere by the responsible Ministers during the course of the session. One matter about which it is possible to make a concrete announcement, is the Separate Amenities Act, 1953. Pursuant to my speech before the President's Council late last year, I announce that this Act will be repealed during this Session of Parliament. The State cannot possibly manage all the social advancement our circumstances demand single-handedly, The community at large, and especially the private sector, also have a major responsibility towards the welfare of our country and its people.

5.   THE ECONOMY

A new South Africa is possible only if it is bolstered by a sound and growing economy, with particular emphasis on the creation of employment. With a view to this, the Government has taken thorough cognisance of the advice contained in numerous reports by variety of advisory bodies. The central message is that South Africa, too, will have to make certain structural changes to its economy, just as its major trading partners had to do a decade or so ago. The period of exceptionally high economic growth experienced by the Western world in the 1960s, was brought to an end by the oil crisis in 1973. Drastic structural adaptations became inevitable for these countries, especially after the second oil crisis in 1979, when serious imbalances occurred in their economies. After considerable sacrifices, those countries which persevered with their structural adjustment programmes, recovered economically so that lengthy periods of high economic growth and low inflation were possible.

During that particular period, South Africa was protected temporarily by the rising gold price from the necessity of making similar adjustments immediately. In fact, the high gold price

even brought prosperity with it for a while. The recovery of the world economy and the decline in the price of gold and other primary products, brought with them unhealthy trends. These included high inflation, a serious weakening in the productivity of capital, stagnation in the economy's ability to generate income and employment opportunities. All of this made a drastic structural adjustment of our economy inevitable.

The Government's basic point of departure is to reduce the role of the public sector in the economy and to give the private sector maximum opportunity for optima) performance. In this process, preference has to be given to allowing the market forces and a sound competitive structure to bring about the necessary adjustments.

Naturally, those who make and implement economic policy have a major responsibility at the same time to promote an environment optimally conducive to investment, job creation and economic growth by means of appropriate and properly co-ordinated fiscal and monetary policy. The Government remains committed to this balanced and practical approach.

By means of restricting capital expenditure in parastatal institutions, privatisation, deregulation and curtailing government expenditure, substantial progress has already :been made towards reducing the role of the authorities in the economy. We shall persist with this in a well-considered way.

This does not mean that the State will forsake its indispensable development role, especially in our particular circumstances. On the contrary, it is the precise intention of the Government to concentrate an equitable portion of its capacity on these aims by means of the meticulous determination of priorities.

Following the progress that has been made in other areas of the economy in recent years, it is now opportune to give particular attention to the supply side of the economy.

Fundamental factors which will contribute to the success of this restructuring are:

- the gradual reduction of inflation to levels comparable to those of our principal trading partners;
- the encouragement of personal initiative and savings;
- the subjection of all economic decisions by the authorities to stringent financial measures and discipline;

- rapid progress with the reform of our system of taxation; and
- the encouragement of exports as the impetus for industrialisation and earning foreign exchange.

These and other adjustments, which will require sacrifices, have to be seen as prerequisites for a new period of sustained growth in productive employment in the nineties.

The Government has also noted with appreciation the manner in which the Reserve Bank has discharged its special responsibility in striving towards our common goals. The Government is very much aware of the necessity of proper co-ordination and consistent implementation of its economic policy. For this reason, the establishment of the necessary structures and expertise to ensure this co-ordination is being given preference. This applies both to the various functions within the Government and to the interaction between the authorities and the private sector.

This is obviously not the occasion for me to deal in greater detail with our total economic strategy or with the recent course of the economy.
I shall confine myself to a few specific remarks on one aspect of fiscal policy that has been a source of criticism of the Government for some time, namely State expenditure.

The Government's financial year ends only in two months' time and several other important economic indicators for the 1989 calendar year are still subject to refinements at this stage. Nonetheless, several important trends are becoming increasingly clear. I am grateful to be able to say that we have apparently succeeded to a substantial degree in achieving most of our economic aims in the past year.

In respect of Government expenditure, the budget for the current financial year wilt be the most accurate in many years. The financial figures will show:

- that Government expenditure is thoroughly under control;
- that our normal financing programme has not exerted any significant upward pressure on rates of-interest; and
- that we shall close the year with a surplus, even without taking the income from the privatisation or Iscor into account.

Without pre-empting this year's main budget, I wish to emphasise that it is also our intention to co-ordinate fiscal and monetary policy in the coming financial year in a way that will enable us to achieve the ensuing goals namely:

- that the present downturn will take the form of a soft landing which will help to make adjustments as easy as possible;

- that our economy will consolidate before the next upward phase so that we shall be able to grow from a sound base; and

- that we shall persist with the implementation of the required structural adaptations in respect, among other things, of the following: easing the tax burden, especially on individuals; sustained and adequate generation of surpluses on the current account of the balance of payments; and the reconstruction of our gold and foreign exchange reserves.

It is a matter of considerable seriousness to the Government, especially in this particular period of our history, to promote a dynamic economy which will make it possible for increasing numbers of people to be employed and share in rising standards of living.

6.   NEGOTIATION

In conclusion, I wish to focus the spotlight on the process of negotiation and related issues. At this stage I am refraining deliberately from discussing the merits of numerous political questions, which undoubtedly will be debated during the next few weeks. The focus, now, has to fall on negotiation.

Practically every leader agrees that negotiation is the key to reconciliation, peace and a new and just dispensation. However, numerous excuses for refusing to take part, are advanced. Some of the reasons being advanced are valid. Others are merely part of a political chess game. And while the game of chess proceeds, valuable time is being lost.

Against this background I committed the Government during my inauguration to giving active attention to the most important obstacles in the way of negotiation. Today I am able to announce far-reaching decisions in this connection.

I believe that these decisions will shape a new phase in which there will be a movement away from measures which have been seized upon as a justification for confrontation and violence. The emphasis has to move, and will move now, to a debate and discussion of political and economic points of view as part of the process of negotiation.

I wish to urge every political and community leader, in and outside Parliament, to approach the new opportunities which are being created, constructively. There is no time left for advancing all manner of new conditions that will delay the negotiating process.

The steps that have been decided, are the following:

The prohibition of the African National Congress, the Pan Africanist Congress, the South African Communist Party and a number of subsidiary organisations is being rescinded.

People serving prison sentences merely because they were members of one of these organisations or because they committed another offence which was merely an offence because a prohibition on one of the organisations was in force, will be identified and released. Prisoners, who have been sentenced for other offences such as murder, terrorism or arson are not affected by this.

The media emergency regulations as well as the education emergency regulations are being abolished in their entirety.

The security emergency regulations will be amended to still make provision for effective control over visual material pertaining to scenes of unrest.

The restrictions in terms of the emergency regulations on 33 organisations are being rescinded. The organisations include the following:

- National Education Crisis Committee
- South African National Students Congress
- United Democratic Front
- Cosatu
- Die Blanke Bevrydingsbeweging van Suid-Afrika.

The conditions imposed in terms of the security emergency regulations on 374 people on their release, are being rescinded and the regulations which provide for such conditions are being abolished.

The period of detention in terms of the security emergency regulations will be limited henceforth to six months. Detainees also acquire the right to legal representation and a medical practitioner of their choice.

These decisions by the Cabinet are in accordance with the Government's declared intention to normalise the political process in South Africa without jeopardising the maintenance of the good order. They were preceded by thorough and unanimous advice by a group of officials which included members of the security community.

Implementation will be immediate and, where necessary, notices will appear in the Government Gazette from tomorrow.

The most important facets of the advice the Government received in this connection, are the following:

- the events in the Soviet Union and Eastern Europe, to which I have referred already, weaken the capability of organisations which were previously supported strongly from those quarters;

- The activities of the organisations from which the prohibitions are now being lifted, no longer entail the same degree of threat to internal security which initially necessitated the imposition of the prohibitions;

- there have been important shifts of emphasis in the statements and points of view of the most important of the organisations concerned, which indicate a new approach and a preference for peaceful solutions; and

- the South African Police is convinced that it is able, in the present circumstances, to combat violence and other crimes perpetrated also by members of these organisations and to bring offenders to justice without the aid of prohibitions on organisations.

About one matter there should be no doubt. The lifting of the prohibition on the said organisations does not signify in the least the approval or condonation of terrorism or crimes

of violence committed under their banner or which may be perpetrated in the future. Equally, it should not be interpreted as a deviation from the Government's principles, among other things, against their economic policy and aspects of their constitutional policy. This will be dealt with in debate and negotiation.

At the same time I wish to emphasise that the maintenance of law and order dare not be jeopardised. The Government will not forsake its duty in this connection. Violence from whichever source, will be fought with all available might.

Peaceful protest mat not become the springboard for lawlessness, violence and intimidation. No democratic country can tolerate that.

Strong emphasis will be placed as well on even more effective law enforcement. Proper provision of manpower and means for the police and all who are involved with the enforcement of the law, will also be ensued. In fact, the budget for the coming financial year will already begin to give effect to this.

I wish to thank the members of our security forces and related services for the dedicated service they have rendered the Republic of South Africa. The dedication makes reform in a stable climate possible.

On the state of emergency, I have been advised that an emergency situation, which justifies these special measures which have been retained, still exists. There is still conflict which is manifesting itself mainly in Natal, but as a consequence of the country-wide political power struggle. In addition, there are indications that radicals are still trying to disrupt the possibilities of negotiation by means of mass violence.

It is my intention to terminate the state of emergency completely as soon as circumstances justify it and I request the co-operation of everybody towards this end. Those responsible for unrest and conflict have to bear the blame for the continuing state of emergency. In the mean time, the state of emergency is inhibiting only those who use chaos and disorder as political instruments. Otherwise the rules of the game under the state of emergency are the same for everybody.

Against this background the Government is convinced that the decisions I have announced are justified from a security point of view. However, these decisions are justified from a political point of view as well.

Our country and all its people have been embroiled in conflict, tension and violent struggle for decades. It is time for us to break out of the cycle of violence and break through to peace and reconciliation. The silent majority is yearning for this. The youth deserve it.

With the steps the Government has taken it has proven its good faith and the table is laid for sensible leaders to begin talking about a new dispensation, to reach an understanding by way of dialogue and discussion.

The agenda is open and the overall aims to which we are aspiring should be acceptable to all reasonable South Africans.

Among other things, those aims include a new, democratic constitution; universal franchise; no domination; equality before an independent judiciary; the protection of minorities as well as of individual rights; freedom of religion; a sound economy based on proven economic principles and private enterprise; dynamic programmes directed at better education, health services; housing and social conditions for all.

In this connection Mr Nelson Mandela could play an important part. The Government has noted that he has declared himself to be willing to make a constructive contribution to the peaceful political process in South Africa.

I wish to put it plainly that the Government has taken a firm decision to release Mr Mandela unconditionally. I am serious about bringing this matter to finality without delay. The Government will take a decision soon on the date of his release. Unfortunately, a further short passage of time is unavoidable.

Normally there is a certain passage of time between the decision to release and the actual release because of logistical and administrative requirements. In the case of Mr Mandela there are factors in the way of his immediate release, of which his personal circumstances and safety are not the least. He has not been an ordinary prisoner for quite some time. Because of that, his case requires particular circum-spection.

Today's announcements, in particular, go to the heart of what Black leaders -- also Mr Mandela -- have been advancing over the years as their reason for having resorted to violence. The allegation has been that the Government did not wish to talk to them and that they were deprived of their right to normal political activity by the prohibition of their organisations.

Without conceding that violence has ever been justified, I wish to say today to those who argued in this manner:

The Government wishes to talk to all leaders who seek peace.

The unconditional lifting of the prohibition on the said organisations places everybody in a position to pursue politics freely.

The justification for violence which was always advanced, no longer exists.

These facts place everybody in South Africa before a fait accompli. On the basis of numerous previous statements there is no longer any reasonable excuse for the continuation of violence. The time for talking has arrived and whoever still makes excuses does not really wish to talk.

Therefore, I repeat my invitation with greater conviction than ever:

> Walk through the open door, take your place at the negotiating table together with the Government and other leaders who have important power bases inside and outside of Parliament.

Henceforth, everybody's political points of view will be tested against their realism, their workability and their fairness. The time for negotiation has arrived.

To those political leaders who have always resisted violence i say thank you for your principled stands. This includes all the leaders of parliamentary parties, leaders of important organisations and movements, such as Chief Minister Buthelezi, all of the other Chief Ministers and urban community leaders.

Through their participation and discussion they have made an important contribution to this moment in which the process of free political participation is able to be restored. Their places in the negotiating process are assured.

CONCLUSION

In my inaugural address I said the following:

"All reasonable people in this country -- by far the majority -- anxiously await a message of hope. It is our responsibility as leaders in all spheres to provide that message realistically, with courage and conviction. If we fail in that, the ensuing chaos, the demise of stability and progress, will for ever be held against us.

"History has thrust upon the leadership of this country the tremendous responsibility to turn our country away from its present direction of conflict and confrontation. Only we, the leaders of our peoples, can do it.

"The eyes of responsible governments across the world are focused on us. The hopes of millions of South Africans are centred around us. The future of Southern Africa depends on us. We dare not falter or fail." This is where we stand:

Deeply under the impression of our responsibility.
Humble in the face of the tremendous challenges ahead.
Determined to move forward in faith and with conviction.

I ask of Parliament to assist me on the road ahead. There is much to be done.

I call on the international community to re-evaluate its position and to adopt a positive attitude towards the dynamic evolution which is taking place in South Africa. I pray that the Almighty Lord will guide and sustain us on our course through unchartered water and will bless your labours and deliberations.

Mr Speaker, Members of Parliament, I now declare this second Session of the Ninth Parliament of the Republic of South Africa to be duly opened.

APPENDIX C:

FIRST HISTORIC MEETINGS: THE GROOTE SCHUUR MINUTE AND THE PRETORIA MINUTE, 1990

THE GROOTE SCHUUR MINUTE, 4 MAY 1990

The government and the ANC agree on a common commitment towards the resolution of the existing climate of violence and intimidation from whatever quarter as well as a commitment to stability and to a peaceful process of negotiations.

Flowing from this commitment, the following was agreed upon:

The establishment of a working group to make recommendations on a definition of political offences in the South African situation; to discuss, in this regard, time scales; and to advise on norms and mechanisms for dealing with the release of political prisoners and the granting of immunity in respect of political offences to those inside and outside South Africa. All person who may be affected will be considered. The working group will bear in mind experiences in Namibia and elsewhere. The working group will aim to complete its work before 21st May 1990. It is understood that the South African government, in its discretion, may consider other political parties and movement and other relevant bodies. The proceeding of the working group will be confidential. In the meantime the following offences will receive attention immediately:

(a) the leaving of the country without a valid travel document;

(b) any offences related merely to organisations which were previously prohibited.

