



Department of
Local Government and Traditional Affairs
KwaZulu-Natal Provincial Government

DIRECTORATE: LEGAL SERVICES

Enquiries Imibuzo Navrae	K W Kuhn	Telephone Ucingo Telefoon	033 – 395 2942	Postal Address Ikheli Lezinwadi Posadres	X9078 Pietermaritzburg 3200
My Reference Inkomba Yami My Verwysing	(LS)2/17/IR/LG	Fax Isikhahamezi Faks	033 – 394 9714	Date Usuku Datum	3 September 2007
Your Reference Inkomba Yakho U Verwysing	N/A	E-mail	Karl-Heinz.Kuhn@kznlgta.gov.za		

Mr. S L Tsenoli Mp
Honourable Chairperson
Portfolio Committee on Provincial and Local Government
National Parliament
Cape Town

Per E-mail: lbrown@parliament.gov.za

COMMENT ON THE LOCAL GOVERNMENT LAWS AMENDMENT BILL, 2007

The abovementioned matter refers.

Whilst some of the attached comments have been provided to the Department of Provincial and Local Government after the first publication of the Bill, the Department deems it necessary to again comment on the Bill, especially with regard to amendments to the Bill originally published by the Department of Provincial and Local Government.

In the premises, we wish to comment as follows on the Draft Bill published by the Committee, provided that it must be assumed that we agree with any clauses on which we have not provided specific comment:

(a) **Ad clause 2:**

Although we are concerned that the effect of the proposed amendment would mean that any determination proposed after 1 January of any specific year, will only be implemented up to 18 months later at the commencement of the next following financial year, we support the rationale for the proposed amendment.

As regards the proposed amendment, we however suggest the following amendment rather than the proposed amendment:

"(4) A boundary determination contemplated in sub-section (2)(b) takes effect on the commencement date of the municipal financial year following the date of publication of the notice effecting such determination: Provided that –

(a) the Board must inform the Minister of Finance of any such determination, at least six months prior to the commencement of the municipal financial year in which such determination is to take effect; and

(b) no determinations may take effect between 1 January and 30 June of any specific financial year."

An additional issue is that the MEC decides on the date on which the determination takes effect, not the Board, which means that the Board will only be in a position to inform the Minister of Finance, once the MEC has advised the Board as contemplated in section 23(3)(b). As this could feasibly only occur up to 3 months later, it is foreseen that very few such determinations will take effect within one financial year.

(b) Ad clause 6:

Whilst we agree with the proposed amendment, the heading of the section will need a consequential amendment by the substitution of the word 'may' with the word 'must'.

(c) Ad clause 9:

We assume that the same would apply as with clause 2, and suggest a similar amendment to that proposed for clause 2 above, although the reference to an election in this clause is in our opinion problematic. All municipal elections will occur within 6 months of the start of a financial year, and in our opinion an election year should be treated the same as any other financial year. In the event that the requirement of 6 months notice is not needed in an election year, the whole clause with regard to 6 months notice appears to be superfluous.

(d) Ad clause 10:

See comment on clause 9 above, which in our opinion similarly applies to this clause.

(e) Ad clause 12:

This clause, which specifically proposes a fixed term contract not exceeding 5 years, appears to be in conflict with the existing section 57(6)(c), which provides for a renewal of the contract on terms and conditions to be agreed on between the parties.

The question that immediately arises is whether section 57(6)(c) does not give rise to a reasonable expectation of a renewal of the contract, and what would happen in the event that the parties cannot reach agreement on the proposed renewal of the contract?

Whilst we support this clause, we recommend the inclusion of the words "*non-renewable*" before "*fixed term*" to remove any ambiguity, as well as the deletion of section 57(6)(c), to remove any possibility of a reasonable expectation that the contract will be renewed, unless the clause is intended to provide for renewals of the contract.

(f) Ad clause 15:

The issue of Regulations versus Guidelines has become problematic, and in our opinion should be clarified to ensure that no further litigation ensues in this regard. A further issue, especially with regard to the Disciplinary Code applicable to managers contemplated in sections 55 to 57 of the Local Government: Municipal Systems Act, has created confusion, in that the Collective Agreement concluded by SALGA, appears not to be applicable to such Managers.

Whilst we are aware that a process is under way to draft such a Code, we submit that section 120 of the Systems Act requires amendment to provide that the Minister may make regulations to provide for a Disciplinary Code for such managers, notwithstanding the provisions of section 67(1)(h) of the Systems Act.

(g) Ad clause 18(b):

We recommend that this clause be re-drafted as follows:

"(3) An MEC issuing a notice in terms of subsection (1)(a), or designating a person to conduct an investigation in terms of subsection (1)(b), must, within 14 days, submit a written statement motivating the action, to –

- (a) the National Council of Provinces;
- (b) the Minister; and
- (c) the Minister of Finance."

A further issue of concern in regard to section 106 of the Systems Act, is the absence of any enforcement measures, short of an intervention as contemplated in section 139 of the Constitution. This issue is however dealt with in greater detail in the document attached hereto as Annexure "B".

(h) Ad clause 19:

Whilst we understand the rationale for this amendment, we are concerned that this period may not be sufficient, especially considering the provisions of the National Credit Act, 2007, and the backlog in the Deeds Offices, and propose a further amendment to cater for the occasion where the certificate expires prior to the transfer of the property.

(i) Ad clause 20:

As the Local Government: Municipal Finance Management Act, 2003, contains similar clauses to those contained in Chapters 8 and 8A of the Local Government: Municipal Systems Act, 2000, we recommend that a similar clause be included in the former Act, although we are concerned that a clause that empowers a Minister to amend laws without following any parliamentary procedure may not survive constitutional scrutiny.

(j) Ad clause 22:

We recommend that the clause be amended to provide that an MEC may institute such an investigation even where the Municipality has instituted an investigation, which in the opinion of the MEC was not correctly or adequately performed, or where the MEC does not agree with the outcome of the investigation.

In order to enable the MEC to exercise his or her mind in this regard, we also recommend a further clause to instruct municipalities to advise the relevant MEC of any investigations instituted in terms of the provisions of item 14 of Schedule 1 to the Act.

(k) Ad clause 24:

We recommend a further amendment to this clause to include a provision that officials must declare any gifts above a certain value, similar to the provision contained in item 7(3) of Schedule 1 to the Act.

(l) Ad clause 26(a):

We suggest the use of the word "*determine*" rather than "*identify*", and propose that the content of this clause also be included in the proposed amendment to section 15(4).

(m) Ad clause 29:

See comment on clause 26(a) above.

(n) **Ad clause 32:**

Considering the numerous complaints and representations received from rate payers, as well as investigations by the Standing Committee on Public Accounts of the KwaZulu-Natal Provincial Legislature into alleged unjustified increases in municipal budgets and rates, we recommend that this clause should be prescriptive, in that it provides that the Minister "must" set upper limits with regard to both percentages contemplated in the relevant section.

(o) **Ad clause 33:**

We are of the opinion that the relevant section in the Act should be re-drafted as a whole, to remove the double negative contained in the clause, which has caused untold confusion within municipalities as to what must be disregarded, and what is excluded from being disregarded.

In addition to the abovementioned, we wish to provide further suggestions on proposed amendments to the suite of local government legislation, as contained in the KwaZulu-Natal Briefing Document on Local Government, which was prepared after extensive consultation with SALGA, ILGM, IMFO, Municipalities, KwaZulu-Natal Provincial Government Departments, other Provincial Departments of Local Government, several National Government Departments and the SA Law Reform Commission.

Although the Briefing Document is primarily intended to facilitate the Provincial Rationalisation of Local Government Laws Project, all challenges and proposed amendments to legislation that fall beyond the competency of a province, were also identified, and are contained in the document attached hereto as Annexure "A".

Whilst we have included all the proposed amendments to the relevant legislation, we are of the opinion that a presentation to the Committee should be allowed, to deal with specific issues unique to KwaZulu-Natal, that may not be adequately explained above.

Yours faithfully,



MS. C. G. GUMBI-MASILELA
HEAD OF DEPARTMENT
LOCAL GOVERNMENT AND TRADITIONAL AFFAIRS

STRUCTURE OF THE DRAFT BRIEFING DOCUMENT ON LOCAL GOVERNMENT

The Draft Briefing Document on Local Government in KwaZulu-Natal focuses on an overview of the 2007 policy, regulatory, and status quo frameworks, to identify key issues to be addressed, and to determine relevant and implementable policy options, within the following context:

“Forging ahead into the new KwaZulu-Natal: Local Government Serving the People”

The structure of the Draft Briefing Document on Local Government was finalised after comprehensive in-depth discussions with the senior management of the Department of Local Government and Traditional Affairs and a number of key stakeholders. In this regard, cognisance was taken of the structure of the following guiding documents:

- The Constitution, 1996;
- The White Paper on Local Government, 1998;
- The national Five Year Local Government Strategic Agenda; and
- The KwaZulu-Natal Department of Local Government and Traditional Affairs Five Year Strategic Plan 2005-2010.

In order to align this Draft Briefing Document on Local Government in KwaZulu-Natal to the national framework policy, it was decided to follow the structure of the national White Paper on Local Government, 1998.

The Draft Briefing Document consists, in addition to this Introduction, of the following interlinked parts:

- Chapter 2: Cooperative Government;
- Chapter 3: Institutional Systems;
- Chapter 4: Political Systems;
- Chapter 5: Administrative Systems;
- Chapter 6: Municipal Finance;
- Chapter 7: Transformation; and
- Chapter 8: The Way Forward.

Each of Chapters 2-7 comprises:

- A background which:
 - contextualises the chapter concerned;

- provides linkages to the Constitution, 1996, the national White Paper on Local Government, 1998, and the suite of national local government legislation; and
- contains the relevant key cluster areas with regard to challenges identified by local government practitioners are indicated; and
- A discussion of the challenges identified during the consultative process and recommendations as how to deal with them by means of policy development and/or the enactment of appropriate legislation.

1 CO-OPERATIVE GOVERNMENT

1.1 BACKGROUND

In the National White Paper on Local Government (1998), co-operative government is discussed with reference to the Constitution of the Republic of South Africa, 1996, which states that government in South Africa is constituted as national, provincial and local spheres of government. These three spheres are distinctive, interdependent and interrelated. Local government is a sphere of government in its own right, and is no longer a function of national or provincial government. It is an integral component of the democratic state.

The implementation of this system at a local level in KwaZulu-Natal has given rise to a number of challenges which require, amongst others, legislative intervention at both national and provincial level. The legislation applicable to this functional area, can be summarised as follows:

- Chapter 2 of the Intergovernmental Relations Framework Act 13 of 2005 (Intergovernmental structures: Parts 1 – 5)
- Chapter 3 of the Intergovernmental Relations Framework Act 13 of 2005 (Conduct of intergovernmental relations)
- Chapter 4 of the Intergovernmental Relations Framework Act 13 of 2005 (Settlement of intergovernmental disputes)
- Chapter 5 of the Local Government: Municipal Structures Act 117 of 1998 (Functions and powers of municipalities)
- Chapter 2 of the Local Government: Municipal Systems Act 32 of 2000 (The legal nature, rights and duties of municipalities)
- Chapter 3 of the Local Government: Municipal Systems Act 32 of 2000 (Municipal functions and powers)

- Chapter 5 of the Local Government: Municipal Systems Act 32 of 2000 (Integrated development planning: Part 1)
- Chapter 10 of the Local Government: Municipal Systems Act 32 of 2000 (Provincial and national monitoring and standard setting)
- Chapter 2 of the Local Government: Municipal Finance Management Act 56 of 2003 (Supervision over local government finance management)
- Chapter 5 of the Local Government: Municipal Finance Management Act 56 of 2003 (Co-operative government)
- Chapter 13 of the Local Government: Municipal Finance Management Act 56 of 2003 (Resolution of financial problems: Parts 1, 2 and 4)

The challenges identified during the preparation of this White Paper deal with the following key cluster areas as regards co-operative governance:

1. The governance of municipalities
2. The regulation of the executive authority of municipalities
3. The constitutional mandates
4. Traditional leadership and institutions
5. Planning for development
6. Disaster management
7. Support
8. Monitoring and evaluation
9. Capacity building
10. Supervision and intervention
11. Alignment of municipal IDPs and the KwaZulu-Natal Provincial Growth and Development Strategy

1.2 CHALLENGES

The following 25 challenges were identified with specific reference to co-operative governance:

1.2.1 ABSENCE OF ENABLING PROVINCIAL LEGISLATION FOR DISTRICT CO-ORDINATING FORUMS

Issue Statement

The Intergovernmental Relations Framework Act 13 of 2005 provides for various co-ordinating forums, but there is no explicit provision for District Co-ordinating Forums.

Recommendation

It is recommended that the Intergovernmental Relations Framework Act 13 of 2005 be amended to accommodate District Co-ordinating Forums, alternatively that provincial legislation be enacted to make provision for such Forums.

1.2.2 CAPACITATION OF PROVINCIAL GOVERNMENT BY NATIONAL GOVERNMENT

Issue Statement

The Constitution, 1996 and national legislation provide for the capacitation of local government by provinces. However, there is no similar provision in national legislation providing for the capacitation of provincial government by national government.

Recommendation

It is recommended that national legislation should prescribe a framework for national government to provide support to provincial government.

1.2.3 CONFLICT BETWEEN MUNICIPAL BY-LAWS AND NATIONAL/PROVINCIAL LEGISLATION

Issue Statement

Although section 156(3) of the Constitution of the Republic of South Africa, 1996, provides for the invalidation of by-laws that conflict with national or provincial legislation, there are a number of areas in respect of which doubt exists whether municipal councils are legally mandated to make by-laws.

Examples are:

- by-laws made in the absence of an enabling provision in national or provincial legislation;
- by-laws imposing more onerous compliance requirements than those provided for in national or provincial legislation;
- by-laws imposing less onerous compliance requirements than those provided for in national or provincial legislation; and
- by-laws made to address *lacunae* (gaps) in national or provincial legislation.

Recommendation

It is recommended that Chapter 2 of the Local Government: Municipal Structures Act 117 of 1998 be amended to provide for a regulatory framework that addresses the

relationship, and regulates potential conflict, between, on the one hand, municipal by-laws and, on the other hand, national or provincial legislation.

1.2.4 CONFLICT BETWEEN SECTION 139 OF THE CONSTITUTION, 1996 AND PROVISIONS OF THE LOCAL GOVERNMENT: MUNICIPAL STRUCTURES ACT 117 OF 1998

Issue Statement

Section 139 of the Constitution, 1996 was amended during 2003 to provide for a procedure for provincial government to intervene in local government. However, no consequential amendments were effected to sections 34 and 35 of the Local Government: Municipal Structures Act 117 of 1998, which has led to the present conflict between these provisions.

Recommendation

It is recommended that the Local Government: Municipal Structures Act 117 of 1998 be amended to align its provisions with those contained in section 139 of the Constitution, 1996.

1.2.5 DEBTS OWED TO MUNICIPALITIES BY GOVERNMENT DEPARTMENTS

Issue Statement

Various national and provincial departments owe huge amounts of money to municipalities for rates and service charges for a period longer than 60 days, without making the necessary arrangements for payment.

Recommendation

It is recommended that

- this matter be dealt with at policy and implementation level;
- the appropriate legislation be amended to provide for the compulsory payment of invoices for municipal service charges and rates due by national and provincial government departments, as well as other organs of state, within sixty days; and
- provision is made for penalties to be incurred and for the matter to be reported to the relevant Legislature's SCOPA, in the event of non-compliance with the sixty day-period.

1.2.6 DISCIPLINARY FRAMEWORK FOR MUNICIPAL POLICE DIFFERS FROM THAT OF SAPS

Issue Statement

The disciplinary framework applicable to municipal police members is different from the framework applicable to members of the SA Police Service (SAPS), especially when a member of the SAPS has been found guilty of an offence.

Recommendation

It is recommended that the disciplinary framework for municipal police services be aligned to that of the SAPS.

1.2.7 EQUITABLE ALLOCATION OF RESOURCES BY DISTRICT MUNICIPALITIES TO LOCAL MUNICIPALITIES

Issue Statement

A number of local municipalities have indicated that the district municipalities within whose jurisdictional areas they fall do not allocate resources on an equitable basis between the constituent local municipalities.

Recommendation

It is recommended that the relevant legislation be amended in a manner that would ensure that the allocation of resources by district municipalities to local municipalities within their respective jurisdictional areas will be done on an equitable basis;

1.2.8 FUNCTIONS OF THE MEC IN THE DETERMINATION OF COUNCILLOR SALARIES AND ALLOWANCES

Issue Statement

Section 7 of the Remuneration of Public Office Bearers Act 20 of 1998 requires the Minister for Provincial and Local Government to consult with Provincial MECs on the salaries and allowances of councillors. The said Minister then determines the upper limits of the salaries and allowances by way of a notice in the Government Gazette.