In addition to the arrangements mentioned in paragraph 1, temporary immunity from prosecution of political offences committed before today, will be considered on an urgent basis for members of the National Executive Committee and selected other members of the ANC from outside the country, to enable them to return and help with the establishment and management of political activities, to assist in bringing violence to an end and to take part in peaceful political negotiations.

The government undertakes to review existing security legislation to bring it into line with the new dynamic situation developing in South Africa in order to ensure normal and free political activities.

The government reiterates its commitment to work towards the lifting of the state of emergency. In this context, the ANC will exert itself to fulfil the objectives contained in the preamble.

Efficient channels of communication between the government and the ANC will be established in order to curb violence and intimidation from whatever quarter effectively.

The government and the ANC agree that the objectives contained in this minute should be achieved as early as possible.

Cape Town, 4th May 1990 Fax from Security Branch, 23 October 1990

In accordance with paragraph 5 of the Groote Schuur Minute, the Minister of Law and Order, Mr Adriaan Vlok amd Mr Jacob Zuma, Information chief on the ANC, met to discuss the creation of efficient channels of communication between the government and the ANC.
After the indepth discussion it was agreed that:

Liaison committees be established on a regional level and also on a destrict or local level depending on the needs that are identified. The objective of the committees is to maintain regular contact between the SA Police and the ANC.

Both the SA Police and the ANC will, as soon as possible, provide one another with the names and addresses and telephone numbers of persons they appointed a liaison officers by 30 October 1990.

The object of the exchange of names of liaison persons is to ensure a line of two-way communication. Up to date the SA Police has received only 29 names of ANC liaison persons.

Please furnish the SA Police with the rest of the names of your liaison persons so as to ensure the efficient functioning of the channels of communication.

Signed: Brigadier R P McIntyre

PRETORIA MINUTE, 6 AUGUST 1990

The government and the ANC have held discussions at the Presidency, Pretoria, today 6 August 1990.

The Government and the ANC have again committed themselves to the Groote Schuur Munite.

The final report of the Working Group on political offences, dated 21 May 1990, as amended, was accepted by both parties. The guidelines to be formulated in terms of the Report will be applied in dealing with members of all organisations, groupings or institutions, governmental or otherwise, who committed offences on the assumption that a particular cause was being served or opposed. The meeting has instructed the Working Group to draw up a plan for the release of ANC-related prisoners and the granting of indemnity to people in a phased manner and to report before the end of August. The following target dates have in the meantime been agreed upon:

The body or bodies referred to in paragraph 8.2 of the Report of the Working Group will be constituted by 31 August 1990.

The further release of prisoners, which can be dealt with administratively, will start on 1 September 1990.

Indemnity, which can be dealt with in categories of persons and not on an individual basis will be granted as from 1 October 1990. This process will be completed not later than the end of 1990.

In all cases where the body or bodies to be constituted according to paragraph 8.2 of the Report of the Working Group will have to consider cases on an individual basis, the process will be expedited as much as possible. It is hoped that this process will be completed within six months, but the latest date envisaged for the completion of the total task in terms of the Report of the Working Group is not later than 30 April 1991.

This programme will be implemented on the basis of the Report of the Working Group.

In the interest of moving as speedily as possible towards a negotiated peaceful political settlement and in the context of the agreements reached, the ANC announcement that it was now suspending all armed actions with immediate effect. As a result of this, no further armed actions and related activities by the ANC and its military wing Umkhonto we Sizwe will take place. It was agreed that a working group will be established to resolve all outstanding questions arising out of this decision to report by 15 September 1990. Both sides once more committed themselves to do everything in their power to bring about a peaceful solution as quickly a possible.

Both delegations expressed serious concern about the general level of violence, intimidation and unrest in the country, especially Natal. They agreed that in the context of the common search for peace and stability, it was vital that understanding should grow among all sections of the South African population that problems can and should be solved through negotiations. Both parties committed themselves to undertake steps and measures to promote and expedite the normalisation of the situation in line with the spirit of mutual trust obtaining among leaders involved.

With due cognisance of the interest, role and involvement of other parties the delegations consider it necessary that whatever additional mechanisms of communication are needed should be developed at local, regional and national levels. This should enable public grievances to be addressed peacefully and in good time, avoiding conflict.

The Government has undertaken to consider the lifting of the State of Emergency in Natal as early as possible in the light of positive consequences that should result from this accord.

In view of the new circumstances now emerging there will be an ongoing review of security legislation. The Government will give immediate consideration to repealing all provisions of the Internal Security Act that –:

- refer to communism or the furthering thereof;
- provide for a consolidated list;
- provide for a prohibition on the publication of statements or writings of certain persons; and
- provide for an amount to be deposited before a newspaper may be registered.

The Government will continue reviewing security legislation and its application in order to ensure free political activity and with the view to introducing amending legislation at the next

session of Parliament. The Minister of justice will issue a statement in this regard, inter alia calling for comments and proposals.

We are convinced that what we have agreed upon can become a milestone on the road to true peace and prosperity for our country. In this we do not pretend to be the only parties involved in the process of shaping the new South Africa. We know there are other parties committed to peaceful progress. All of us can henceforth walk upon all those who have not yet committed themselves to peaceful negotiations to do so now.

Against this background, the way is open to proceed towards negotiations on a new constitution. Exploratory talks in this regard will be held before the next meeting which will be held soon.

PRETORIA
6 August 1990
REPORT

WORKING GROUP ESTABLISHED UNDER PARAGRAPH 1 OF THE GROOTE SCHUUR MIN UTE

On 2, 3, and 4 May 190, at Groote Schuur in Cape Town, a delegation of the African National Congress met the State President accompanied by Ministers and officials. At the conclusion of the meeting a document, called the Groote Schuur Minute, was adopted. A copy thereof is attached. Paragraph 1 provided for the establishment of a working group. The ANC nominated as its representatives on the working group, Messrs Zuma, Maduna, Nhlanhla, Pahad, Phos and Ndlovu (its members on the Steering Committee). The Government nominated as its representative Minister Coetzee, Deputy Minister Meyer and Messrs Van der Merwe, Swanepoel, Louw and Viall, Major General Knipe and Brigadier Kok.

The Working Group was charged with –:

- making recommendation on a definition of political offences in the south African situation; discussing, in this regard, time scales; and

-    advising on norms and mechanisms for dealing with the release of political prisoners and the granting of immunity of political offences to those inside and outside South Africa.

It is recognised that in terms of the Groote Schuur Minute, the category of persons involved only in offences set out hereunder have already been catered for, for immediate attention:

3.1   The leaving of the country without a valid travel document;

3.2   Any offences related merely to organisations, which were previously prohibited (including membership of Umkhonto we Sizwe).

Persons in the above category are entitled to be dealt with in terms of the provisions set out in paragraphs 6.2 and 6.3 hereof, as the case may be.

The Working Group met on a number of occasions and reports as follows:

DEFINING POLITICAL OFFENCES IN THE SOUTH FRICAN SITUATION:

6.1   The following classes of persons, whether inside or outside South Africa, must be taken into account with regard to pardon or indemnity for political offences:

-    persons already sentenced, including persons serving a sentence, persons subject to any suspended sentence, persons awaiting execution of a sentence or where the case is on appeal or review;

-    persons who may be liable to prosecution, or who are awaiting or undergoing trial;

-    persons in detention.

6.2   The power to pardon is vested in the State President by virtue of Section 6 of the Republic of South Africa Constitution Act. 1983 (Act 110 of 1983), and Section 69 of the Prisons Act, 1959 (Act 8 of 1959), and will apply to persons already sentenced, i.e. class (a) above;

6.3   Special power to grant indemnity is required in regard to persons referred to in class (b) above. The relevant power is contained in Section 2 of the Indemnity Act, 1990. Section 6 of the Criminal Procedure Act, 1977, provides for the stopping of a prosecution and may therefore be applied.

The recommendations contained in this document relate only to political offences and in no way imply any limitation upon the general exercise of the powers mentioned in paragraph 6.2 and 6.3.

In preparing for the making of "recommendations on a definition of political offences in the South African situation", the following principles and factors were noted (the principles and factors are largely those applied by Prof Norgaard in the Namibian situation after study of the jurisprudence and the representations of the parties concerned and do not purport to be exhaustive):

There is no generally accepted definition of "political offences" or "political prisoner" in international law. What is generally accepted, however, is that principles developed in the field of extradition law are relevant in distinguishing between "political offence" and "common crimes".

The law and practice of states show that there is now a considerable degree of consensus both as to the type of offence which may in principle be classified a political as well as to the sort of factors which should be taken into account in deciding whether an offence is "political" or not. In particular, the following are aspects of the law and practice of extradition, which appear to provide valuable guidance.

Whether or not an offence is political depends on the facts and circumstances of each individual case. The question is thus approached on a case-by-case basis.
Certain offences are recognised as "purely" political, e.g. treason directed solely against the State and not involving a common or "ordinary" crime such as murder or assault or the dissemination of subversive literature.

In certain circumstances a "common" crime, even a serious one such a murder, may be regarded as a political offence. Here the following are the principal factors which are commonly taken into account by national courts:

> (i)   The motive of the offender - i.e. was it a political motive (eg. to change the established order) or a personal motive (eg. to settle a private grudge);

(ii)   The context in which the offence was committed, especially whether the offence was committed in the course of or as part of a political uprising or disturbance;

(iii)   The nature of the political objective (eg. whether to force a change in policy or to overthrow the Government);

(iv)   The legal and factual nature of the offence, including its gravity (eg. rape could never be regarded as a political offence);

(v)   The objective of the offence (eg. whether it was committed against Government property or personnel or directed primarily against private property or individuals);

(vi)   The relationship between the offence and the political objective being pursued, eg. the directness or proximity of the relationship, or the proportionality between the offence and the objective pursued;

(vii)   The question whether the act was committed in the execution of an order or with the approval of the organisation, institution or body concerned.

6.6.1   The Working Group endorses the principles and factors set out in paragraph 6.5.2, and accepts that these will form the basis of guidelines to meet the South African situation when considering the grant of pardon or indemnity in respect of political offences.

6.6.2   As stated in the Groote Schuur Minute, it is understood that the Government may in its discretion consult other political parties and movements, and other relevant bodies with regard to the grant of pardon or indemnity in respect of offences relating to them. For this purpose it shall be free to formulate its own guidelines, which it will apply in dealing with members of such organisations, groupings or institutions, governmental or otherwise, who committed offences on the assumption that a particular cause was being served or opposed.

TIME SCALES

7.1 Having defined political offences, the norms and the guidelines and cut-off date will have to be fixed. Pardon and indemnity will only be considered in respect of political offences committed on or before that date.

7.2 Bearing in mind the preamble to the Groote Schuur Minute, the Working Group accepts that the process should proceed as expeditiously as possible. It is understood that diverse periods for pardon, indemnity and release will apply to diverse persons, categories of persons and categories of offences. A mechanism to provide advice to Government in this regard is necessary.

7.3 It is understood that the Government may, without waiting for the implementation of the process contemplated in this document, proceed to exercise the powers referred to in paragraph 6.2, in terms of existing policy. This may result in substantial results in the very near future in regard to persons referred to in class (a) of paragraph 6.1.

A MECHANISM

8.1 The granting of pardon or indemnity in respect of a specific offence or a category of offence, is an executive governmental function. The purpose of devising a mechanism, is to provide the executive with wise advice and to demonstrate that the interests of all parties are being taken into account in as objective a manner as possible.

It is suggested for this purpose that a body or bodies be constituted, consisting of a convener with ad hoc appointments from concerned groups when dealing with particular offences (or categories of offences).

It is recommended that this Working Group be kept in respect of ANC interests.

A GUIDE TO THE NEGOTIATIONS PROCESS AND THE ARMED STRUGGLE

THE STEERING COMMITTEE

The Steering Committee is made up of government and the ANC representatives. Its main function is to steer the talks. It dealt with all the preparations for both the Groote Schuur Minute and Pretoria Minute.

THE GROOTE SCHUUR MINUTE

The Groote Schuur Minute is the first agreement on the talks about talks between the government and the ANC. Its main features are the following:

- The establishment of a working group to define a political offence.
- The NEC members together with certain senior cadres of the ANC allowed to return home to begin the process of establishing ANC offices inside the country.
- An undertaking by the government to lift the State of Emergency.
- An undertaking by the government to review all security legislation and ti bring the same in line with internationally acceptable standards.
- The creation of channels of communications between the government and the ANC.

THE INDEMNITY ACT

The Indemnity Act is an act of parliament in terms whereof temporary or permanent indemnity may be granted with or without conditions.

THE WORKING GROUP IN TERMS OF THE GROOTE SCHUUR MINUTE – PARA. 1 THEREOF

In terms of paragraph 1 of the Groote Schuur Minute, a working group was established to work out a definition of political offence as well as the mechanisms and time scales for the release of political prisoners and the return of exiles.

A REPORT OF THE WORKING GROUP ESTABLISHED UNDER THE GROOTE SCHUUR MINUTE

This report was adopted by both the government and the ANC on the 6 August 1990 at Pretoria. It deals with a definition of a political offence, the question of the release of political prisoners and the return of exiles.

THE PRETORIA MINUTE

The Pretoria Minute is the second important agreement between the government and the ANC. I t was entered into on the 6th August 1990. Its main features are the following:

- The suspension of armed action by the ANC.
- An undertaking by the government to – release all political prisoners by the 30th April 1991 – allow all exiles to return home.
- The intention to form national, regional and local structures to address situations of conflict at the levels aforementioned.
- An agreement for the commencement of constitutional exploratory talks between the government and the ANC.
- The establishment of a Working Group to deal with the implementation of the suspension of armed action.

THE WORKING GROUP IN TERMS OF PARA. 3 OF THE PRETORIA MINUTE

The functions of the Working Group established under paragraph 3 of the Pretoria Minute are "to resolve all outstanding questions arising out of the decision to suspend armed action and related activities".

APPENDIX D:

NATIONAL PEACE ACCORD, 14 SEPTEMBER 1991

To signify our common purpose to bring an end to political violence in our country and to set out the codes of conduct, procedures and mechanisms to achieve this goal.

We, participants in the political process in South Africa, representing the political parties and organisations and governments indicated beneath our signatures, condemn the scourge of political violence which has affected our country and all such practices as have contributed to such violence in the past, and commit to this National Peace Accord.

The current prevalence of political violence in the country has already caused untold hardship, disruption and loss of life and property in our country. It now jeopardizes the very process of peaceful political transformation and threatens to leave a legacy of insurmountable division and deep bitterness in our country. Many, probably millions, of citizens live in continuous fear as a result of the climate of violence. This dehumanising factor must be eliminated from our society.