Municipalities, however, are empowered to determine the actual salaries and allowances in terms of section 7(3) of the Remuneration of Public Office Bearers Act 20 of 1998 in consultation with the MEC for Local Government, without providing for any specific criteria other than those contained in section 7(1) or for any deadlock breaking mechanism in the event that the Municipal Council and the MEC disagree.

Recommendation

It is recommended that section 7(3) of the Remuneration of Public Office Bearers Act 20 of 1998 be expanded to:

- provide specific criteria that the MEC is to consider when consulting with municipalities; and
- include a deadlock breaking mechanism in the event that consensus cannot be reached.

1.2.9 HARMONISATION OF NATIONAL AND PROVINCIAL LEGISLATION

Issue Statement

National and Provincial legislation provide different frameworks for the classification of municipal infrastructure, and the functionary to whom the responsibility is assigned. An example is the classification of municipal roads, and the conflict that arises between national and provincial legislation with regard to transport forums and the allocation of funds.

Recommendation

It is recommended that national framework legislation and provincial legislation be harmonised to remove any conflict and duplication between frameworks for the classification of municipal infrastructure.

1.2.10 IMPLEMENTATION OF THE INTERGOVERNMENTAL RELATIONS FRAMEWORK ACT 13 OF 2005 (SECTION 35: IMPLEMENTATION PROTOCOLS)

Issue Statement

Implementation protocols are required in respect of the Intergovernmental Relations Framework Act 13 of 2005. At present, the provincial process for the development of such protocols has not yet been completed.

Recommendation

It is recommended that the Implementation Protocols must be finalised as a high priority, to ensure appropriate and effective service delivery by municipalities to local communities.

1.2.11 INADEQUATE INTERVENTION POWERS OF THE MEC TO EFFECTIVELY DEAL WITH IRREGULARITIES AT MUNICIPALITIES

Issue Statement

Circumstances often arise where limited dysfunctionality occurs within a municipality, which requires fast and effective intervention by the MEC.

The application of either section 106 of the Local Government: Municipal Systems Act 32 of 2000, read with the KwaZulu-Natal Commissions Act 3 of 1991, with its concomitant public hearings, or section 139 of the Constitution, 1996, with its strong interventionist approach, is not appropriate in such circumstances.

Recommendation

It is recommended that national legislation must be amended to provide for fast and effective intervention by the MEC in circumstances where limited dysfunctionality occurs within a municipality.

1.2.12 INTERPRETATION OF CONSTITUTIONAL SCHEDULE 4 (PART B) AND 5 (PART B) FUNCTIONAL DOMAINS

Issue Statement

The lack of clarity as regards the interpretation of the functional domains, allocated to local government in terms of Schedules 4 (Part B) and 5 (Part B) of the Constitution, 1996, creates challenges relating to the ambit of functions to be performed by municipalities.

Recommendation

It is recommended that:

- policy be formulated at national level to provide for the definition of functions as contained in Schedules 4 (Part B) and 5 (Part B) of the Constitution, 1996; and
- national local government legislation be amended to provide for the definition of said functions.

1.2.13 INVESTIGATIONS BY THE MEC IN TERMS OF CLAUSE 14(6) OF SCHEDULE 1 TO THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT 32 OF 2000

Issue Statement

Item 14(6) of Schedule 1 of the Local Government: Municipal Systems Act 32 of 2000 provides that an MEC may investigate a breach of the Code of Conduct for councillors. However, this may only occur subsequent to an investigation having been completed by the Council. The MEC is therefore unable to institute such an

investigation *mero motu*, which limits the power of the MEC to investigate breaches of the Code.

Recommendation

It is recommended that an amendment to Item 14(6) of Schedule 1 of the Local Government: Municipal Systems Act 32 of 2000 be considered, in order to mandate an MEC to institute an investigation *mero motu*.

1.2.14 NON-COMPLIANCE BY MUNICIPALITIES WITH DIRECTIVES IN TERMS OF SECTION 105 OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT 32 OF 2000

Issue Statement

Section 105 of the Local Government: Municipal Systems Act 32 of 2000 contains no enforcement mechanisms to ensure compliance with a directive issued to a municipality by the MEC. Presently the only recourse for the MEC is to approach the High Court for an interdict to ensure compliance.

Recommendation

The Local Government: Municipal Systems Act 32 of 2000 must be amended to provide for enforcement mechanisms available to the MEC.

1.2.15 PARTICIPATION OF LOCAL MUNICIPALITY MAYORS IN THE PREMIER'S COORDINATING FORUM

Issue Statement

The Intergovernmental Relations Framework Act 13 of 2005 provides that the Provincial Coordinating Committee (PCC) (in KZN named the Premier's Coordinating Forum (PCF)) consists of, amongst other persons, district municipal mayors. Local municipal mayors are, however, excluded, with the result that the concerns of local municipal mayors are not necessarily addressed at PCF meetings.

Recommendation

It is recommended that:

- the Intergovernmental Relations Framework Act 13 of 2005 be amended to provide for the participation of local municipal mayors in PCCs; and
- provincial intergovernmental relations legislation be enacted to provide for the compulsory membership and participation of local municipal mayors in PCF meetings.

1.2.16 PARTICIPATION OF SENIOR TRADITIONAL LEADERS IN LOCAL MUNICIPALITIES

Issue Statement

At present there is no synergistic relationship between councillors and senior traditional leaders in terms of service delivery, on account of the non-participation of senior traditional leaders in municipal councils.

Recommendation

It is recommended that the membership and participation of senior traditional leaders in municipal councils, as contemplated in section 81 and Schedule 6 of the Local Government: Municipal Structures Act 117 of 1998, be implemented.

1.2.17 PERFORMANCE OF HEALTH SERVICES BY MUNICIPALITIES

Issue Statement

The definitions of primary health care, environmental health and municipal health services are such that uncertainty has arisen as to the sphere of government, and the appropriate functionary therein, who must perform, and assume responsibility for, these services.

Recommendation

It is recommended that the relevant legislation be amended to provide for incontestable definitions, the allocation of responsibilities, and a regulatory and policy framework, to enable the transfer of the administration of such functions to another sphere of government in appropriate circumstances.

1.2.18 PROVISION OF DISASTER MANAGEMENT FRAMEWORK BY DISTRICT MUNICIPALITIES

Issue Statement

In terms of the Disaster Management Act 57 of 2002, the functional domain of disaster management lies with district municipalities, although the disaster management frameworks of district municipalities seldom reflect the needs identified by local municipalities.

Recommendation

It is recommended that the relevant legislation be amended to provide that the district disaster management framework must be finalised in consultation with local municipalities.

1.2.19 RENDERING OF LIBRARY SERVICES

Issue Statement

Currently most municipalities do not render any library services as determined by the constitutional framework, due to financial constraints.

Recommendation

It is recommended that national and provincial legislation be amended to provide for a financial model to allow municipalities to render library services.

1.2.20 ROLE OF COMMUNITY DEVELOPMENT WORKERS

Issue Statement

The absence of clear role definitions for Community Development Workers leads to tension between Community Development Workers, ward councillors and ward committee members.

Recommendation

It is recommended that:

- the relevant national legislation be amended to provide for and specify the role of Community Development Workers; and
- a framework be established to regulate the relationship between Community Development Workers, ward councillors, ward committee members and communities concerned.

1.2.21 ROLE OF INSTITUTIONS SUPPORTING CONSTITUTIONAL DEMOCRACY (ESTABLISHED IN TERMS OF CHAPTER 9 OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996)

Issue Statement

Several Chapter 9 institutions have not yet extended their focus to Local Government or are unable to perform at Local Government level due to various constraints.

Recommendation

It is recommended that sufficient provision is made by way of legislation or otherwise, for such institutions to function at all three levels of government.

1.2.22 STANDARD DRAFT INTERNAL RULES FOR INTERGOVERNMENTAL STRUCTURES

Issue Statement

Although section 33 of the Intergovernmental Relations Framework Act 13 of 2005, provides that intergovernmental structures must adopt rules to govern their internal procedures, many municipalities have not done so. Section 34 of the Act provides that the Minister may issue standard draft internal rules for intergovernmental structures, and the absence of such rules compromises the effective functioning of structures.

Recommendation

It is recommended that:

- the Minister issue the standard draft internal rules for intergovernmental structures as provided for in the Intergovernmental Relations Framework Act 13 of 2005; and
- provincial intergovernmental relations legislation be enacted to provide for the issuing of standard draft internal rules for intergovernmental structures.

1.2.23 SUPERVISORY AND OVERSIGHT ROLE OF MEC

Issue Statement

Section 106 of the Local Government: Municipal Systems Act 32 of 2000 empowers the MEC to issue directives and institute investigations in municipalities in the event of suspected non-performance or maladministration, without providing for any enforcement mechanisms to ensure that municipalities comply with such a directive or any recommendation emanating from such an investigation.

Recommendation

It is recommended that

- Section 106 of the Local Government: Municipal Systems Act 32 of 2000 be amended to enable the MEC to implement appropriate action where a directive or recommendation emanating from an investigation is not complied with, in circumstances where an intervention in terms of section 139 of the Constitution, 1996 is not merited; and
- Section 107 of Local Government: Municipal Structures Act 117 of 1998 be amended to provide the national Minister with powers of intervention in the event that a municipality fails to comply.

1.2.24 TIME FRAMES FOR INTERGOVERNMENTAL DISPUTE RESOLUTION

Issue Statement

Section 42 of the Intergovernmental Relations Framework Act 13 of 2005, provides for a process of resolving disputes, without providing for any time frames within which such disputes must be resolved.

Recommendation

It is recommended that:

- the Intergovernmental Relations Framework Act 13 of 2005, be amended to provide for time frames for the settlement of intergovernmental disputes; and
- provincial intergovernmental relations legislation be enacted to provide for similar time frames.

1.2.25 VARIOUS DEPARTMENT OF LAND AFFAIRS ADMINISTERED STATUTES AND PROGRAMMES IMPOSE OBLIGATIONS ON MUNICIPALITIES

Issue Statement

Various statutes and programmes administered by the Department of Land Affairs impose obligations on municipalities to render support to communities, which obligations are not adhered to by a number of municipalities.

Examples of such legislation and programmes are:

- Restitution of Land Rights Act 22 of 1994;
- Spatial Data Infrastructure Act 54 of 2003;
- Provision of alternative housing to people evicted from farms;
- LRAD and key components of the Land Redistribution Programme;
- Communal Land Rights Act 80 of 2004 (date of commencement to be proclaimed);
- Land Reform (Labour Tenants) Act 3 of 1996; and
- Extension of Security of Tenure Act 62 of 1997.

Recommendation

It is recommended that the relevant legislation be amended to provide for the capacitation of municipalities to render such support to communities.

2 INSTITUTIONAL SYSTEMS

2.1 BACKGROUND

With reference to the Constitution, 1996, the White Paper on Local Government, 1998, referred to the establishment of the following three categories of municipalities:

- Category (A): A municipality that has exclusive municipal executive and legislative authority in its area.
- Category (B): A municipality that shares municipal executive and legislative authority in its area with a Category (C) municipality within whose area it falls.
- Category (C): A municipality that has municipal executive and legislative authority in an area that includes more than one municipality.

In order to establish a flexible system of Government, especially in non-metropolitan areas, and to accommodate the diversity in settlement types and administrative capacities, the following provisions were enacted at national level to provide for the management of institutional systems:

- Chapter 1 of the Local Government: Municipal Structures Act 117 of 1998 (Categories and types of municipalities: Parts 1 - 2)
- Chapter 2 of the Local Government: Municipal Structures Act 117 of 1998 (Establishment of municipalities)
- Chapter 3 of the Local Government: Municipal Structures Act 117 of 1998 (Municipal councils: Part 1)
- Chapter 2 of the Local Government: Municipal Systems Act 32 of 2000 (The legal nature, rights and duties of municipalities)
- Chapter 10 of the Local Government: Municipal Finance Management Act 56 of 2003 (Municipal entities: Part 1)
- Chapter 13 of the Local Government: Municipal Finance Management Act 56 of 2003 (Resolution of financial problems: Part 4)
- Chapter 1 of the Local Government: Municipal Demarcation Act 27 of 1998 (Municipal Demarcation Board: Parts 1 – 2)
- Chapter 3 of the Local Government: Municipal Demarcation Act 27 of 1998 (Administrative and other matters: Parts 1 - 3).

The implementation of the system in KwaZulu-Natal has given rise to a number of challenges which require, amongst others, further legislative intervention at both national and provincial level.

The challenges identified during the preparation of this White Paper deal with the following key cluster areas as regards institutional systems:

1. Structures
2. Systems
3. Good governance
4. Traditional leadership and institutions
5. Enforcement measures
6. People focused, effective and efficient municipalities
7. Community confidence in system of local governance
8. Accountability
9. Performance management

2.2 CHALLENGES

The following 21 challenges were identified for specific reference to institutional systems:

2.2.1 ABSENCE OF A FRAMEWORK FOR THE ANNUAL MUNICIPAL PERFORMANCE REPORT

Issue Statement

Chapter 6 of the Local Government: Municipal Systems Act 32 of 2000 requires municipalities to report annually on their performance, and requires the MEC to prepare a provincial report in this regard. Chapter 6, however, does not provide any framework with regard to the criteria and timelines that must be adhered to, which renders monitoring and evaluation ineffectual.

Recommendation

It is recommended that the Performance Management Regulations issued in terms of the Local Government: Municipal Systems Act 32 of 2000 be expanded to include provisions for the reporting structure, format and timelines that must be aligned to the Monitoring and Evaluation System document issued by the Presidency in 2005.

2.2.2 ABSENCE OF DEADLOCK-BREAKING MECHANISMS IN THE ELECTION OF MUNICIPAL POLITICAL OFFICE BEARERS

Issue Statement

The absence of deadlock breaking mechanisms, similar to those contained in Schedule 3 of the Local Government: Municipal Structures Act 117 of 1998 in the election of local councillors to serve on district municipalities causes delays and unwarranted tensions.

Recommendation

It is recommended that provision be made for a uniform deadlock breaking mechanism in the election of municipal political office bearers.

2.2.3 ABSENCE OF DISCIPLINARY PROCEDURE FOR COUNCILLORS

Issue Statement

Schedule 2 to the Local Government: Municipal Systems Act 32 of 2000 relates to the Code of Conduct for municipal officials and provides that breaches of the Code, must be dealt with in terms of the disciplinary procedures of the municipality envisaged in section 67(1)(h) of the Act. However, Schedule 1 the Code of Conduct for Councillors, does not provide for the application of any disciplinary procedure for councillors.

Recommendation

It is recommended that the relevant legislation be amended in a manner that would ensure that disciplinary procedures are applied in cases of alleged breaches of the Schedule 1 Code of Conduct by councillors.

2.2.4 ALIGNMENT OF OPERATIONS OF SUB-FORUMS OF THE COMMUNITY POLICE FORUMS AND WARD COMMITTEES IN RESPECT OF SAFETY MATTERS

Issue Statement

The activities of the Ward Committees in respect of safety issues are often found to be conflicting with or duplicating the activities of the sub-forums of Community Police Forums established in terms of the South African Police Service Act 68 of 1995.

Recommendation

It is recommended that section 74(b) of the Local Government: Municipal Structures Act 117 of 1998 be amended to detail the functions of a Ward Committee and that such functions be aligned, in respect of safety issues, to the South African Police Service Act 68 of 1995.

2.2.5 APPEALS AGAINST DECISIONS TAKEN IN TERMS OF DELEGATED AUTHORITY

Issue Statement

Section 62 of the Local Government: Municipal Systems Act 32 of 2000 provides for an appeal against a decision taken in terms of delegated authority by, inter alia, a political structure which is defined as –

“the council of the municipality or any committee or other collective structure of a municipality elected, designated or appointed in terms of a specific provision of the Municipal Structures Act.”

Section 62(4) determines that where the appeal lies against a political structure, the municipal council (or, if the council comprises more than fourteen councillors, a committee of councillors not involved in the original decision) is the appeal authority. This results in the municipal council, or a committee of the municipal council, sitting in appeal on its own previous decision.

Recommendation

It is recommended that the relevant legislation be amended so as to ensure that the administrative law principle of *functus officio* applies to municipal councils, and that the legislation provides for an appeal to an independent appeal authority.

2.2.6 ASSIGNMENT OF RESPONSIBILITY FOR SPATIAL PLANNING

Issue Statement

The lack of finality on the responsibility for spatial planning and the duplication of custodians of spatial planning has resulted in severe constraints on development planning and implementation at a provincial level.

An example is the duplication arising from the Development Facilitation Act 67 of 1995 (administered by the Minister of Agriculture and Land Affairs in consultation with the Minister of Housing), the proposed Land Use Management legislation (prepared by the Department of Land Affairs) and the Spatial Development Framework (created by the Department of Provincial and Local Government).

Recommendation

It is recommended that a policy decision be taken at national government level with regard to the responsible custodian for spatial planning, and concomitant outstanding national legislation should be finalised as a matter of high priority.