In order to achieve some measure of stability and consolidate the peace process, a priority shall be the effects of political violence at a local level. This would achieve a measure of stability based on common effort thereby facilitating a base for broader socio-economic development.

Reconstruction and development actions of the communities as referred to above, shall be conducted within the wider context of socio-economic development.

In order to effectively eradicate intimidation and violence, mechanisms need to be created which shall on the one hand deal with the investigation of incidents and he causes of violence and intimidation and on the other hand actively combat the occurrence of violence and intimidation.

The police force, which by definition shall include the police forces of all self-governing territories, has a central role to play in terminating the violence and in preventing the future perpetration of such violence. However, the perception of the past role of the police has engendered suspicion and distrust between the police and many of the affected communities. In recognition of the need to promote more effective policing, a commitment to sound

policing practices and a cooperative relationship between the police and the communities are necessary.

This Accord is intended to promote peace and prosperity in violence-stricken communities. The right of all people to live in peace and harmony will be promoted by the implementation of this Accord. The Accord is of such a nature that every peace-loving person can support it. The Accord reflects the values of all key players in the arena of negotiation and reconciliation.

The implementation and monitoring of the Peace Accord represents a crucial phase in the process to restore peace and prosperity to all the people of South Africa.

Noting that the majority of South Africans are God-fearing citizens, we ask for His blessing, care and protection upon our Nation to fulfil the trust placed upon us to ensure freedom and security for all.
Bearing in mind the values which we hold, be these religious or humanitarian, we pledge ourselves with integrity of purpose to make this land a prosperous one where we can all live, work and play together in peace and harmony.

The signatories have agreed upon:

-   a Code of Conduct for political parties and organisations to be followed by all the political parties and organisations that are signatories to this Accord;

-   a Code of Conduct to be adhered to by every police official to the best of his or her ability, as well as a detailed agreement on the security forces;

-   the guidelines for the reconstruction and development of the communities;

-   the establishment of mechanisms to implement the provisions of this Accord.

The signatories acknowledge that the provisions of this Peace Accord are subject to existing laws, rules and procedures and budgetary constraints. New structures should not be created where appropriate existing structures can be used.

This Accord will not be construed so as to detract from the validity of bilateral agreements between any of the signatories.

WE, THE SIGNATORIES ACCORDINGLY SOLEMNLY BIND OURSELVES TO THIS ACCORD AND SHALL ENSURE AS FAIR AS HUMANLY POSSIBLE THAT ALL OUR MEMBERS AND SUPPORTERS WILL COMPLY WITH THE PROVISIONS OF THIS ACCORD AND WILL RESPECT ITS UNDERLYING RIGHTS AND VALUES AND WE, THE GOVERNMENT SIGNATORIES, UNDERTAKE TO PURSUE THE OBJECTIVE OF THIS ACCORD AND SEEK TO GIVE EFFECT TO ITS PROVISIONS BY WAY OF THE LEGISLATIVE, EXECUTIVE, AND BUDGETING PROCEDURES TO WHICH WE HAVE ACCESS.

CHAPTER 1
PRINCIPLES

The establishment of a multi-party democracy in South Africa is or common goal. Democracy is impossible in a climate of violence, intimidation and fear. In order to ensure democratic political activity al political participants must recognise and uphold certain fundamental rights described below and the corresponding responsibilities underlying those rights.

These fundamental rights include the right of every individual to:

- freedom of conscience of belief;
- freedom of speech and expression;
- freedom of association with others;
- peaceful assembly;
- freedom of movement;
- participate freely in peaceful political activity.

The fundamental rights and responsibilities derive from established democratic principles namely:

- democratic sovereignty derives from the people, whose tight it is to elect their government and hold it accountable at the polls for its conduct of their affairs;

- the citizens must therefore be informed and aware that political parties and the media must be free to impart information and opinion;

- there should be an active civil society with different interest groups freely participating therein; AND
- political parties and organisations, as well as political leaders and other citizens, have an obligation to refrain from incitement to violence and hatred.

The process of reconstruction and socio-economic development aimed at addressing the causes of violent conflict, must be conducted in a non-partisan manner, that is, without being controlled by any political organisation or being to the advantage of any political group at the expense of another.

Reconstruction and development projects must actively involve the affected communities. Through a process of inclusive negotiations involving recipients, experts and donors, the community must be able to conceive, implement and take responsibility for projects in a co-ordinated way as close to the grassroots as possible. In addition, reconstruction and development must facilitate the development of the economic and human resources of the communities concerned.

The initiatives referred to in 1.4 and 1.5 above, should in no way abrogate the right and duty of governments to continue their normal developmental activity, except that in doing so they should be sensitive to the spirit and contents of any agreement that may be reached in terms of 1.5 above.

The parties to this process commit themselves to facilitating the rapid removal of political, legislative and administrative obstacles to development and economic growth.

The implementation of a system to combat violence and intimidation will only succeed if the parties involved have a sincere commitment to reach this objective. Only then will all the people of South Africa be able to fulfil their potential and create a better future.

It is clear that violence and intimidation declines when it is investigated and when the background and reasons for it is exposed and given media attention. There is, therefore, need for an effective instrument to do just that. It is agreed that the Commission established by the Prevention of Public Violence and Intimidation Act, 1991, be used as an instrument to investigate and expose the background and reasons for violence, thereby reducing the incidence of violence and intimidation.

Since insufficient instruments exist to actively prevent violence and intimidation at regional and local levels, it is agreed that committees be appointed at regional and local levels to assist in this regard. Peace bodies are therefore to be established at both regional and local levels to be styled "Regional Dispute Resolution Committees" (RDRC) and "Local Dispute Resolution Committees" (LDRC) respectively. These bodies will be guided and co-ordinated at a national level by a National Peace Secretariat. At the local level the bodies will be assisted by, Justices of the Peace.

The Preparatory Committee has played a crucial role in the process of bringing the major actors together to negotiate a Peace Accord. There is still much to be done to implement the Accord and establish the institutions of peace. To assist in this regard, a National Peace Committee shall be established.

There should be a simple and expeditious procedure for the resolution of disputes regarding transgressions of the Code of Political Parties and Organisations by political parties and organisations, who are signatories to the National Peace Accord. These disputes should, wherever possible, be settled at grassroots level, through participation of the parties themselves; and by using the proven methods of mediation, arbitration and adjudication.

An effective and credible criminal judicial system requires the swift and just dispensation of justice. This in turn will promote the restoration of peace and prosperity in communities, freeing them of the ravage of violence and intimidation. Special attention should be given to unrest related cases by setting up Special Criminal Courts for this purpose.

CHAPTER 2
CODE OF CONDUCT FOR POLITICAL PARTIES AND ORGANISATIONS

The signatories to this Accord agree to the following Code of Conduct:

We recognise the essential role played by political parties and organisations as mediators in a democratic political process, permitting the expression, aggression and reconciliation of different views and interests, and facilitating the translation of the outcome of this process into law and public policy, and respect the activities of political parties and organisations in organising their respective structures, canvassing for support, arranging and conducting public meetings, and encouraging voting.

All political parties and organisations shall actively contribute to the creation of a climate of democratic tolerance by:

- publicly and repeatedly condemning political violence and encouraging among their followers an understanding of the importance of democratic pluralism and a culture of political tolerance; and

- acting positively, also vis-à-vis all public authorities including local and traditional authorities, to support the right of all political parties and organisations to have reasonable freedom of access to their members, supporters and other persons in rural areas, whether they be housed on public or private property.

No political party or organisation or any official or representative of such party, shall:

- kill, injure, apply violence to, intimidate or threaten any other person in connection with that person's political beliefs, words, writing or actions;

- remove, disfigure, destroy, plagiarise or otherwise misrepresent any symbol or other material of any other political party or organisation;

- interfere with, obstruct or threaten any other person or group travelling to or from or intending to attend, any gathering for political purposes;

- seek to compel, by force or threat to force, any person to join any party or organisation, attend any meeting, make any contribution, resign from any post or office, boycott any occasion or commercial activity or withhold his or her labour or fail to perform a lawful obligation; or

- obstruct or interfere with any official or representative of any political party or organisation's message to contact or address any group of people.

All political parties and organisations shall respect and give effect to the obligation to refrain from incitement to violence and hatred. In pursuit hereof no language calculated or likely to incite violence or hatred, including that directed against any political party or personality, nor any wilfully false allegation, shall be used at any political meeting, nor shall pamphlets, posters or other written material containing such language be prepared or circulated, either in the name of any party, or anonymously.

All political parties and organisations shall:

- ensure that the appropriate authorities are properly informed of the date, place, duration and, where applicable, routing of each public meeting, ally, march or other event organised by the party or organisation;

- take into account local sentiments and foreseeable consequences, as well as any other meetings already arranged on the same date in close proximity to the planned event, provided that this shall not detract from the right of any political party or organisation freely propagate its political views; and

- immediately and at all times, establish and keep current effective lines of communication between one another at national, regional and local levels, by ensuring a reciprocal exchange of the correct names, addresses and contact numbers of key leaders at each level, and by appointing liaison personnel in each location to deal with any problems which may arise.

All political parties and organisations shall provide full assistance and co-operation to the police in the investigation of violence and apprehension of the individuals involved. The signatories to this Accord specifically undertake not to protect or harbour their members and supporters to prevent them from being subjected to the processes of justice.

CHAPTER 3
SECURITY FORCES: GENERAL PROVISIONS

3.1 GENERAL PRINCIPLES

3.1.1　The police shall endeavour to protect the people of South Africa from all criminal acts and shall do so in a rigorous non-partisan fashion, regardless of the political belief and affiliation, race, religion, gender or ethnic origin of the perpetrators or victims of such acts;

3.1.2　The police shall endeavour to prevent crimes and shall attempt to arrest and investigate all those reasonably suspected of committing crimes and shall take the necessary steps to facilitate the judicial process.

3.1.3   The police shall be guided by a belief that they are accountable to society in rendering their policing services and shall therefore conduct themselves so as to secure and retain the respect and approval of the public. Through such accountability and friendly, effective and prompt service, the police shall endeavour to obtain the co-operation of the public whose partnership in the task of crime control and prevention is essential.

3.1.4   The police, as law enforcement officers, shall expect a higher standard of conduct from its members in the execution of their duties than they expect from others and in pursuance hereof, supports prompt and efficient investigation and prosecution of its own members alleged to have acted unlawfully and shall commit itself to continue the proper training and retraining of its members in line with the objectives of professional policing and the principles set out in Chapter 3 and 4 of this Accord. The police in particular shall emphasise that there is no place in the police force for policing practices based on personal or racial prejudice, corruption, excessive force or any unlawful actions.

3.1.5   The police shall exercise restraint in the pursuance of their duties and shall use the minimum force that is appropriate in the circumstances.

3.1.6   Parties, organisations and individuals acknowledge that they too have a contribution to make in the process of sustaining, developing and encouraging a police force of which shall all South Africans can be proud. This involves a respect for the professionalism of the police force, and assisting the police in the performance of their legitimate duties.

3.2 THE POLICE SHALL OBSERVE THE FOLLOWING MORE DETAILED SET OF REQUIREMENTS:

3.2.1   The police shall endeavour to protect the people of South Africa from all criminal acts and acts of political violence, and shall do so in a rigorous non-partisan fashion, regardless of the political belief and affiliation, religion, gender, race, or ethnic origin of the perpetrators or victims of such acts.

3.2.1.1 The police must always respond promptly to calls for assistance and intervention.

3.2.1.2 Where prior notification is given of possible violence, the police must take all reasonable steps to prevent such outbreak of violence.

3.2.1.3 The police shall endeavour to disarm those persons illegally bearing dangerous weapons in any gathering or procession.

3.2.2 The police shall endeavour to prevent crimes and shall attempt to arrest and investigate all those reasonably suspected of committing crimes and shall take the necessary steps to facilitate the judicial process.

3.2.2.1 Where violent clashes occur the police shall attempt to arrest all those reasonably suspected of participating in any unlawful act. If the police are unable for any reason to arrest all suspects, efforts must be made to photograph, video or otherwise identify the suspects.

3.2.2.2 After a suspect has been arrested, the police shall conduct a full, proper and expeditious investigation into the complaint, shall endeavour to submit the necessary evidence to the Attorney-General as soon as possible and shall give all the necessary co-operation in this regard.

3.2.2.3 In addition to rights arrested persons have in terms of the law, suspects arrested solely for crimes related to political violence should be informed of their tights and given the opportunity to telephone their family or a lawyer. Judges' rules shall consistently be applied by all police officials.

3.2.2.4 All criminal complaints shall be accepted at a charge office. After the complaint is accepted, the complainant shall be given a form containing the complaint number and the nature of the charge. The name and telephone number of the investigating officer shall be made available or dispatched within seven days to the complainant.

3.2.2.5 The complainant shall, upon request, be entitled to any relevant information from the investigating officer on the progress and outcome of the investigation.

3.2.2.6 In order t investigate all crimes relating to "political violence", which include public violence as defined in the Prevention of Public Violence and Intimidation Act, 1991, the police shall establish a special police investigation unit on the following basis:

- A police investigation unit shall be established under the command of a police general (or senior police officer in the case of self-governing territories);

- This police general shall monitor, co-ordinate and supervise investigations into crimes of political violence;

- A senior police officer shall be appointed in the region of each special criminal court and shall carry out his duties and functions under the command of the said police general;

- It will be the responsibility of each such officer as assisted by such officials as are seconded to him or appointed on an ad hoc basis to assist him, to conduct or supervise investigations into crimes of political violence, in the region of that special criminal court;

- When necessary each such officer shall liaise with the prosecutor of the special court in regard to the conduct of investigations into crimes of political violence;

- Each such officer may personally investigate such crimes and/or supervise investigations performed by ordinary units of the police;

- The police general who commands the special investigation unit as well as each such officer shall, where possible, have sufficient personnel and resources at his disposal to enable him to effectively carry out his powers and functions;

- Each such officer shall be responsible for compiling a monthly report on the progress of investigations and for referring it to the police general who commands the special investigation unit. The Standing Commission and/or the National Peace Committee may inquire on the progress of the investigations and the police general shall submit a report;

- In all cases where an affidavit containing evidence is submitted to the National Peace Committee or Regional Dispute Resolution Committee to the effect that the local police in any station and/or district have acted with bias towards a political party or organisation in that district, the investigation into any incident of alleged political violence shall, on basis of the affidavit, be conducted by the special investigation unit with jurisdiction in that region or under the supervision of an officer from such unit;

- The National Peace Committee shall be informed of the appointment of the police general and the senior officers;

- The Commissioner of Police shall have regard to recommendations of the National Peace Committee.

3.2.3   The police shall be guided by a belief that they are accountable to society in rendering their policing services and shall therefore conduct themselves so as to secure and retain the respect and approval of the public.

Accountability in this paragraph and also referred to in clause 3.1.3 above, as well as in the Police Code of conduct, entails the following:

3.2.3.1 In order to facilitate better communication with the community, the police shall, in each locality where a Local Dispute Resolution Committee exists:

consult regularly with:

- the Local Dispute Resolution Committee, or in its absence, community leaders, including - representatives of signatories to this accord; and

- community leaders, on the efficient functioning of the police in that community and shall regularly communicate with such committee, representatives or leaders on the issues raised by them with the police.

- establish a liaison officer of rank not lower than a warrant officer, in each police district, to which requests for urgent assistance may be directed. The police shall notify the LDRC of the identity of liaison officers.

3.2.3.2 In addition to the normal channels available within the Department of Law and Order, complaints against the police may also be referred to the Police Reporting Officer, or, depending on the nature of such complaints, to the Standing Commission on Violence and Intimidation.

3.2.3.3 If the police feel they are unfairly victimised or harassed by any person or body or organisation they will have the right to raise a complaint to the National Peace Committee or any other appropriate body.

3.2.4 The police shall expect a higher standard of conduct from themselves than they expect from others.

3.2.4.1 Complaints of alleged police misconduct which is of such a serious nature that it may detrimentally affect police/community relations should be referred to the Police Reporting Officer or the Commissioner of Police for investigation by a unit of the police specifically established for this purpose, under the supervision of a designated general of the police. Where the complaint is directed to the Police Reporting Officer it should be referred by him to the Commissioner of Police for investigation by such a unit. The units will be available as far as possible in each police region.

3.2.4.2 The unit shall submit to the Police Reporting Officer, a report on the complaints submitted to it, as well as the progress and outcome of investigations into the complaints. The Police Reporting Officer will have the authority to ensure that the investigation is a full and proper investigation and accordingly will be entitled to refer the report back to the unit. The Police Reporting Officer shall be appointed in the following manner:

The Association of Law Societies and General Council of the Bar shall recommend to the Minister of Law and Order three candidates per region for the appointment of a Regional Police Reporting Officer. If the Minister is not prepared to make an appointment from the names so received, he may refer the recommendation back to the Association of Law Societies and the General Council of the Bar for additional three names from which he has to make an appointment.

Such a Police Reporting Officer may be a former prosecutor, a former member of the attorney-general's staff, a lawyer in private practice, a former magistrate, or a former policeman.

3.2.4.3 The Police Reporting Officer may recommend to the Commissioner of Police the suspension or transfer of the police official under investigation until the completion of the investigation.

3.2.4.4 The Police Reporting Officer shall, on the completion of the investigation, make a recommendation to the Commissioner of Police a to the disciplinary action that should be taken against the police involved in the misconduct. The complainant shall be notified of the recommendations and the outcome of this complaint. The Police Reporting Officer may, with the consent of the complainant, provide the National Peace Committee with the recommendations and outcome of the investigation.

3.2.4.5 All police officials in uniform should carry a legible external form of identification.

3.2.4.6 All official police vehicles shall have an identification number painted on the side, and all military vehicles acting in support of the police shall display an identification number on the side and no such number may be removed for as long as such military vehicles are used in support of the police, provided that this shall not apply to police vehicles which are required for official undercover work, not in breach of clause 3.5 related to clandestine or covert operations. It shall be an offence for a police or military vehicle to be driven on a public road without numberplates or without the numberplates allocated to such vehicle by the relevant registration authority.

3.2.5 The police shall exercise restraint in the pursuance of their duties and shall use the minimum of force that is appropriate in the circumstances.

3.2.5.1 Clear guidelines shall be issued by the police for dealing with unlawful gatherings and the following aspects shall be addressed in such guidelines.

When a confrontation between a police unit and a gathering is reasonably foreseeable, a senior police official shall where possible be in command of that unit.

The police unit performing crowd control duties shall, where possible, be equipped with public address systems and someone who can address the crowd in a language the crowd will understand.

Before ordering a gathering to disperse, an attempt must be made to ascertain the purpose of the gathering and to negotiate the immediate dispersal of the group.

Where residents of a community or a hostel are clearly the subject of the attack, the police shall endeavour to disarm and disperse the aggressors.

A reasonable time must be given to the gathering to comply with the requests or instructions of the commanding officer.

The commanding officer shall only authorise the use of injurious or forceful methods of crowd dispersal if he believes that the crowd constitute a danger to the public safety or to the safety of any individual or to any valuable movable or immovable property and if he has reason to believe that less injurious methods will not succeed in dispersing the gathering. The least possible degree of force should be used in attaining the aim of policing. Unless circumstances prevent it, persuasion, advice and warning should be used to secure co-operation, compliance with the law and the restoration of order.

The police should focus on making less injurious equipment also available to police stations in order to minimize the risk of forceful actions.

3.3 POLICE BOARD

3.3.1 A Police Board shall be established whose composition shall comprise of both members of the public and representatives of the police in equal numbers. The chairperson is to be appointed by the Minister of Law and Order from one of the members representing the public.

3.3.2 The members of the public shall be appointed by the Minister of Law and Order to the Police Board from names put forward by unanimous decision by the National Peace Committee. The Minister of Law and Order shall have the discretion to appoint further members from parties who are not represented on the National Peace Committee.

3.3.3 The function of the Police Board shall be to consider and to make recommendations to the Minister of Law and Order in regard to the polity relating to the training and efficient functioning of the police, with a view to reconcile the interests of the community with that of the police.

3.3.4　The Police Board shall be empowered to do research and call for representation from the public regarding any investigation conducted by it.

3.3.5　The Police Board shall not have a role in regard to the day to day functioning of the police.

3.3.6　The recommendations of the Police Board in regard to the above matters shall be made public, insofar as it is essential in reconciling the interests of the community with that of the police.

3.4　COMPOSITION OF THE POLICE FORCE

3.4.1　The relationship between, and the status of, the South African Police and the Police Forces in the Self-governing Territories in the transition phase, can only be decided by the interested parties through negotiations.

3.4.2　Where the Police Forces of any self-governing territory is alleged to be a party to the conflict, the Standing Commission shall investigate this and make appropriate recommendations.

3.5　CLANDESTINE OR COVERT OPERATIONS

3.5.1　No public funds shall be used to promote the interests of any political party or political organisation and no political party or political organisation shall accept any public funds to promote its interests, which shall have the effect of interfering negatively in the political process.

3.5.2　The government shall not allow any operation by the security forces with the intention to undermine, promote or influence any political party or political organisation at the expense of another by means of any acts, or by means of disinformation.

3.5.3　If any of the signatories to this accord has reason to believe that any operation is being conducted in breach of this clause, it may lodge a complaint with the Police Reporting Officer or the Commission as the case may be.

3.5.4   In addition to any civil/criminal liability (s)he may incur, any individual member of the police who is found to have breached this clause shall be dealt with in accordance with the Police Act, Regulations and Standing Orders.

3.5.5   In addition to civil/criminal liability (s)he may incur, any individual member of the defence force who is found to have breached this clause shall be dealt with in accordance with the defence statutes and codes and the Code of Conduct for the members of the defence force.

3.5.6   In order to monitor ongoing compliance with this provision the Commission, or a person authorised by it, shall upon receipt of any request by a party, or a complainant or on information received by it, be entitled by warrant to enter and inspect any place and interrogate any security force member, and seize any record or piece of evidence.

3.6   DANGEROUS WEAPONS

3.6.1   The parties agree that the disastrous consequences of widespread violence and the urgent requirement of peace and stability on which to build the common future make it necessary to act decisively to eliminate violence or the threat of violence from a political sphere.

3.6.2   In pursuit of this understanding the parties agree that no weapons or firearms may be possessed, carried or displayed by members of the general public attending any political gathering, procession or meeting.

3.6.3   All parties and organisations shall actively discourage and seek to prevent their members and supporters from possessing, carrying or displaying weapons or fire-arms when attending any political gathering, procession or meeting.

3.6.4   The Government undertakes to issue the necessary proclamations to implement the principles of paragraph 3.6.2 after consultation with the interested parties.

3.7 SELF PROTECTION UNITS (previously called self-defence units)

3.7.1 The Law accords all individuals the right to protect themselves and their property, and to establish voluntary associations or self protection units in any neighbourhood to prevent crime and to prevent any invasion of the lawful rights of such communities. This shall include the right to bear licensed arms and to use them in legitimate and lawful self-defence.

3.7.2 The parties also agree that no party or political organisation shall establish such units on the basis of party or political affiliation, such units being considered private armies.

3.7.3 No private armies shall be allowed or formed.

3.7.4 The parties also recognise that liaison structures should operate between any community based self protection unit and the police so as to facilitate education on citizens' rights, police responsiveness and other aspects in respect of which there is a legitimate and common interest.

3.7.5 The police remains responsible for the maintenance of law and order and shall not be hindered in executing their task by any self protection unit.

3.7.6 All existing structures called self-defence units shall be transformed into self protection units which shall function in accordance with the principles contained in paragraph 3.7.

3.8 GENERAL

3.8.1 This Accord shall, where applicable, be issued as a directive by the Commissioner of Police and if necessary, the Police Act and regulations will be amended accordingly.

3.8.2 In view of the changing policing demands of a changing South Africa the police shall continue to take steps to retrain their members on the proper functions of the police as set out in the Code and in this agreement and in particular in methods of defusing conflict through discussion.

3.8.3 This Accord shall, where applicable be honoured by and shall in terms of paragraph 3.8.1 be binding on the police.

3.8.4 This Accord hall, where applicable, be binding on the defence force in as much as it performs any ordinary policing function.

3.8.5 Where a government of a self-governing territory becomes a signatory to this Accord, the provisions of this Accord will, mutatis mutandis, be applicable to such a government as well as the police force of such a government.

3.8.6 A government of a self-governing territory which is a signatory to this Accord may opt to accept the jurisdiction of the Police Board or Police Reporting Officer established in respect of the South African Police Force.

3.9 CODE OF CONDUCT FOR MEMBERS OF THE DEFENCE FORCE

A code is in the process of being negotiated under the auspices of the National Peace Committee.

CHAPTER 4
SECURITY FORCES: POLICE CODE OF CONDUCT

MISSION OF THE SOUTH AFRICAN POLICE

"We undertake, impartially and with respect for the norms of the law and society, to protect the interests of the country and everyone therein against any criminal violation, through efficient service rendered in an accountable manner".

CODE OF CONDUCT OF THE SOUTH AFRICAN POLICE

All members pf the South African Police shall commit themselves to abide by the Code of Conduct in the following terms:

As a member of the South African Police, I undertake to adhere to the following Code of Conduct to the best of my abilities:

As a police official I will observe the oath of loyalty which I made to the Republic of South Africa by performing the task that is required of me by law, with untiring zeal, single - mindedness and devotion to duty, realising that I accept the following principles:

In order to preserve the fundamental and constitutional rights of each individual by the use of preventive measures, or alternatively, in the event of disruption, to restore social order by the use of reactive policing.

The authority and powers accorded to the Police for the maintenance of social order, and the subsidiary objectives they adopt are dependent upon and subject to public approval, and the ability to secure and retain the respect of the public.

The attainment and retention of public approval and respect in clued the co-operation of the public in the voluntary observance of the laws.

Any offence or alleged offence by any member of the South African Police, of the common law or statutory law, including the Police Act and the regulations promulgated in accordance thereof, shall be thoroughly investigated and in the event of any violation thereof, appropriate measures shall be taken. Such an offence or alleged offence, depending on the nature thereof, maybe referred to a Police Reporting Officer or the Commission established in terms of the Prevention of Violence and Intimidation Act, 1991, or to a commission that shall be specifically appointed for that purpose. All assistance and co-operation possible shall be rendered to a commission such as this, and the Police Reporting Officer and where investigations are undertaken by the Police at the request of the commission or the Police Reporting Officer, a special investigation team shall be used for this purpose.

The extent and quality of public co-operation proportionally diminishes the need for corrective measures.

The favour and approval of the public shall be sought by:

- enforcing the law firmly, sensitively and with constant and absolute impartiality;
- giving effective and friendly service to each individual, regardless of the political and religious belief, race, gender or ethnic origin;
- reacting as quickly as possible on requests for help or service;
- making personal sacrifices in order to save lives; and

- encouraging police community relationships, and by promoting participation by the community.

The least possible degree of force e used in attaining the aim of policing, and then only when persuasion, advice and warnings have failed to secure co-operation compliance with the law and restoration of order.

Judges' Rule shall consistently be applied by all police officials.

Police official must adhere to the executive function of policing and refrain from taking it upon themselves to perform a judicial function.

All police officials in uniform shall wear a clearly distinguishable mark of identification.

The integrity of policing in reflected by the degree of personal and moral responsibility and professional altruism evident in the behaviour and actions of every individual member of the police.

The stability of society, and the vitality and continuity of democratic ideals are dependent upon policing that:

- is consistently aware of the sensitive balance between individual freedom and collective security;
- is consistently aware of the dangers inherent in illegal and informal coercive actions and methods; and
- will never give in to the temptation to sacrifice principles by resorting the reprehensible means to secure good ends.

The professionalisation of policing depends primarily upon intensive selection, training, planning and research.

The needs of the community shall be considered in the training programme of the Police, and the contribution made by communities in this regard, shall be taken into account.

Every member should strive and apply him/herself to individual and institutional professionalism by self-improvement and study.

Any offence by any member of the police, committed in the presence of a fellow member of the police, shall be dealt with by such a fellow member in accordance with the powers and duties conferred upon him or her by any act relating to such an offence. In addition such a fellow member shall forthwith notify his or her commander.

In order to maintain these principles, I undertake to:

- make my personal life an example worthy to be followed by all;
- develop my own personality and also create the opportunity for others to do likewise;
- treat my subordinates as well as my seniors in a decent manner;
- fulfil my duty faithfully despite danger, insult or threat;
- develop self-control, remain honest in thought and deed, both on and off duty;
- be an example in obeying the law of the land and the precepts of the force;
- prevent personal feelings, prejudices, antagonism or friendships from influencing my judgement;
- receive no unlawful reward or compensation; and
- remain worthy of the trust of the public, by unselfish service, seek satisfaction in being ready to serve and to dedicate myself in the service to my God and my country.