2.2.7 ATTENDANCE OF COUNCIL MEETINGS BY COUNCILLORS

Issue Statement

Section 30(1) of the Local Government: Municipal Structures Act 117 of 1998 provides that a majority of the councillors must be present at a meeting of the council before a vote may be taken on any matter. Council meetings in the smaller

municipalities must often be postponed because of the absence of a majority of councillors. In a number of instances Item 4 of the Code of Conduct for Councillors (Schedule 1) with regard to the attendance of meetings is not strictly enforced by the Speaker.

Recommendation

It is recommended that:

- the Code of Conduct for Councillors be amended so as to strengthen the provisions relating to the compulsory attendance of council, portfolio committee and other related meetings by councillors, and to impose a duty on the Speaker to enforce the amended provisions; and
- the relevant legislation be amended to ensure that the annual report of the municipality concerned contains full details on the attendance by individual councillors of council, portfolio committee and other related meetings.

2.2.8 CONFLICT BETWEEN THE LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT 56 OF 2003 AND THE PUBLIC FINANCE MANAGEMENT ACT 1 OF 1999 WITH REGARD TO REGIONAL ELECTRICITY REGULATORS

Issue Statement

The Local Government: Municipal Finance Management Act 56 of 2003 and the Public Finance Management Act 1 of 1999 contradict each other in terms of what type of company the Regional Electricity Regulators should be. The Local Government: Municipal Finance Management Act 56 of 2003 states that the company must be a municipal entity, meaning that the municipality must own a majority of the shares, while the Public Finance Management Act 1 of 1999 states that it must be a public entity at national level in terms of which the national sphere of government must own the majority of the shares.

Recommendation

It is recommended that the Local Government: Municipal Finance Management Act 56 of 2003 and the Public Finance Management Act 1 of 1999 be aligned.

2.2.9 CONFLICT BETWEEN THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT 32 OF 2000 AND THE LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT 56 OF 2003

Issue Statement

There is a conflict between the Local Government: Municipal Systems Act 32 of 2000 and the Local Government Municipal Finance Management Act 56 of 2003 in that the Local Government: Municipal Finance Management Act 56 of 2003 provides that a councillor may not be awarded a tender, whereas the Local Government: Municipal Systems Act 32 of 2000 allows it, subject to approval by the municipal council concerned.

Recommendation

It is recommended that the Local Government: Municipal Systems Act 32 of 2000, be amended to comply with the Local Government: Municipal Finance Management Act 56 of 2003.

2.2.10 CONTRACTUAL CAPACITY OF COUNCILLORS AS MEMBERS OR DIRECTORS OF JURISTIC PERSONS

Issue Statement

The Supply Chain Management Regulations issued in terms of the Local Government: Municipal Finance Management Act 56 of 2003 prohibit councillors from contracting with their municipality, although a similar prohibition does not apply to partnerships or juristic persons whose members or directors are councillors.

Recommendation

It is recommended that the Supply Chain Management Regulations be amended to expand the prohibition to partnerships and juristic persons whose members or directors are councillors.

2.2.11 DIVISION OF POWERS AND FUNCTIONS BETWEEN DISTRICT AND LOCAL MUNICIPALITIES

Issue Statement

Schedules 4 (Part B) and 5 (Part B) to the Constitution, 1996, set out the areas of exclusive municipal competence subject to the provisions of sections 155(6)(a) and (7). In addition, section 84 of the Local Government: Municipal Structures Act 117 of 1998 provides for the division of powers and functions between district and local municipalities. Due to the lack of capacity, specifically at district municipality level, powers and functions assigned to district municipalities (see s 84 of the MSA), have been allocated to local municipalities to perform.

The absence of a uniform approach to the allocation of powers and functions has created uncertainty within municipalities with regard to the powers and functions they are required to perform.

Recommendation

It is recommended that the provisions of section 84 of the Local Government: Municipal Structures Act 117 of 1998 be adhered to, alternatively that a uniform approach be utilised in the allocation of powers and functions.

2.2.12 FUNCTIONING OF THE AD HOC COMMITTEE AS REGARDS ASSESSMENTS OF MUNICIPAL IDPS BY THE MEC

Issue Statement

Chapter 5 of the Local Government Municipal Systems Act, 32 of 2000 empowers the MEC to request a municipality to amend its Integrated Development Plan, in the event that he or she deems it necessary. Should a municipality find the request reasonable, it will amend its plan, although the municipality may refuse to amend its plan in which event the MEC must create an ad hoc committee to mediate the dispute. The absence of any Regulations governing the functioning and procedures of the ad hoc committee creates uncertainty in the event of disputes.

Recommendation

It is recommended that Regulations be promulgated to provide for the functioning and procedures of the ad hoc committee contemplated in section 33 of the Local Government: Municipal Systems Act 32 of 2000.

2.2.13 FUNCTIONS OF MAYOR AND SPEAKER IN CERTAIN TYPES OF MUNICIPALITIES

Issue Statement

Section 36(5) of the Local Government: Municipal Structures Act 117 of 1998 provides that in a section 9(e), (f) or 10(c) type municipality, the Speaker shall be called the Mayor. This results in uncertainty as regards the functions to be performed by, and the salary and benefits to be paid to, such office bearer.

Recommendation

It is recommended that the relevant legislation be amended so as to determine for the functions, salaries and benefits of municipal offices bearers in section 9(e), (f) or 10(c) type municipalities.

2.2.14 LACK OF PROVISION FOR, AMONGST OTHERS, SAFETY AND OTHER PLANS IN THE IDPS OF MUNICIPALITIES (LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT 32 OF 2000)

Issue Statement

Section 26 of the Local Government: Municipal Systems Act 32 of 2000 does not provide for Safety Plans to be included in the Integrated Development Plans of municipalities. Furthermore, it does not provide for Municipal Housing Plans (which are being implemented by municipalities on behalf of provinces).

Recommendation

It is recommended that section 26 of the Local Government: Municipal Systems Act 32 of 2000 be amended to also provide for the compulsory incorporation of all other forms of plans which are not at present part of the IDP framework.

2.2.15 MUNICIPAL COUNCILLORS UTILISING MUNICIPAL FUNDS TO INSTITUTE OR DEFEND LITIGATION IN WHICH THEY ARE CITED IN THEIR PERSONAL CAPACITY

Issue Statement

At present there is no regulatory framework on whether municipal funds can be utilised by municipal councillors when instituting or defending litigation in which they are cited in their personal capacity.

Recommendation

It is recommended that a regulatory and policy framework be established by means of national legislation to regulate such issues and to specify further for what purposes municipal funds may be utilised by municipal councillors in such circumstances.

2.2.16 MUNICIPAL COUNCILS ARE EMPOWERED TO DELEGATE FUNCTIONS, POWERS AND DUTIES TO EXECUTIVE COMMITTEES, WHO MEET IN CLOSED SESSION, PRECLUDING ATTENDANCE AND PARTICIPATION BY COUNCILLORS AND THE PUBLIC.

Issue Statement

The Local Government legislation empowers municipal councils to delegate a wide range of functions, powers and duties to executive committees, whilst a limited number of functions, powers and duties cannot be so delegated. Such delegations to executive committees preclude ordinary councillors from attendance or participation in any discussions or decision-making by such committee if such meeting is declared

closed. In addition, members of the public are also precluded from attending any such committee meeting.

Recommendation

It is recommended that national legislation give effect to the binding constitutional values of transparency and inclusivity, by providing a framework in terms of which attendance by the public would be guaranteed, and participation in discussions and decision-making by non-committee councillors would be ensured.

2.2.17 NON-ALIGNMENT OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT 32 OF 2000 AND THE LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT 56 OF 2003 AS REGARDS THE IDP PROCESS

Issue Statement

The Local Government: Municipal Systems Act 32 of 2000 and the Local Government: Municipal Finance Management Act 56 of 2003 are not aligned with regard to the budget process for purposes of the drafting and implementation of the Integrated Development Plans of municipalities.

Examples are:

- The timeline issues;
- The budget adoption process;
- The duplicate reporting requirements in respect of finance and performance; and
- The Service Development Improvement Plan (SDIP).

Recommendation

It is recommended that the Local Government: Municipal Systems Act 32 of 2000 and the Local Government Municipal Finance Management Act 56 of 2003 are amended to align the requirements in both Acts. Furthermore, the framework provided by the Monitoring and Evaluation Systems document (issued by the Presidency in 2005) should be incorporated into such amendments.