"SERVAMUS ET SERVIMUS – WE PROTECT AND WE SERVE"

CHAPTER 5
MEASURES TO FACILITATE SOCIO-ECONOMIC RECONSTRUCTION AND DEVELOPMENT

5.1   Reconstruction and development projects must actively involve the affected communities. Through a process of inclusive negotiations involving recipients, experts and donors, the community must be able to conceive, implement and take responsibility for projects in a co-ordinated way as close to the grassroots as possible. In addition, reconstruction and development must facilitate the development of the economic and human resources of the communities concerned.

5.2   Projects at a local level require the co-operation of all members of the community irrespective of their political affiliation. The people within the local communities must see local organisations working together on the ground with common purpose. Parties with constituency support in an area must commit themselves to facilitating such an approach to development projects.

5.3   Reconstruction projects must work on the ground at local level. This requires a combined effort by all political organisations and affected parties to raise the required level of capital and human resources for development. Public and private funds will have to be mobilised for this purpose.

5.4   Sustainable development implies that all individuals must be assisted and encouraged to accept responsibility for their socio-economic well-being. Each actor must define and accept his/her role and there must be an acceptance of co-responsibility for and co-determination of socio-economic development.

5.5   This development initiative should in no way abrogate the right and duty of governments to continue their normal development activity, except that in doing so they should be sensitive to the spirit and contents of any agreement reached.

5.6   This parties to the process commit themselves to facilitating the rapid removal of political, legislative and administrative obstacles to development and economic growth.

5.7   The National Peace Committee and the Regional Dispute Resolution Committees will establish permanent sub-committees on socio-economic reconstruction and development.

5.8   Both the national and regional sub-committees defined above could establish advisory and consulting groups to facilitate their work.

5.9   The functions of these sub-committees would be to:

5.9.1   assist the peace structures in regard to socio-economic reconstruction and development;

5.9.2   take initiative to implement the principles outlined above ad to deal with the issues set out hereunder;

5.9.3   the combined inputs of the sub-committees participants would be to facilitate, co-ordinate and expedite reconstruction and development in terms of the principles outlined above.

5.10 The general guideline on the issues to be dealt with is to remove from immediate issues related to violence and the peace process toward pre-emption of violence and then toward integrating into the overall need for socio-economic development.

5.11 The sub-committees should identify areas at community level where they could begin to facilitate the co-ordination of the following issues:

- reconstruction of damaged property;
- reintegration of displaced persons into the community;
- expansion of infrastructure to assist in consolidating the peace process; and
- community involvement in the maintenance and improvement of existing community facilities and the environment.

5.12 The sub-committees should facilitate crisis assistance that will link to socio-economic development in the following areas:

- ealing with the immediate effects of violence and the resultant social effects, displaced persons problem and homelessness; and
- where infrastructure is itself a spark to violence, eg water, electricity, transportation, schools etc.

5.13 In addressing the above issues attention will have to be paid to:

- the equitable allocation of state resources, including state-funded development agencies (physical and financial) for both public and community-based initiatives;
- mobilisation of additional resources – both public and private;
- the cumbersome nature of governmental structures in the provision of resources and services;
- the position of the very poor and marginalized groups;
- land, its accessibility and use;
- basic housing;
- provision of basic services;
- education;
- health and welfare;
- job creation and unemployment;
- the availability of land for housing and basic services.

5.13 The sub-committees should identify potential flash points and co-ordinate socio-economic development that will defuse tension eg squatter settlements: squatter settlement-township interfaces; hostels; hostel-township interfaces, provision and maintenance of basic services and rural resource constraints. The sub-committees should identify areas of socio-economic development that would prevent violence.

5.14 The sub-committee would attempt to ensure that overall socio-economic development is cognizant of the need to reinforce the peace process and defuse the potential for violence.

CHAPTER 6

COMMISSION OF INQUIRY REGARDING THE PREVENTION OF PUBLIC VOLENCE AND INTIMIDATION ("the Commission")

6.1 It is acknowledged that the police is primary responsible for the investigation of crime. The police is, as a result, also responsible for the investigation and bringing to book of all perpetrators of violence and intimidation.

6.2 Post mortem inquests play an important role in exposing and opening up circumstances relating to unrest and violence. Inquests with judges as presiding officers have taken place more frequently since the implementation of the Inquests Amendment Act, 1990 (Act 45 of 1990). The Inquests Amendment Act, 1991 (Act 8 of 1991), has furthermore streamlined the process and inquests can be disposed of more rapidly. Records of all inquest proceedings relating to public violence should be submitted to the Commission.

6.3 It is clear that violence and intimidation declines when it is investigated and when the background and reasons for it is exposed and given media attention. There is therefore need for an effective instrument to do just that. It is agreed that the Commission established by the Prevention of Public Violence and Intimidation Act, 1991, be used as an instrument to investigate and expose the background and reasons for violence, thereby reducing the incidence of violence and intimidation. However, in order to improve the efficacy of the Act in preventing violence it may be necessary to amend the Act, to accommodate the provisions of this Chapter. Where amendments are necessary, the National Peace Committee shall send its proposals to the Minister of Justice as soon as possible.

6.4 In terms of the Prevention of Public Violence and Intimidation Act, 1991, the Commission shall function as follows:

The Commission shall function on a permanent basis.

The Commission's objective shall be to:

- inquiry into the phenomenon of public violence and intimidation in the Republic, the nature and causes thereof and what persons are involved therein;

- inquire into any steps that should be taken in order to prevent public violence and intimidation;

- make recommendations to the State President regarding;

- the general policy which ought to be followed in respect of the prevention of public violence and intimidation;

- steps to prevent public violence or intimidation;

- any other steps it may deem necessary or expedient, including proposals for the passing of legislation, to prevent a repretition or continuation of any act of omission relating to public violence or intimidation;

- the generation of income by the State to prevent public violence and intimidation as well as the compensation of persons who were prejudiced and suffered patrimonial loss thereby;

- any other matter which may contribute to preventing public violence and intimidation;

It is agreed that the Commission shall be composed as follows:

A judge or retired judge of the Supreme Court or a senior advocate wit at least10 years experience in the enforcement of the law. This will ensure that the Commission has suitable, independent ad objective leadership, fully versed in the law and fearlessly given to grant all

parties an equal opportunity to state their views and give their facts. This person will be the chairman.

A senior advocate or senior attorney or a senior professor of law. The incumbent will assist the chairmen of the Commission, providing balance from a legal point of view. Because of his status this person will not be susceptible to influence from other parties. This person will be the vice-chairman.

Three other duly qualified persons.

The National Peace Committee shall submit a short list of person to be considered for appointment.

It is acknowledged that it is desirable that the Commission should be and be seen to be independent and non-partisan.

membembers of the Commission are appointed for a period of three years.

The Commission's functions will be assisted by a secretriat to provide administrative and logistical services.

The Commission's functions will include the following:

- to investigate the causes of violence and intimidation;
- to recommend measures capable of containing the cycle of violence;
- to recommend measures in order to prevent further violence;
- to initiate research programmes for the establishment of scientific empirical data on violence; and
- o make recommendations concerning the funding of the process of peace.

Any individual will be able to approach the Commission with a request to investigate any particular matter relevant to combating violence and intimidation. I any such individual is held in detention, the relevant authorities will facilitate the transmission of such a request to the Commission. If a request is unfounded, trivial or designed for purposes other than the prevention of violence and intimidation, the Commission may in its discretion decline to act upon the request. The Commission does not only act upon receiving a request from an individual, but may of its own accord investigate matters.

The investigation by or at the behest of the Commission shall not affect any legal processes.

Where a matter has already been dealt with as a result of legal processes, the Commission shall not re-investigate the matter but may take cognisance of the evidence presented during such processes and the findings emanating from such proceedings.

The Commission shall be empowered to enlist the help of other institutions in its investigations. Investigations by the Police Reporting Officer referred to in this Accord shall not be affected by the Commission.

Members of the Commission and its secretariat (insofar as they may be employed by the State) shall be remunerated by the State. The State shall provide funds for the operation of the Commission.

The Commission shall be empowered in order to conduct an investigation and insofar as it may be relevant to:

- require any person to give evidence on the matter being investigated;

- require any person to put any document or other evidentiary material at the disposal of the Commission;

- order that the identity of any person mentioned in 6.18.1 and 6.18.2 shall not be revealed if that person's life or property or his family is endangered because of his assistance to the Commission;

- order that the relevant authority provide appropriate protection to a person mentioned in 6.18.1 and 6.18.2 if his life is endangered because of his assistance to the Commission; and

- order that the contents of any document or other evidentiary material shall not be revealed or published if circumstances so demand.

The proceedings of the Commission shall take place in public, unless the Commission decides that circumstances demand otherwise. This is designed to ensure that the safety of witnesses can be guaranteed.

The Commission shall determine if legal representation is desirable in any particular given case.

After completion of an investigation the Commission shall compile a report on its findings and recommendations. This report will be handed to the State President who may make known for public information the facts in question and the findings of the Commission which he deems necessary in the public interest. Without derogating from the State President's discretion, the State President is required to make such reports available to inter alia the National Peace Committee.

Measures shall be enacted to provide for the expenses and mechanisms of the Commission.

In order to ensure that steps are taken against perpetrators of violence and intimidation, the Commission may refer any evidence constituting an offence to the relevant Attorney-General and to the Special Criminal Courts.

Anyone hampering or influencing the Commission or any of its members in the execution of their duties shall be guilty of an offence. This will ensure that the status of the Commission is established and that it does not fall prey to pressure.

The above-mentioned is reflected in the Prevention of Public Violence and Intimidation Act, 1991.

Fully aware of the fact that the composition of the proposed body will determine its relevancy and legitimacy, the Minister of Justice indicated during the Second Reading Debate of the Act that no appointment would be made without consultation and negotiation with the relevant role players. Consensus will be the key word. It is agreed that for the system to be effective, it needs to be credible.

In terms of Section 4 of the Act, committees may be established to assist the Commission in the exercise of its functions. The relevant players will therefore also be able to be represented on the committees by their own members and experts. These committees will enjoy the same far-reaching powers as the Commission itself. Regional committees of the Commission should be established in each of the regions identified by the Commission to monitor and inquire into public violence and intimidation. Local and regional security force commanders,

and the LDRC and RDRC members, should advise the Commission or the Sub-committee of the Commission of any admission warning of anticipated or current public violence.

The parties agree that for the Commission to be effective it needs to be a credible instrument. It will furthermore only obtain credibility if it is to be constituted after the National Peace Committee has been consulted. If this condition is met, the establishment of the Commission should be given unconditional support.

In order to function properly within a legal framework, to exercise the considerable powers given and to obtain State funding, there is no alternative to making use of a statutory enactment, such as the Act. It is suggested that the Act be employed to fulfil this role, because it can be utilised immediately and does not require further statutory attention.

CHAPTER 7
NATIONAL PEACE SECRETARIAT, REGIONAL AND LOCAL DISPUTE RESOLUTION COMMITTES

7.1 It is from the aforegoing that sufficient instruments exist to investigate violence and intimidation and to bring the perpetrators thereof to book. Insufficient instruments exist however to actively combat violence and intimidation at grassroots level. It is therefore proposed that committees will require national co-ordination.

7.2 In order to provide management skills, budgetary commitment and statutory empowerment and sanctions, State involvement is essential.

7.3 A National Peace Secretariat:

7.3.1 A National Peace Secretariat shall be established, comprising at least four persons nominated by the National Peace Committee and one representative of the Department of Justice. Further members, up to a maximum of four may also be appointed.

7.3.2 The function of the National Peace Secretariat will be to establish and co-ordinate Regional Dispute Resolution Committees and thereby Local Dispute Resolution Committees.

7.3.3 The National Peace Secretariat will take decisions on a consensus basis.

7.3.4   The required financial and administrative resources of the National Peace Secretariat, and the other bodies established by it, will be provided by the Department of Justice.

7.4 Regional and Local Dispute Resolution Committees:

7.4.1   Peace bodies are to be established at both regional and local level, to be styled "Regional Dispute Resolution Committees (RDRC) and " Local Disputes Resolution Committees (LDRC) respectively.

7.4.2   Just as the Commission will gain its legitimacy from its composition, reflecting the interested and relevant organisations, the RDRC's and LDRC's will gain their legitimacy by representing the people and communities they are designed to serve.

7.4.3   The areas of jurisdiction of the RDRC's shall be decided by the National Peace Secretariat until such time as statutory provision is made.

7.4.4   RDRC's will be constituted as follows:

7.4.4.1 representatives from relevant political organisations;
7.4.4.2 representatives from relevant churches;
7.4.4.3 representatives from relevant trade union, industry and business in the region;
7.4.4.4 representatives of relevant local and tribal authorities; and
7.4.4.5 representatives from the police and the defence force.

7.4.5 Duties of RDRC's shall include the following:

7.4.5.1 attending to any matter referred to it by the LDRC, the National Peace Secretariat or the Commission;

7.4.5.2 advising the Commission on matters causing violence and intimidation in its region;

7.4.5.3 settling disputes causing public violence or intimidation by negotiating with the parties concerned and recording he terms of such settlements;

7.4.5.4 guiding LDRC's in their duties;

7.4.5.5 monitoring current applicable peace and future peace agreements entered into in the relevant region and settling disputes arising from them;

7.4.5.6 informing the National Peace Secretariat of steps taken to prevent violence and intimidation in its region including breaches of Peace Agreements; and

7.4.5.7 consulting with relevant authorities in its region to combat or prevent violence and intimidation.

7.4.6 The communities within which LDRC's are to be established should be identified by the RDRC's.

7.4.7 LDRC's will be constituted by drawing representatives reflecting the needs of the relevant community.

7.4.8 Duties of the LDRC's shall include the following:

7.4.8.1 attending to any matter referred to it by either the Commission or the RDRC's;

7.4.8.2 creating trust and reconciliation between grassroots community leadership of relevant organisations, including the police and the defence force;

7.4.8.3 co-operating with the local Justice of the Peace in combating and relevant violence and intimidation;

7.4.8.4 settling disputes causing public violence and intimidation by negotiating with the parties concerned and recording the terms of such settlements;

7.4.8.5 eliminating conditions which may harm peace accords or peace relations;

7.4.8.6 reporting and making recommendations to the relevant RDRC's;

7.4.8.7 to promote compliance with current valid and future peace accords and agreements entered into in the relevant area;

7.4.8.8 to agree upon rules and conditions relating to marches, rallies and gatherings; and

7.4.8.8 liaise with local police and local magistrates on maters concerning the prevention of violence, the holding of rallies, marches and gatherings.

7**.**5 Justices of the Peace

7.5.1   It is proposed that additional Justices of the Peace be appointed after consultation with relevant parties and LDRC's. The purpose of the Justices of the Peace will essentially be to promote the peace process at the grassroots level and to assist LDRCs in their activities.

7.5.2 Duties of the Justices of the Peace shall include the following:

7.5.2.1 investigating any complaint received from anyone pertaining to public violence and intimidation, except where legal processes or investigations instituted by the South African Police, other police forces, the Commission, the RDRC's, the Police Reporting Officer or a commission of inquiry are dealing with the relevant matter.

7.5.2.2   mediating between relevant parties to a dispute by negotiating;

7.5.2.3 applying the rules of natural justice when issuing an order which will be fair and just in the particular circumstances in order to restore peaceful relations;

7.5.2.4   referring facts constituting an offence to the relevant Attorney-General;

7.5.2.4   in co-operation with parties and in consultation with the LDRC's acting as the ears and eyes of LDRC;s and reacting in urgent cases;

7.5.2.5 in all matters relating to public violence reporting to the LDRC's; and

7.5.2.6 to pronounce as a judgement the terms of a settlement reached at LDRC's or RDRC's, provided that the terms of such settlement are executable.

7.6 RDRC's, LDRC's and Justices of the Peace shall be empowered to:

7.6.1   request the presence of any person with knowledge of any acts of violence or intimidation to give evidence;

7.6.2   request that any person in possession of any relevant document or other evidenciary material put the same at their disposal; and

7.6.3   protect the identity and safety of anyone assisting the relevant body as contemplated in 7.6.1 and 7.6.2 by excluding the public and/or media from its proceedings or by limiting access to its documents or reports or by prohibiting the publication of the contents of any of its documents or reports.

7.7   The National Peace Secretariat shall assist RDRC's in the exercise of their duties.

7.8   RDRC's may limit the number of members of a LDRC taking into account the prevailing circumstances in the community.

7.9   RDRC's shall determine the boundaries of the area constituting the jurisdiction of LDRC's within their own areas of jurisdiction.

7.10   The National Peace Secretariat and the Commission will advise on the policy to be applied to and by the RDRC's and the LDRC's and the management of the said bodies.

7.11   Members of the RDRC's, LDRC's and Justices of the Peace not in full-time employment of the State shall be entitled to remuneration and allowances to be paid by the State.

7.12   RDRC's and LDRC' shall appoint chairmen and vice-chairmen to represent the RDRC and the LDRC concerned for a period of one year.

7.13   RDRC's and LDRC's shall furnish the National Peace Secretariat, the Commission or the relevant RDRC, as the case may be, with any information required by such bodies.

7.14   In view of the lack of effective peace promoting mechanisms at grassroots level it is urgent that these proposals be implemented as soon as possible. Because of the said urgency, it is agreed that the proposals be implemented on a voluntary basis at the outset. In order to give permanency and effectivity to the proposed structures it will have to be give statutory recognition as soon as possible. This should also ensure that the structures be founded by the State. In drafting the required legislation there should be wide consultation including with the National Peace Committee. The proposed legislation will also be published for general information and comment.

7.15 In order to ensure the proper functioning of the LDRC's, it is necessary to:

7.15.1 give them high status In their communities for their role in the peace process;

7.15.2 compensate the members of LDRC's for out-of-pocket expenses for attending meetings; and

7.15.3 train the members of the LDRC's in conciliating disputes, running meetings, negotiating skills, etc.

CHAPTER 8
NATIONAL PEACE COMMITTEE

8.1 COMPOSITION

8.1.1 Those political parties and organisations currently represented on the Preparatory Committee shall constitute the National Peace Committee together with representatives drawn from other signatory parties where the National Peace Committee believes such inclusion will give effect to the National Peace Accord.

8.1.2 The National Peace Committee shall appoint a chairperson and a vice-chairperson who shall be drawn from the religious and business communities.

8.2 OBJECTIVE

The objective of the National Peace Committee is to monitor and to make recommendations on the implementation of the National Peace Accord as a whole and to ensure compliance with the Code of Conduct for Political Parties and Organisations.

8.3 FUNCTIONS

The functions of the National Peace Committee shall be, inter alia to:

- perform those functions imposed upon it by the National Peace Secretariat and the Commission;

- receive and consider reports by the National Peace Secretariat and the Commission;
- decide disputes concerning the interpretation of the Code of Conduct for Political Parties and Organisations;
- resolve disputes concerning alleged transgressions of the Code of Conduct for Political Parties and Organisations;
- convene a meeting for the signatories in the event of an unresolved breach of the National Peace Accord; and
- recommend legislation to give effect to the National Peace Accord.

POWERS

The National Peace Committee shall have the following powers:

- promote the aims and spirit of the National Peace Accord;
- convene a meeting of the signatories where necessary;
- amend the constitution of the National Peace Committee;
- negotiate and conclude further agreements to achieve the objects of the National Peace Accord

MEETINGS

The National Peace Committee shall elect a chairperson who shall not be a representative of any of the signatory parties.

Meetings shall take place on a regular basis at a date and time agreed to in advance.

Urgent meetings shall be convened by the chairperson on not less than 48 hours' notice in writing to the authorised representatives.

The service of written notice of a meeting at the specified address of the authorised person shall constitute due notice.

An urgent meeting shall be called by the chairperson on a written request of one of the signatory parties to the National Peace Accord.

VOTING

All decisions shall be by consensus.

In the event of a dispute over the interpretation of the National Peace Accord, the failure of the National Peace Committee to achieve consensus at the meeting at which the dispute is raised or at such further meetings as agreed, the dispute shall be referred to expedited arbitration in the manner set out in paragraph 9.4.

In an event of a breach of the National Peace Accord not being resolved by consensus at a meeting of the National Peace Committee, the chairperson of the National Peace Committee shall convene a meeting of national leadership of the signatories within 30 days of that meeting.

CHAPTER 9
ENFORCING THE PEACE AGREEMENT BETWEEN PARTIES

9.1 There should be simple and expeditious procedures for the resolution of the disputes regarding transgressions of the Code of Conduct for Political Parties and Organisations by political parties and organisations who are signatories of the National Peace Accord. These disputes should wherever possible, be settled:

9.1.1 at grassroots level;

9.1.2 through the participation of the parties themselves; and

9.1.3 by using the proven methods of mediation, arbitration and adjudication.

9.2 Disputes and complaints regarding the transgression of the Code of Conduct for Political Parties and Organisations shall be referred to the National Peace Committee or a committee to whom it has referred the matter for resolution, if the parties were not to resolve the dispute themselves.

9.3 Where disputes cannot be resolved by the National Peace Committee or the committee to whom it has been referred to by the National Peace Committee, it shall be referred for arbitration.

9.4 The arbitrator shall be a person with legal skills, appointed by the relevant parties by consensus, failing which the arbitrator shall be appointed by the National Peace Committee within 21 days of being requested to do so in writing and failing which the Chairperson of the National Peace Committee shall appoint an arbitrator.

9.5 Subject to the above, the procedure of the arbitration shall be as follows:

9.5.1 the complaint shall be referred to the arbitrator by the complaining parties;

9.5.2 the arbitrator shall decide on a date of hearing and call upon the parties to the dispute to be present at the hearing with their witnesses;

9.5.3 the hearing shall be conducted in private;

9.5.4 the arbitrator shall make a finding on the facts and make an order on the organisation concerned to remedy the breach either by a public distancing of the organisation from the events or by steps to be taken to prevent further breaches of the Code and the time within which the order has to be implemented;

9.5.5 the arbitrator shall hold a compliance hearing once the time period has expired to determine compliance;

9.5.6 the arbitrator will then submit a report of its findings to the National Peace Committee.

9.6 The signatories agree to consult each other in the National Peace Committee on methods of ensuring that the Code of Conduct for Political Parties and Organisations is enforceable on all such bodies, including the possibility of statutory enforcement.

CHAPTER 10
SPECIAL CRIMINAL COURTS

10.1 An effective ad credible criminal judicial system requires the swift but just dispensation of justice. This in turn will promote the restoration of peace and prosperity to communities, freeing them of the ravages of violence and intimidation. Special attention should be given to unrest related cases, cases of public violence and cases involving intimidation bt setting up Special Criminal Courts specifically for the purpose.

10.2 It is agreed that the Department of Justice, in co-operation with local legal practitioners of the Law Societies and the Bar, should establish project committees to advise the Department of Justice on the administration of the proposed Special Criminal Courts.

10.3 These Special Criminal Courts will not deal with ordinary day-to-day crime. Its function will be to deal with unrest related cases. As a result, cases being heard in these courts will be disposed of swiftly and effectively without delay. Cognizance is taken of the initiative to establish mobile courts in certain areas to bring justice closer to the people. The initiative is supported.

10.4 Special Criminal Courts should be located in areas where its services are most urgently needed. This implies that cases can be heard more expeditiously that ordinary criminal courts and would be able to. This ensures that perpetrators of violence and intimidation will not unnecessarily be let out on bail enabling them to become re-involved in violence and intimidation. This also ensures that those who are maliciously accused of being violent can have their names cleared sooner than is the case at present.

10.5 The Criminal Law Amendment Act of 1991 provides a mechanism for a programme of witness protection. It is based on the voluntary co-operation of the person threatened by others and can also protect his family members. It is agreed that these provisions be actively utilised in areas affected by unrest.

10.6 For unrest, political violence and intimidation related offences to be effectively combated, criminals should be prosecuted as effectively as possible and at the earliest instance.

10.7 It is acknowledged that for Special Criminal Courts to be effective, special procedural and evidential rules should apply. The parties therefore commit themselves to promoting

procedural and evidential rules that will facilitate the expeditious and effective hearing of criminal cases.

APPENDIX E:

Address to CODESA by Nelson Mandela, President of the ANC

20 December 1991

Leaders of political parties and movements;

Distinguished observers from international organisations;

Members of the diplomatic corps;

Venerable traditional and religious leaders of our people;

Comrades and friends.

Today will be indelibly imprinted in the history of our country. If we, who are gathered here, respond to the challenge before us, today will mark the commencement of the transition from apartheid to democracy. Our people, from every corner of our country, have expressed their yearning for democracy and peace. Codesa represents the historical opportunity to translate that yearning into reality.

For eighty years, the ANC has led the struggle for democracy in South Africa. Along the route traversed this period, many sacrifices were made by thousands upon thousands of our people. In the arduous battle between freedom and oppression, positions hardened and polarisation developed between the people and the state. Even when, in the absence of any other recourse, the ANC took up arms, our objective was to secure a political settlement in South Africa. In the past few years an environment more conducive to establishing mutual trust has been established.

South Africans of many persuasions recognise that this environment, and its institutional product, Codesa, is the fruit of their sacrifices and struggle. They have a justifiable expectation that Codesa will set our country on the road to democracy.

Inasmuch as apartheid has been declared a crime against humanity and the problems of our country have engaged so much of the attention of the international community over decades, the presence of esteemed observers from key international organisations as guests of Codesa is most appropriate.

We welcome the guests from the United Nations organisation; the organisation of African unity; the Commonwealth; the European Economic Community and the non-aligned

movement. We trust that they will avail to the process now unfolding their wisdom, insights and experience gained in many similar initiatives across the world.

All South Africans share the hope and vision of a free land free of apartheid, where internal strife will have no place.

The ANC initiated the search for peace in our country. Since 1987 the ANC has intensively campaigned for a negotiated transfer of power. This campaign reached new heights in 1989 when the OAU, the non-aligned movement and the UN General Assembly all adopted declarations supporting this position. All three declarations stated:

"…That where colonial, racial and apartheid domination exists, there can be neither peace nor justice".

In keeping with this spirit, Codesa must therefore lay the basis for the elimination of racial and apartheid domination.

It is only be decisive action in this regard that south Africa will be granted entry to the community of nations as a full member.

The strength of the Codesa initiative lies in the range of political parties and persuasions represented here. The presence of so many parties augurs well for the future. The diverse interests represented, speak of the capacity to develop consensus across the spectrum and the desire to maximise common purpose amongst South Africans. Many parties here have already invested so much by way of preparing their constituencies for transformation. Above all else, the investment already made must spur us on to total commitment for the successful outcome of this convention.

Ons betreur feit dat daar nog partye is wat hulself uit hierdie belangrike proses uitsluit. Na Kodesa is die situasie in ons land onomkeerbaar. Die dreigemente met burgeroorlog is onverantwoordelik en totaal onaanvaarbaar. Die tyd vir sulke praatjies is lankal verby. As hulle hierdie dreigemente uitvoer sal doe wereld sien dat hulle die lyding van alle Suid Afrkaners wil verleng, en die besoeke na vrede in ons land wil verpes.

Maar een ding staan vas: Die proses tot egte demokrasie is onstuitbaar. Die deskiedenis bied vir ons almal unieke geleentheid. Om hierdie geleentheid van lee, negatiewe bravado te

verkwansel, is om die toekoms te ontken. Ons doen steeds 'n beroep op sulke partye om nou, selfs in hierdie laat stdium, by Kodesa aan te sluit.

Die boodskap van die ANC deur Kodesa is eenvoudig, duidelik, en vir alle Suid Afrikaners, die tyd vir een Afrika, een yolk, een stem, een toekoms, is daar.

The national convention in 1909 was a gathering of whites representing the four British colonies. It was also a betrayal of black people and denial of democracy. The act of union entrenched colonial practices and institutions constitutionally. In its wake, our country has lived through eight decades of wasted opportunity. Codesa provides the first opportunity since to attempt to establish democracy in our country.

It is imperative that we also reach consensus on the definition of democracy. From the ANC's perspective, democracy entails:

- that all governments must derive their authority from the consent of the governed;
- no persons or groups of persons shall be subjected to oppression, domination or discrimination by virtue of their race, gender, ethnic origin, colour or creed;
- all persons should enjoy security in their persons and should be entitled to the peaceful enjoyment of their possessions, including the right to acquire, own or dispose of property, without distinction based on race, colour, language, gender or creed;
- all persons should have the right to hold and express whatever opinions they wish to subscribe to, provided that in the exercise of that right they do not infringe on the rights of others.

This quality of democracy will indeed only be possible when those who have borne the brunt of apartheid oppression exercise their right to vote in a free and fair election on the basis on universal suffrage. We can see no reason why an election for a constituent assembly should not be possible during 1992.

Ngesikhathi isimo sengcindezelo sidinga kuzatshalazwe uanc akazange ahlehlele emuva kodwa wakhomba umhlahlandlela. Manje ngoba isimo sesiyavuma yiyona futhi i ANC ehamba phambili ekuletheni uxolo kuleli lokhokho.

Uma kukhona abantu abandinga inkululeko eSouth Africa abantu abamnyama bayindinga manje ngoba isimo sabo somnotho nenhlalanhle siya ngokuba sibi nsuku zonke.

Ilungelo lokuvota iyona nto ewumongo womzabalazo we nkululeko.