2.2.18 NON-COMPLIANCE BY MUNICIPAL OFFICE BEARERS IN RESPECT OF PRESCRIBED COUNCIL PROCEEDINGS

Issue Statement

Insufficient provision is made in national legislation to ensure compliance by municipal office bearers regarding the conducting of proceedings of municipal councils or committees thereof.

Section 29, read with section 40, of the Local Government: Municipal Structures Act 117 of 1998, requires a Speaker to convene a council meeting in the event that a majority of councillors request such a meeting in writing. Non-compliance with such a request is at present not followed by a sanction. In a given case, aggrieved councillors may not have sufficient financial resources to access the judicial process.

Recommendation

It is recommended that national legislation be amended to provide for the municipal manager or a functionary identified by the MEC for Local Government to perform such functions. It is also suggested that the municipal manager not be involved, and that the functionary identified by the MEC be an internal political functionary. In other cases of disfunctionality, sections 106 and 139 of the Constitution, 1996, should be implemented.

2.2.19 PERFORMANCE MANAGEMENT OF MUNICIPALITIES

Issue Statement

The absence of a clear framework to implement the monitoring and evaluation of municipal service delivery, creates uncertainty as regards the functionary who is to perform such services, and the manner in which such services are to be performed.

Recommendation

It is recommended that legislation be amended to identify the functionary to perform such services, and to provide a framework for such monitoring and evaluation at local government level.

2.2.20 PROLIFERATION OF STRUCTURES AND DIFFERENT FUNCTIONARIES PROVIDING SERVICES TO LOCAL COMMUNITIES

Issue Statement

There has been a significant increase in the number of structures involving community members who are involved in consultation processes and functionaries who provide services at local government level. In addition, these structures and functionaries are also not appropriately coordinated. This has resulted in the

unnecessary duplication of functions and structures, and has had the effect of inhibiting efficient and sustainable service delivery.

Recommendation

It is recommended that:

- an audit be undertaken of all such structures and functionaries operating and providing services at local government level;
- subsequently, a process of rationalisation of such structures and functionaries be undertaken to ensure the appropriate integration and coordination of such structures and functionaries within the context of the focus of effective and sustainable service delivery at local government level;
- consideration be given to the linking of the above with the multi-purpose centres for one-stop service delivery in an integrated manner, as well as with the coordinated roll-out of e-governance.

2.2.21 REPRESENTATION ON VARIOUS MUNICIPAL COMMITTEES

Issue Statement

The proportionate membership of different political parties on the Executive Committee of a municipal council is prescribed in terms of section 43(2) of the Local Government: Municipal Structures Act 117 of 1998. However, no similar provision exists to prescribe the proportionate membership on portfolio committees of municipal councils.

Recommendation

It is recommended that the relevant legislation be amended to provide for the proportionate representation on portfolio committees of municipal councils.

3 POLITICAL SYSTEMS

3.1 BACKGROUND

With reference to the Constitution, 1996, the White Paper on Local Government, 1998:

- referred to political systems;
 - emphasised the importance of strong political leadership for developmental local government;
 - examined political and electoral systems for the new local government system;
- and

- stated that democratic and developmental local government needs dynamic political leadership, regular and free elections and appropriate political systems and structures.

This focus on democratic, developmental and people focused local government required the enactment at national level of the following provisions:

- Chapter 3 of the Local Government: Municipal Structures Act 117 of 1998 (Municipal councils: Part 2)
- Chapter 4 of the Local Government: Municipal Structures Act 117 of 1998 (Internal structures and functions: Parts 1 – 6)
- Chapter 3 of the Local Government: Municipal Systems Act 32 of 2000 (Municipal functions and powers)
- Chapter 4 of the Local Government: Municipal Systems Act 32 of 2000 (Community participation)
- Chapter 5 of the Local Government: Municipal Systems Act 32 of 2000 (Integrated development planning: Part 3)
- Chapter 7 of the Local Government: Municipal Systems Act 32 of 2000 (Local public administration and human resources: Part 2)
- Chapter 8 of the Local Government: Municipal Systems Act 32 of 2000 (Municipal services: Part 3)
- Chapter 9 of the Local Government: Municipal Systems Act 32 of 2000 (Credit control and debt collection)
- Chapter 4 of the Local Government: Municipal Finance Management Act 56 of 2003 (Municipal budgets)
- Chapter 7 of the Local Government: Municipal Finance Management Act 56 of 2003 (Responsibilities of mayors)
- Chapter 14 of the Local Government: Municipal Finance Management Act 56 of 2003 (General treasury matters)
- Chapter 2 of the Local Government: Municipal Property Rates Act 6 of 2004 (Rating: Parts 1 – 2)
- Chapter 2 of the Local Government: Municipal Demarcation Act 27 of 1998 (Demarcation: Parts 1 - 3)
- Chapter 2 of the Local Government: Municipal Electoral Act 27 of 2000 (Voters roll and election date)
- Chapter 3 of the Local Government: Municipal Electoral Act 27 of 2000 (Preparations for election: Parts 1 - 3)

- Chapter 4 of the Local Government: Municipal Electoral Act 27 of 2000 (Observers and voter education providers)
- Chapter 5 of the Local Government: Municipal Electoral Act 27 of 2000 (Voting)
- Chapter 6 of the Local Government: Municipal Electoral Act 27 of 2000 (Counting).

The implementation of the system in KwaZulu-Natal has given rise to a number of challenges which require, amongst others, further legislative intervention at both national and provincial level.

The challenges identified during the preparation of this White Paper deal with the following key cluster areas as regards political systems:

1. Political systems
2. Good governance
3. People focused, effective and efficient municipal governance
4. Building confidence of community in system of local governance
5. Accountability
6. Performance management

3.2 CHALLENGES

The following 7 challenges were identified for specific reference to political systems:

3.2.1 AMENDMENT OF MUNICIPAL COUNCIL MEETING PARTICULARS WITHOUT NOTICE TO THE PUBLIC

Issue Statement

Section 19 of the Local Government: Municipal Systems Act 32 of 2000, specifies that the municipal manager must give notice to the public, in a manner determined by the municipal council, of the time, date and venue of every ordinary meeting of the council concerned. In practice, many council meetings are postponed without notification to the public of the amended meeting particulars.

Recommendation

It is recommended that the relevant legislation be amended so as to remove any uncertainty with regard to the obligation to provide information in respect of postponed council meetings.

3.2.2 CIVIL IMMUNITY OF COUNCILLORS AND MUNICIPAL OFFICIALS

Issue Statement

Section 100 of the Natal Local Authorities Ordinance 25 of 1974, empowers municipal councils to indemnify “officers and servants”, but once this Ordinance is repealed, this issue must be addressed elsewhere. In addition, Members of Parliament are indemnified in terms of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004, however, there is no legislation extending equivalent immunities to councillors.

Recommendation

It is recommended that:

- section 28 of the Local Government: Municipal Structures Act 32 of 2000, read with section 161 of the Constitution, 1996, be amended to provide for privileges and immunities for councillors; and
- the existing provincial legislation that may provide for some form of immunity for officials be analysed, and similar measures be enacted in new provincial legislation.

3.2.3 DEEMED RESIGNATION OF COUNCILLORS WHEN APPLYING FOR ADMINISTRATIVE POSTS

Issue Statement

Municipal officials contemplated in terms of section 57 of the Local Government: Municipal Systems Act 32 of 2000, are deemed to have resigned upon receipt of a certificate confirming their nomination as a candidate in a municipal election. However, the converse does not apply to councillors, who remain councillors until their successful appointment, resulting in a possible conflict of interest.

Recommendation

It is recommended that the Local Government: Municipal Systems Act 32 of 2000 be amended to remove such possible conflict of interest, and that councillors be prohibited from applying for an administrative post in a municipality where they have served as a councillor for a period of two years after termination of term of office as a councillor.

3.2.4 DISTINCT FUNCTIONAL DOMAINS OF MUNICIPAL OFFICIALS AND COUNCILLORS

Issue Statement

The Local Government: Municipal Systems Act 32 of 2000, the Municipal Finance Management Act 56 of 2003, and other Local Government legislation, set out the functions of municipal managers and political office bearers. Despite this, there is still a tendency by political office bearers to involve themselves in functions which are within the exclusive domain of municipal managers.

Recommendation

It is recommended that the relevant legislation be amended to remove any uncertainty as regards the distinct roles, powers, functions and duties of councillors and those of municipal officials.