U1992 unyaka wamanqamu okufalene ulethe ukhetho lokuqala lwentando yeningi south Africa.

Codesa, on its own, will not deliver democracy. In recording this fact, there is no attempt to demean Codesa. Even absolute consensus during the life of Codesa will still leave an apartheid constitution in place. We need to be reminded that, this very constitution was declared null and void by the UN Security Council in 1983.

The invalidation of the prevailing constitution, in the most persuasive argument, in support of the view that the incumbent government is unsuited to the task of overseeing the transition to democracy. Its often stated commitment to democracy must now compel it to make way for an interim government of national unity to supervise the transition.

This is the only cogent outflow from our deliberations at Codesa. The consensus, which we arrive at will certainly have far-reaching implications for the birth of a new nationhood. None of us could be satisfied with circumstances where the consensus struck at this meeting is not translated into full legal force.

An interim government, important as it may be, is but a product of agreement between ourselves, as political parties, and organisations. It will not be the outcome of full participation by the people of our country.

Negotiations, to be successful, must be owned and supported by the majority of South Africans.

In the absence of full participation, we must commit ourselves to open negotiations to ensure that notions of secret deals do not arise. This process will also hinge on the confidence by each participating that the communication of developments be absolutely non-partisan. Consideration therefore needs to be given to the immediate establishment of the necessary mechanisms to ensure that the state controlled media accurately and fairly represents the views of all participants. The means of establishing an interim government will not be participatory. Therefore the consensus at Codesa should curtail both its mandate and its lifespan.

The ANC remains fully committed to the installation of a government, which can justly claim authority because it is based on the will of the people. This reality will have to be underpinned by a constitution which both engenders respect and enjoys legitimacy. There is a compelling urgency about this task. It is inconceivable that such a democratic constitution could be reached in any way but through the portals of an elected constitution-making body, namely a Constituent Assembly.

It is tragic that our country, so well-endowed with natural resources has been reduced to an economic wasteland by the system of apartheid, based on greed and mismanagement. It is also distressing to note that the deplorable violence has reached such alarming proportions, and others threaten still more. These features are a direct consequence of the determination of a minority to maintain the power and privilege accrued by apartheid. There are large parts of our country where free political activity is still not possible, where law and order is still ruled by the jackboot and a large number of political prisoners remain incarcerated.

In the spirit of our Convention, we call upon the Government to proclaim an immediate Codesa Amnesty before Christmas for all remaining political prisoners throughout the country.

Nothing could be more irresponsible than for those of us gathered here to deny our people the right to peace and freedom of association and to deny our country its due economic growth.

We can only reserve the current situation if we set our sights on establishing true democracy. The national interest is far, far more important than the sectional interests represented by any party here. Everybody wants a place in the sun of a post-apartheid South Africa. No delegation here could possibly have been mandated its constituency, however small, to attend Codesa in order to annihilate itself.

Recognising this, however, we want to make a strong appeal to everybody present to place the compelling national concerns above narrow sectional interests.

History will judge us harshly if we fail to turn the opportunity, which it now presents us with, into common good. The risks of further pain and affliction arising from violence, homelessness, unemployment or gutter education, are immense. No country or people can afford the extension of this anguish, even for a day. The approach, which we adopt at Codesa, must be fundamentally inclusive. The price of Codesa's failure will be far too great.

We must not trample on the confidence, which our people have placed in the successful conclusion to these negotiations. It would be foolhardy to spurn the world for its efforts in assisting to secure peace and prosperity for South Africa. Our people and the world expect a non-racial, non-sexist democracy to emerge from the negotiations on which we are about to embark.

Failure of Codesa is inconceivable, so to is consensus without legal force. There is absolutely no room for error or obstinacy. The challenge, which Codesa places before each one of us, is to unshackle ourselves from the past and to build anew.

Codesa can be the beginning of reconstruction. Let our common commitment to the future of our country inspire us to build a South Africa of which we can all be truly proud.

APPENDIX F:

DECLARATION OF INTENT, CONVENTION FOR A DEMOCRATIC SOUTH AFRICA (CODESA I), 20 DECEMBER 1991

We, the duly authorised representatives of political parties, political organisations, administrators and the South African Government, coming together at this first meeting of the Convention for a Democratic South Africa, mindful of the awesome responsibility that rests upon us at this moment in the history of our country,

Declare our solemn commitment:

- **to bring about** an undivided South Africa with one nation sharing a common citizenship, patriotism and loyalty, pursuing amidst our diversity, freedom, equality and security for all irrespective of race, colour, sex or creed; a country free from apartheid or any other form of discrimination or domination;

- **to work** to heal the divisions of the past, to secure the advancement of all, and to establish a free and open society based on democratic values where the dignity, worth and rights of every South Africa are protected by law;

- **to strive** to improve the quality of life of our people through policies that will promote economic growth and human development and ensure equal opportunities and social justice for all South Africans;

- **to create** a climate conducive to peaceful constitutional change by eliminating violence, intimidation and destabilisation and by promoting free political participation, discussion and debate;

- **to set in motion** the process of drawing up and establishing a constitution that will ensure, inter alia:

  - the South Africa will be united, democratic, non-racial and non-sexist state in which sovereign authority is exercised over the whole of its territory;

- that the Constitution will be the supreme law and that it will be guarded over by an independent, non-racial and impartial judiciary;

- that there will be a multi-party democracy with the right to form and join political parties and with regular elections on the basis of universal adult suffrage on a common voters roll; in general the basic electoral system shall be that of proportional representation;

- that there shall be a separation of powers between the legislature, executive and judiciary with appropriate checks and balances;

- that the diversity of languages, cultures and religions of the people of South Africa shall be acknowledged;

- that all shall enjoy universally accepted human rights, freedoms and civil liberties including freedom of religion, speech and assembly protected by an entrenched and justiciable Bill of Rights and a legal system that guarantees equality of all before the law.

We agree:

- that the present and future participants shall be entitled to put forward freely to the Convention any proposal consistent with democracy.

- that CODESA will establish a mechanism whose task it will be, in co-operation with administrations and the South African Government, to draft all texts of legislation required to give effect to the agreements reached in CODESA.

We, representatives of political parties, political organisations, further solemnly commit ourselves to be bound by the agreements of CODESA and in good faith to take all steps as are in our power and authority to realise their implementation.

African National Congress; Bophuthatswana Government; Ciskei Government; Democratic Party; Dikwankwetla Party; Inkatha Freedom Party (did not sign); Inyandza National Movement; Intando Yesizwe Party; Labour party of South Africa; Natal/Tansvaal Indian

Congress; National Party; National People's Party; Solidarity; South African Communist Party; Transkei Government; United People's Front; Venda Government; Ximoko Progressive Party.

We, the South African Government, declare ourselves to be bound by agreements we reach together with other participants in CODESA in accordance with the standing rules and hereby commit ourselves to the implementation thereof within our capacity, powers and authority.

> South African Government
> Nkosi sikelel'iAfrik.
> Ons vir jou Suid –Afrika.

Morena boloka sechaba sa heso. May the Lord bless our country. Mudzimu Fhatutshedza Afrika. Hosi katekisa afrika.

Addendum to the Declaration of Intent

For the avoidance of doubt as to the interpretation of the Declaration of Intent, it is declared by its signatories that irrespective of their individual interpretive views thereof, no provision of the Declaration, interpreted alone or in conjunction with any other provision thereof shall be constued as –:

- favouring or inhibiting or precluding the adoption of any particular constitutional model, whether unitary, federal, confederal, or otherwise, consistent with democracy;

- preventing any participant from advocating the same or the separation, in terms of any constitutional model, of powers between a central government and the regions; during the proceedings of CODESA or any of its committees or Working Groups; and

- that this Addendum shall be added to and form part of the Declaration.

APPENDIX G:

RECORD OF UNDERSTANDING, 26 SEPTEMBER 1992

Meeting between the State President of the Republic of South Africa and the president of the African National Congress held at the World Trade Centre on the 26 September 1992

1. The attached Record of Understanding was agreed to.

2. On the way forward –:

    -   The two delegations agreed that this summit has laid a basis for the resumption of the negotiation process.

    -   To this end the ANC delegation advised the South African Government that it would recommend to its National Executive Committee that the process of negotiation be resumed, whereafter extensive bilateral discussions will be held.

    -   It was agreed that the practicalities with regard to bilateral discussions will be dealt with through the existing channel.

Record of Understanding

-   Since 21 August 1992 a series of meetings was held between Mr Roelf Meyer, Minister of Constitutional Development and Mr Cyril Ramaphosa, Secretary General of the African National Congress. These meetings entailed discussions with a view to removing obstacles towards the resumption of negotiations and focused on the identification of steps to be taken to address issues raised in earlier memoranda. The discussions took note of various opposing viewpoints on the relevant issues and obstacles. It was decided that these issues should not be dealt with exhaustively in the understanding. This document reflects the understanding reached at the conclusion of the discussions regarding these obstacles and issues.

-   The understandings of these issues and obstacles included the following, although it was observed that there are still other important matters that will receive attention during the process of negotiation:

- The Government and the ANC agreed that there is a need for a democratic constituent assembly/constitution-making body and that for such a body to be democratic it must:

  - be democratically elected;
  - draft and adopt the new constitution, implying that it should sit as a single chamber;
  - be bound only be agreed constitutional principles;
  - have a fixed time frame;
  - have an adequate deadlock breaking mechanism;
  - function democratically i.e. arrive at its decisions democratically with certain agreed majorities;
  - be elected within an agreed predetermined time period;

Within the framework of these principles, detail will have to be worked out in the negotiation process;

- The Government and the ANC agreed that during the interim/transitional period there shall be constitutional continuity and no constitutional hiatus. In consideration of this principle, it was further agreed that:

  - the constitution-making body/constituent assembly shall also act as the interim/transitional Parliament;

  - The shall be an interim/transitional government of national unity;

  - The constitution-making body/constituent assembly cum interim/transitional Parliament and the interim/transitional government of national unity shall function within a constitutional framework/transitional constitution which shall provide for national and regional government during the period of transition and shall incorporate guaranteed justiciable fundamental rights and freedoms. The interim/transitional Parliament may function as a one-chamber body.

- The two parties are agreed that all prisoners whose imprisonment is related to political conflict of the past and whose release can make a contribution to reconciliation should be released. The Government and the ANC agreed that the release of prisoners, namely, those who according to the ANC fall within the guidelines defining political offences, but according to the Government do not, and who have committed political offences on or before 8 October 1990 shall be carried out in stages (as reflected in a separate document: Implementation Programme: Release of Prisoners) and be completed before 15 November 1992. To this end the parties have commenced a process of identification. It is the Government's position that all who have committed similar offences but who have not been charged and sentenced should be dealt with on the same basis. On this question no understanding could be reached and it was agreed that the matter will receive further attention.

  As the process of identification proceeds, releases shall be effected in the abovementioned staged manner. Should it be found that the current executive powers of the State do not enable it to give effect to specific releases arising from the above identification the necessary legislation shall be enacted.

- The Goldstone Commission has given further attention to hostels and brought out an urgent report on certain matters and developments in this regard. The Commission indicated that the problem is one of criminality and that it will have to investigate which localities are affected.

  In the meantime some problematic hostels have been identified and the Government has undertaken as a matter of urgency to address and deal with the problem in relation to those hostels that have been associated with violence. Further measures will be taken, including fencing and policing to prevent criminality by hostel dwellers and to protect hostel dwellers against external aggression. A separate document (Implementation Programme: Hostels) records the identification of such hostels and the security measures to be taken in these instances.

  Progress will be reported to the Goldstone Commission and the National Peace Secretariat. United nations observers may witness the progress in co-operation with the Goldstone Commission and the National Peace Secretariat.

- In the present volatile atmosphere of violence, the public   display and carrying of dangerous weapons provokes further tensions and should be prohibited. The Government has informed the ANC that it will issue a proclamation within weeks to prohibit countrywide the carrying and display of dangerous weapons at all public occasions subject to exemptions based on guidelines being prepared by the Goldstone Commission. The granting of exemptions shall be entrusted to one or more retired judge. On this basis, the terms of the proclamation and mechanism for exemption shall be prepared with the assistance of the Goldstone Commission.

- The Government acknowledges the right of all parties and organisations to participate in peaceful mass action in accordance with the provisions of the National Peace Accord and the Goldstone Commission's recommendations. The ANC for its part reaffirms its commitment to the provisions of the Code of Conduct for Political Parties arrived at under the National Peace Accord and the agreement reached on 16 June 1992 under the auspices of the Goldstone Commission as important instruments to ensure democratic political activity in a climate of free political participation. The two parties also commit themselves to the strengthening of the Peace Accord process, to do everything in their power to calm down tensions and to finding ways and means of promoting reconciliation in South Africa.

  In view of progress made in this summit and the progress we are likely to make when negotiations are resumed, the ANC expresses its intention to consult its constituency on a basis of urgency with a view to examine the current programme of mass action.

The two parties agreed to hold further meetings in order to address and finalise the following matters which were not completed at the summit:

Climate of free political activity.
Repressive/security legislation.
Covert operations and special forces.
Violence

Agreed to at Johannesburg on 26 September 1992. (Signed)

FW de Klerk   N R Mandela
State President   President:ANC

APPENDIX H:

ADDRESS BY NELSON MANDELA TO THE PLENARY SESSION OF THE MULTI-PARTY NEGOTIATIONS PROCESS
World Trade Centre, Kempton Park, 17 November 1993

Honourable Justices,
Leaders and Members of all delegations present here today.

We have reached the end of an era. We are at the beginning of an era.

Whereas apartheid deprived millions of our people of their citizenship, we are restoring that citizenship.

Whereas apartheid sought sought to fragment our country, we are re-uniting our country.

The central theme of the Constitution for the Transition is the unity of our country and people.

This constitution recognises the diversity of our people. Gone will be the days when one language dominated. Gone will be the days when one religion was elevated to a position of privilege over other religions. Gone will be the days when one culture was elevated to a position of superiority and other denigrated and denied.

We emerge from a conflict ridden-society in which colour, class and ethnicity were manipulated to sow hatred and division. We emerge from a society which was structured on violence and which raised the spectre of a nation in danger of never being able to live at peace with itself.

Our agreements have put that era behind us. This shameful past dictates the crucial need for a Government of National Unity. We are firmly on the road to a non-racial and non-sexist democracy.

For the first time in the history of our country, on April 27th, 1994, all South Africans, whatever their language, religion and culture, whatever their colour or class, will vote as equal citizens.

Millions who were not allowed to vote, will do so. I, too, for the first time in my short life, will vote.

There are some people who still express fears and concerns. To them we say: you have a place in our country. You have a right to raise your fears and your concerns. We, for our part, are committed to giving you the opportunity to bring forth those views so that they may be addressed within the framework of democracy.