3.2.5 ELECTION OF MUNICIPAL EXECUTIVE COMMITTEE

Issue Statement

Section 160(8) of the Constitution, 1996 read with section 43(2) of the Local Government: Municipal Structures Act 117 of 1998, provides for an imprecise system of proportional representation in the Municipal Executive Committee. Municipalities, in substantially complying with the provisions of section 160 of the Constitution, 1996, apply varying formulae that lead to a lack of consistency in the election of Municipal Executive Committees.

Recommendation

It is recommended that the Local Government: Municipal Structures Act 117 of 1998 be amended to provide for a precise and uniform proportional representation system to elect members of the Municipal Executive Committee.

3.2.6 INVOLVEMENT OF MUNICIPAL COUNCILLORS IN THE PERFORMANCE OF FUNCTIONS BY MUNICIPAL MANAGERS

Issue Statement

Section 55(1) of the Local Government: Municipal Systems Act 32 of 2000 provides that a municipal manager, as head of administration, subject to the policy directions of the municipal council, is responsible for, and accountable to, the council concerned as regards a range of issues, including the management of the provision of services to the municipality concerned. In practice, municipal councillors, without being expressly authorised by statute, often involve themselves in an inappropriate manner in the performance of functions by the municipal manager.

Recommendation

It is recommended that the relevant legislation be amended so as to remove any uncertainty as regards the role of municipal councils in respect of the performance of the functions of the municipal manager.

3.2.7 INTERFERENCE WITH SUPPLY CHAIN MANAGEMENT PROCEDURES

Issue Statement

Section 118 of the Local Government: Municipal Finance Management Act 56 of 2003 provides that no person may interfere with the supply chain management system of a municipality or municipal entity. In practice, however, interference does take place, particularly in the approval of tenders.

Recommendation

It is recommended that:

- the relevant national legislation be strengthened as to ensure that no deviations of, or interferences with, the implementation of the nationally prescribed Supply Chain Management system are allowed; and
- relevant provincial legislation be enacted to empower MECs to investigate instances of deviations of, or interferences with, the implementation of the prescribed Supply Chain Management system, to take the necessary corrective steps and to impose the necessary punitive measures.

4 ADMINISTRATIVE SYSTEMS

4.1 BACKGROUND

With reference to the Constitution, 1996, the White Paper on Local Government, 1997:

- identified the need for changes to the pre-2000 administrative organisation and operations of municipalities;
- outlined a set of principles and alternative options for more effective service delivery;
- asserted the need for sound labour relations to underpin developmental local government;
- discussed the roles and responsibilities of national government in assisting municipalities to transform themselves; and
- required each municipality to develop an institutional plan which was to outline its own transformation programme.

The need for transformed administrative systems to support improved service delivery, resulted in the enactment of the following provisions at national level:

- Chapter 3 of the Local Government: Municipal Structures Act 117 of 1998 (Municipal councils: Part 1)
- Chapter 4 of the Local Government: Municipal Structures Act 117 of 1998 (Internal structures and functions: Parts 1 – 5 and 7)
- Chapter 5 of the Local Government: Municipal Structures Act 117 of 1998 (Functions and powers of municipalities)
- Chapter 3 of the Local Government: Municipal Systems Act 32 of 2000 (Municipal functions and powers)
- Chapter 4 of the Local Government: Municipal Systems Act 32 of 2000 (Community participation)
- Chapter 5 of the Local Government: Municipal Systems Act 32 of 2000 (Integrated development planning: Part 2)
- Chapter 7 of the Local Government: Municipal Systems Act 32 of 2000 (Local public administration and human resources: Parts 1, 3 and 4)
- Chapter 8 of the Local Government: Municipal Systems Act 32 of 2000 (Municipal services: Parts 2 – 4)
- Chapter 8A of the Local Government: Municipal Systems Act 32 of 2000 (Municipal entities: Parts 1, 2 and 5 – 7)
- Chapter 11 of the Local Government: Municipal Systems Act 32 of 2000 (Legal matters)
- Chapter 3 of the Local Government: Municipal Finance Management Act 56 of 2003 (Municipal revenue: Parts 1 – 2)
- Chapter 4 of the Local Government: Municipal Finance Management Act 56 of 2003 (Municipal budgets)
- Chapter 6 of the Local Government: Municipal Finance Management Act 56 of 2003 (Debt)
- Chapter 8 of the Local Government: Municipal Finance Management Act 56 of 2003 (Responsibilities of municipal officials: Parts 1 – 2)
- Chapter 9 of the Local Government: Municipal Finance Management Act 56 of 2003 (Municipal budget and treasury offices)
- Chapter 10 of the Local Government: Municipal Finance Management Act 56 of 2003 (Municipal entities: Parts 1 – 6)
- Chapter 11 of the Local Government: Municipal Finance Management Act 56 of 2003 (Goods and services: Parts 1 – 2)

- Chapter 12 of the Local Government: Municipal Finance Management Act 56 of 2003 (Financial reporting and auditing)
- Chapter 13 of the Local Government: Municipal Finance Management Act 56 of 2003 (Resolution of financial problems: Part 1)
- Chapter 14 of the Local Government: Municipal Finance Management Act 56 of 2003 (General treasury matters)
- Chapter 15 of the Local Government: Municipal Finance Management Act 56 of 2003 (Financial misconduct)
- Chapter 2 of the Local Government: Municipal Property Rates Act 6 of 2004 (Rating: Parts 2 – 5)
- Chapter 4 of the Local Government: Municipal Property Rates Act 6 of 2004 (General valuation of rateable property: Parts 1 – 2)
- Chapter 5 of the Local Government: Municipal Property Rates Act 6 of 2004 (Valuation criteria)
- Chapter 6 of the Local Government: Municipal Property Rates Act 6 of 2004 (Valuation rolls)
- Chapter 7 of the Local Government: Municipal Property Rates Act 6 of 2004 (Valuation appeal boards)
- Chapter 8 of the Local Government: Municipal Property Rates Act 6 of 2004 (Updating of valuation rolls)
- Chapter 1 of the Local Government: Municipal Demarcation Act 27 of 1998 (Municipal Demarcation Board: Part 3)
- Chapter 2 of the Local Government: Municipal Demarcation Act 27 of 1998 (Demarcation: Parts 1 – 4)
- Chapter 3 of the Local Government: Municipal Electoral Act 27 of 2000 (Preparations for election: Parts 4 – 6)
- Chapter 6 of the Local Government: Municipal Electoral Act 27 of 2000 (Counting).

The implementation of the system in KwaZulu-Natal has given rise to a number of challenges which require, amongst others, further legislative intervention at both national and provincial level.

The challenges identified during the preparation of this White Paper deal with the following key cluster areas as regards administrative systems:

1. Functions of local government

2. Good governance
3. Human resource management
4. Basic service delivery
5. Local economic development
6. People focussed, effective and efficient municipalities
7. Building confidence of community in system of local government
8. Accountability
9. Performance management.

4.2 CHALLENGES

The following 16 challenges were identified for specific reference to administrative systems:

4.2.1 ALIENATION OF IMMOVABLE PROPERTY BY A MUNICIPALITY

Issue Statement

Section 233 – 235 of the Natal Local Authorities Ordinance 25 of 1974, empowered the MEC to approve sales of immovable property by a municipality in certain circumstances. Sections 14 and 110 – 116 of the Local Government: Municipal Finance Management Act 56 of 2003 have no similar provisions, thus giving municipalities the exclusive authority to dispose of immovable property.

In addition, municipalities are unable to dispose of immovable property by way of private treaty even where it involves the plight of the poor, or is in public interest, as section 14 of the Local Government: Municipal Finance Management Act 56 of 2003 requires a competitive process to dispose of capital assets.

Recommendation

It is recommended that section 14 of the Local Government: Municipal Finance Management Act 56 of 2003, be amended to

- provide that municipalities must consult the provincial MEC on intended sales of immovable property; and
- empower municipalities to dispose of capital assets by way of private treaty where the plight of the poor or the public interest requires same.

4.2.2 APPOINTMENT OF MUNICIPAL OFFICIALS

Issue Statement

Section 55(1)(e) of the Local Government: Municipal Systems Act 32 of 2000 provides that it is the function of the municipal manager to appoint staff other than those referred to in section 56(a) of the Act. In practice, many municipal councils or individual councillors involve themselves in section 55(1)(e) appointments.

Recommendation

It is recommended that the relevant legislation be amended so as to remove any uncertainty as regards the role of municipal councils in the appointment of municipal officials.

4.2.3 APPOINTMENT OF SENIOR LINE FUNCTIONARIES

Issue Statement

Section 56(a) of the Local Government: Municipal Systems Act 32 of 2000 empowers a municipal council to appoint a manager who is directly accountable to the municipal manager **after consultation** (as opposed to **in consultation**) with the municipal manager, which results in the municipal manager having no final say in the identification or appointment of municipal officials who report directly to said manager.