The democratic order gives to each and all of us the instruments to address problems constructively and through dialogue.

Le ke yona indawo, kufuneka icace oku kwebhokwe emhlophe ihamba ehlingwini: Embusweni wentando yabantu, ngabantu, ayamkelekile konke into yokuba iqaqobana labantu linganako ukunyazelisa intando neemfuno zalo, ngokwenjenjalo lisengele phantsi, lidobelela iimfanelo namalungelo akhe namnye ummi weli lizwe.

(Let this, however, be clear: there is no place in a democracy for any community or section of a community to impose its will at the expense of the fundamental rights of any other citizen.)

Ek wil weereens sekere groepe in die Afrikaner gemeenskap aanspreek: Almal van u is deel van die Suid-Afrikaanse nasie. Almal van u is gelyke burgers van die nuwe Suid-Afrika. U het die volste reg tot u eie taal, godsdiens en kultuur. Hierdie regte sal u nie ontneem word nie.

Let us all grasp the opportunity that democracy offers. Democracy has no place for talk of civil war. Those who persist with such threats do not care for human life.

Democracy is about empowerment. Now together we can begin to make the equality of education the right of all our children; to begin to remove homelessness, hunger and joblessness; to begin to restore land to those who were deprived by force and injustice; to break the cycle of stagnation in our economy.

Together, we can build a society free of violence. We can build a society grounded on friendship and our common humanity – a society founded on tolerance. That is the only road open to us. It is a road to a glorious future in this beautiful country of ours. Let us join hands and march into the future.
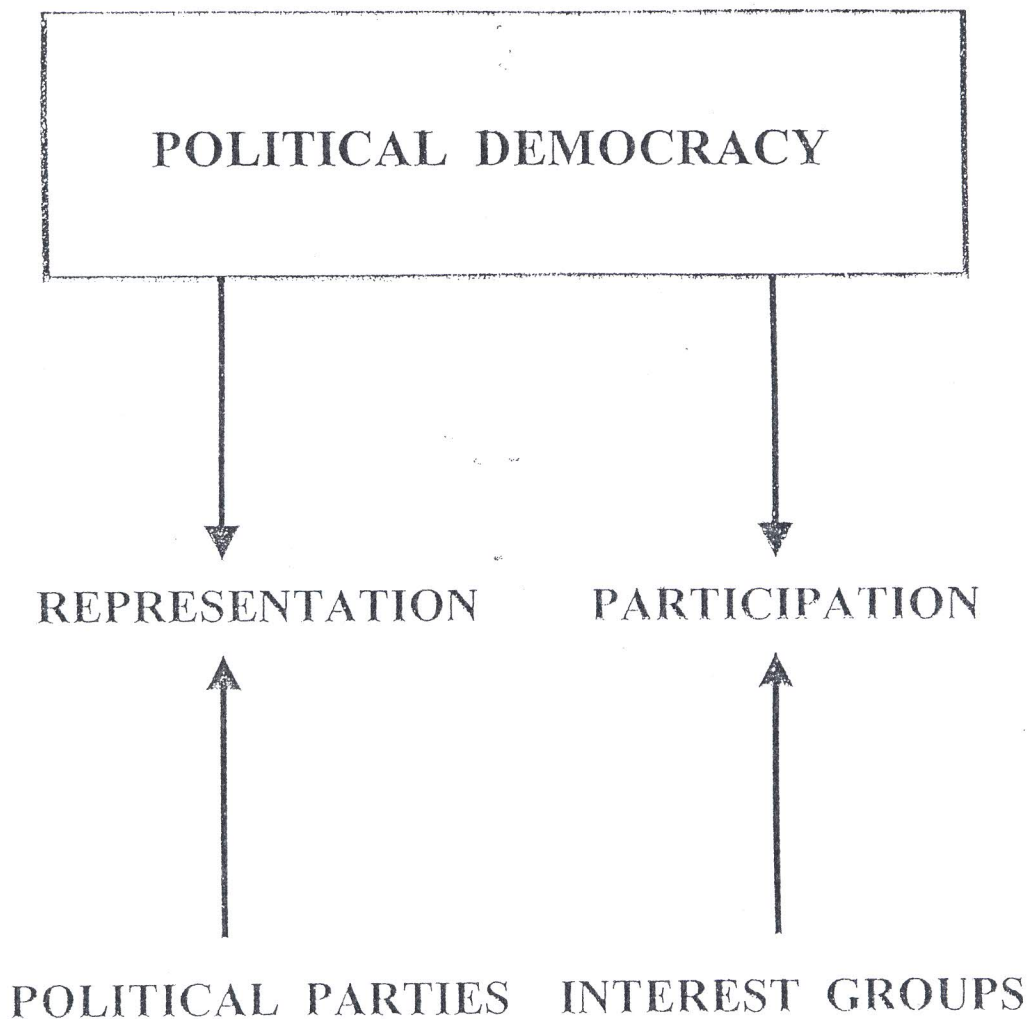
APPENDIX I:

DIAGRAMS SHOWING SOUTH AFRICA'S NEWLY-DESIGNED CONSTITUTIONAL DISPENSATION

APPENDIX I:

DIAGRAMS SHOWING SOUTH AFRICA'S NEWLY-DESIGNED
CONSTITUTIONAL DISPENSATION *(Diagrams derived from
D. P. Wessels' work)*

DEMOCRACY

BY DEFINITION ────────────────────▶

```
┌─────────────────────────────────────────────┐
│                                             │
│          POLITICAL DEMOCRACY                │
│                                             │
└─────────────────────────────────────────────┘
         │                       │
         ▼                       ▼

  REPRESENTATION          PARTICIPATION

         ▲                       ▲
         │                       │

POLITICAL PARTIES    INTEREST GROUPS
```

SEPARATION OF POWERS

$$\boxed{\text{C O N S T I T U T I O N}}$$

DIVIDE

↓

$$\boxed{\text{G O V E R N I N G   P O W E R}}$$

↓

$$\boxed{\text{B R A N C H E S}}$$

LEGISLATURE	EXECUTIVE	JUDICIARY
RESPONSIBLE	RESPONSIBLE	RESPONSIBLE
MAKING OF LAWS	IMPLEMENTATION OF LAWS	INTERPRETATION OF LAWS
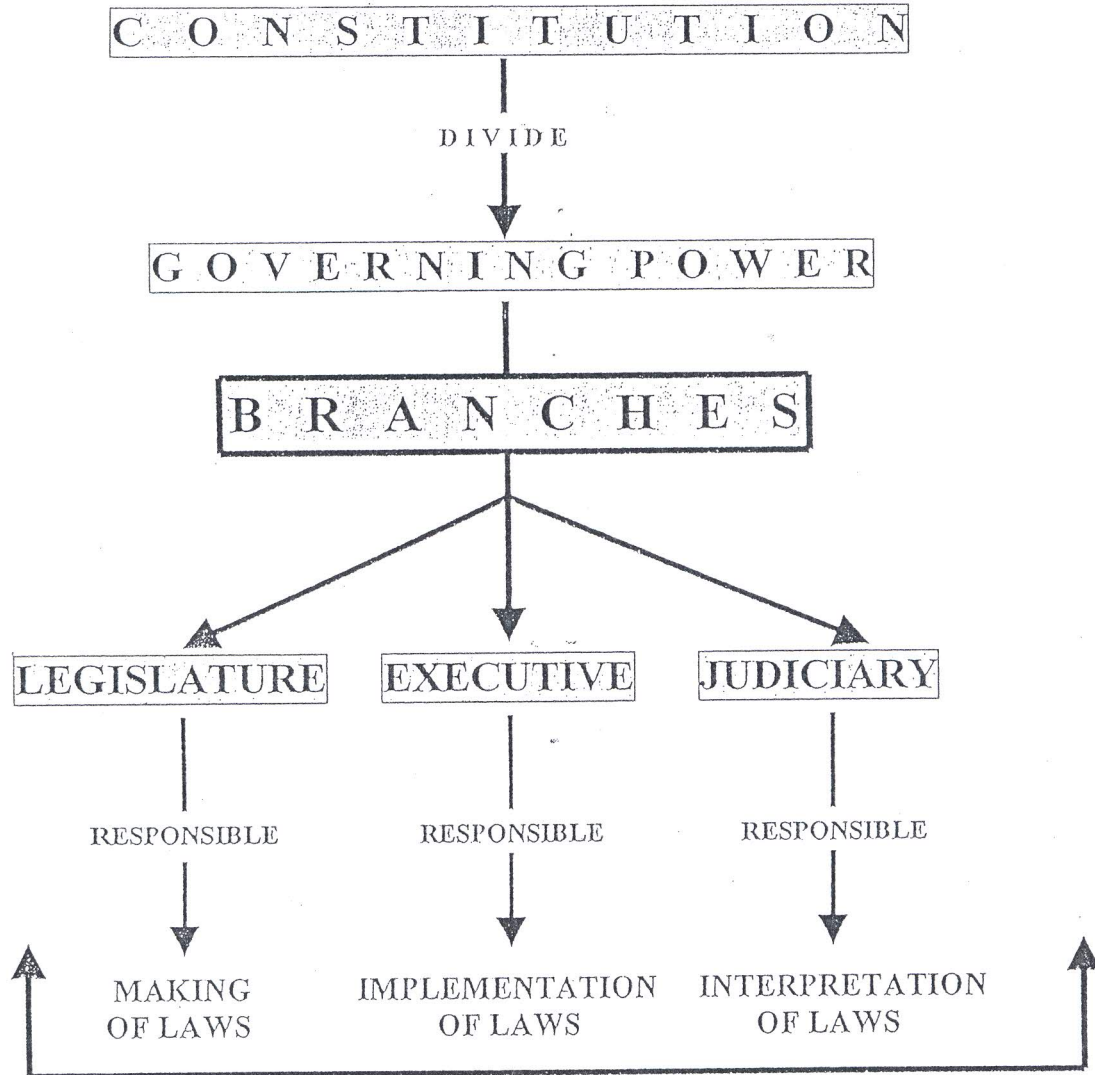
HORIZONTAL DIVISION OF GOVERNING POWER

PURPOSE: "To establish a government which is sufficiently restrained from becoming tyrannical. When all three branches act in concert, government can do what it must, but no executive, legislature, or court will ever be able to use the whole power of government to work its way heedless of restraint"
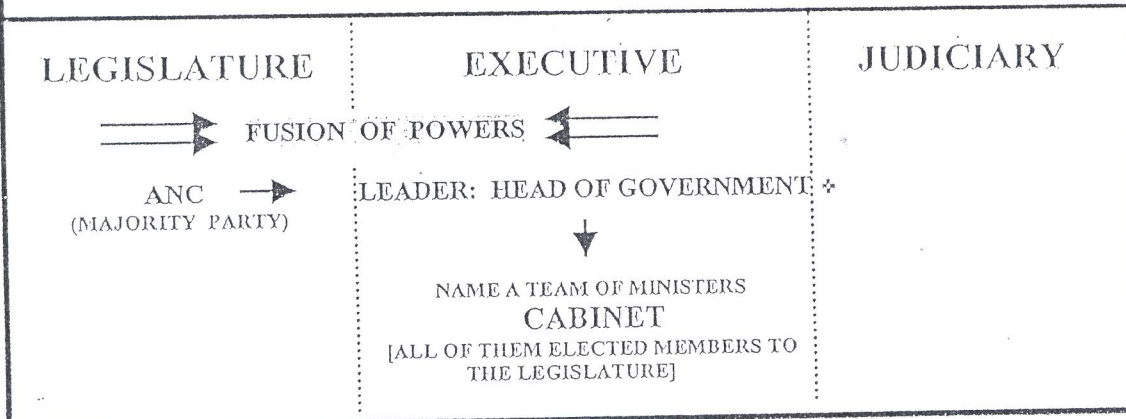
SEPARATION OF POWERS

SUPREMACY OF THE CONSTITUTION
(it replaces the principle of the sovereignty of parliament)

C O N S T I T U T I O N

↓

apply the principle of the separation of powers as the **fusion of powers**

LEGISLATURE	EXECUTIVE	JUDICIARY
⟹ FUSION OF POWERS ⟸		
ANC → (MAJORITY PARTY)	LEADER: HEAD OF GOVERNMENT ✣	
	↓	
	NAME A TEAM OF MINISTERS **CABINET** [ALL OF THEM ELECTED MEMBERS TO THE LEGISLATURE]	

ANC / NNP IFP / DP / FF / PAC / ACDP

- STRONG PARTY GOVERNMENT
- LEGISLATIVE AND EXECUTIVE TERMS ARE SYNCHRONISED
  - EXECUTIVE ARE RESPONSIBLE TO THE LEGISLATURE
- OVERLAP OF PERSONNEL

ELECTION

- TO ELECT A GOVERNMENT
- ONLY ONE ELECTION TAKES PLACE EVERY 5th YEAR
- VOTERS ELECT ONLY A - LEGISLATURE

✣ ALSO HEAD OF STATE [ELECTED BY THE ELECTORAL COLLEGE]
CONCLUSION: RSA - A PARLIAMENTARY SYSTEM OF GOVERNMENT

N A T I O N A L

EXCLUSIVE LEGISLATIVE POWERS ON:

- FISCAL AND MONETARY POLICY
- FOREIGN AFFAIRS
- MILITARY / DEFENSE
- TELECOMMUNICATION

[ON ANYTHING NOT MENTIONED SCHEDULES 4 AND 5 OF THE CONSTITUTION]

N A T I O N A L + P R O V I N C I A L

SCHEDULE 4: *CONCURRENT* LEGISLATIVE POWERS ON:

- HOUSING
- HEALTH
- AGRICULTURE
- EDUCATION

P R O V I N C I A L

SCHEDULE 5: *EXCLUSIVE* LEGISLATIVE POWERS ON:

- ABATOIRS
- AMBULANCE SERVICES
- PROVINCIAL SPORT
- LIQUOR LICENCES

LOCAL GOVERNMENT

SCHEDULES 4 (PART B) AND 5 PART B): *EXCLUSIVE* EXECUTIVE AUTHORITY and THE RIGHT TO (MAKE and ADMINISTER *BY-LAWS*) ON:

- AIR POLLUTION
- LOCAL TOURISM
- BUILDING REGULATIONS
- TRADING REGULATIONS

[LOCAL GOVERNMENT IS A FUNCTION OF THE PROVINCIAL GOVERNMENT: PROVINCIAL LEGISLATIVE POWERS TO THE EXTENT SET OUT IN SEC 155 (6) (a) and (b); and SEC 139 (1) "PROVINCIAL SUPERVISION OF LOCAL GOVERNMENT"]