Recommendation

It is recommended that the relevant legislation be amended so as to ensure the concurrence of the municipal manager as regards all section 56(a) appointments.

4.2.4 ASSUMPTION OF OFFICE AFTER ELECTIONS

Issue Statement

When does a newly elected councillor assume office? Is it the date upon which the Municipal Electoral Officer declares the election result; when the Provincial Electoral Officer declares the election result; when the Independent Electoral Commission (IEC) declares the election result; or when the result is published by the IEC in the Government Gazette?

Secondly, the term of office of political office bearers in a municipality will terminate when the election result is declared, with new office bearers only being elected some days later. However, no provision is made for office bearers who, in the interim, continue to exercise their functions, or for the remuneration of office bearers who are re-elected to the same positions.

Recommendation

It is recommended that the Local Government: Municipal Structures Act 117 of 1998 be amended to clarify the situation.

4.2.5 ESTABLISHMENT OF MUNICIPAL STAFF STRUCTURE

Issue Statement

Section 66 of the Local Government: Municipal Systems Act 32 of 2000 provides that a municipal manager, within a policy framework determined by the municipal council and subject to any applicable legislation, must approve of a staff establishment for the municipality concerned. In practice, municipal councils, without being expressly authorised by statute, play an active role in the determination of the staff establishment.

Recommendation

It is recommended that the relevant legislation be amended so as to remove any uncertainty as regards the role of municipal councils in the determination of the staff establishment.

4.2.6 IMPROVING THE SECURITY OF TENURE OF MUNICIPAL OFFICIALS

Issue Statement

Municipal officials appointed in terms of section 57 of the Local Government: Municipal Systems Act 32 of 2000, fear for their continued employment subsequent to municipal elections.

Recommendation

It is recommended that the relevant legislation be amended so as to remove any uncertainty as regards the continuation of employment of section 57 municipal officials subsequent to local government elections.

4.2.7 INCORRECT REFERENCE TO LEGISLATION

Issue Statement

Regulation 17(3) of the Local Government: Municipal Performance Regulations for Municipal Managers and Managers Directly Accountable to Municipal Managers published in Government Gazette 8085 (published of 01 August 2006 (in terms of section 120 of the Local Government: Municipal Systems Act 32 of 2000)), refers to sections 64 of the Local Government: Municipal Electoral Act 27 of 2000, which deals with appointments and certificates of municipal managers. Regulations 17(3)

should refer to section 15(3) or section 18(2) of the Local Government: Municipal Electoral Act 27 of 2000, instead of section 64.

Recommendation

It is recommended that Regulation 17(3) of the Local Government: Municipal Performance Regulations for Municipal Managers and Managers Directly Accountable to Municipal Managers be amended to reflect the correct reference.

4.2.8 LACK OF UNIFORM GUIDELINES ON THE REMUNERATION OF MUNICIPAL MANAGERS AND SECTION 57 MANAGERS

Issue Statement

Whilst the salaries and benefits of councillors are determined in accordance with the grade of the municipality, this is not the case in respect of municipal managers and section 57 managers. The repeal of the Remuneration of the Town Clerks Act 115 of 1984 left a void in this regard.

Recommendation

It is recommended the relevant legislation be enacted.

4.2.9 MULTIPLICATION OF APPEAL AND REVIEW PROCESSES

Issue Statement

Section 62 of the Local Government: Municipal Systems Act 32 of 2000 provides for an internal appeal against a decision taken by a political structure, political office bearer, councillor or staff member of a municipality. This duplicated right to appeal causes confusion and delays development, as objectors or developers utilise appeal and review processes consecutively in an attempt to frustrate other parties.

Examples are the duplicate appeal processes contained in the

- Development Facilitation Act 67 of 1995;
- Town Planning Ordinance 27 of 1949;
- Section 62 of the Local Government: Municipal Systems Act 32 of 2000; and
- The Promotion of Administrative Justice Act 3 of 2000.

In addition, the present legislation enables an appellant to lodge several appeals to functionaries below the level of the delegator, against a decision taken by a delegatee in the name of the delegator.

Recommendation

It is recommended that section 62 of the Local Government: Municipal Systems Act 32 of 2000 be amended to restrict appeals in terms of section 62 to residual appeals, where no other appeal or review mechanism is available. Furthermore, such appeal must be restricted to a single appeal to an internal appeals body created by the municipality, on condition that compliance with the provisions of Promotion of Administration of Justice Act 3 of 2000 is ensured.

4.2.10 MUNICIPAL RATES AS REGARDS INGONYAMA TRUST AND STATE LAND

Issue Statement

Section 7 of the Local Government: Municipal Property Rates Act 6 of 2004, provides that a municipality must levy rates on all rateable property in its area. Municipalities are obliged to value all categories of land within their jurisdictional areas, including Ingonyama Trust land, state land, land privately held and other land. In addition, municipalities must impose rates on all such land, subject to certain exemptions. The valuation and rating of Ingonyama Trust and other state land gives rise to many problems.

Recommendation

It is recommended that:

- national subordinate legislation be issued to provide for a uniform framework for the valuation and rating methodology of Ingonyama Trust, state and municipal land; and
- national legislation be amended to enable MECs to issue directives for the uniform application of a framework providing for the rating of Ingonyama Trust, state and municipal land.

4.2.11 NON-APPLICABILITY OF UNIFORM NORMS AND STANDARDS TO MUNICIPALITIES

Issue Statement

The Minister for Finance may, in terms of section 20(1)(b)(iv) of the Local Government: Municipal Finance Management Act 56 of 2003, prescribe uniform norms and standards concerning the setting of municipal tariffs, the management of financial risks, and other matters where a municipality uses a municipal entity or other external mechanism for the performance of a municipal service or other function. These norms and standards do not take into account the differences that exist amongst the different categories and grades of municipalities.

Recommendation

It is recommended that section 20(1)(b)(iv) of the Local Government: Municipal Finance Management Act 56 of 2003 be amended to provide for the setting of differentiated norms and standards to reflect the different categories and grades of municipalities.

4.2.12 PERFORMANCE BY MUNICIPALITIES OF ENVIRONMENTAL FUNCTIONS

Issue Statement

Municipalities are not performing their environmental functions as far as beaches, air pollution, etc. is concerned.

Recommendation

It is recommended that both national and provincial governments capacitate municipalities to perform the environmental functions.

4.2.13 PROFESSIONAL STATUS OF SENIOR MUNICIPAL OFFICIALS NOT SUFFICIENTLY RECOGNISED IN LEGISLATION

Issue Statement

The repeal of the Profession of Town Clerks Act 75 of 1988 has left a void with regard to local government management being a profession. This has had a number of implications, amongst others, in respect of conditions of employment and remuneration.

Recommendation

It is recommended that the re-enactment of legislation to declare local government management as a profession, be considered.

4.2.14 PROTECTION AGAINST DISMISSAL OR SUSPENSION OF SENIOR MUNICIPAL OFFICIALS BY THE MUNICIPAL COUNCIL

Issue Statement

At present, a municipal council may summarily dismiss or suspend senior municipal officials (e.g. municipal manager, chief financial officer or head of legal services) in cases where said officials perform their statutory monitoring and evaluation functions in relation to council decisions.

Recommendation

It is recommended that national legislation be amended to provide for a compulsory process, consisting of:

- an investigation by a provincial Department of Local Government; and
- a decision by the MEC concerned based on the outcome of such investigation;

prior to the implementation of such dismissal or suspension.

4.2.15 STATUTORY REPORTING REQUIREMENTS AND FORMATS FOR MUNICIPALITIES

Issue Statement

Section 105(2) of the Local Government: Municipal Systems Act 32 of 2000 provides that the MEC may, by notice in the Provincial Gazette, require municipalities to provide information to specified provincial organs of state. In addition, national and other provincial legislation requires municipalities to submit information to various departments and organs of state, other than the Department for Local Government, in divergent formats, which places an undue administrative burden on municipalities.

Recommendation

It is recommended that:

- the relevant legislation be amended to ensure the co-ordination of information to be submitted, as well as the format in which such information is to be submitted by the municipalities;
- at national level, the Department of Provincial and Local Government, after having inventorised all statutory reporting obligations on municipalities, must ensure the appropriate standardisation of all legislation and reporting formats within the national sphere; and
- at provincial level, the Department of Local Government and Traditional Affairs, after having inventorised all statutory reporting obligations on municipalities, must ensure the appropriate standardisation of all legislation and reporting formats within the provincial sphere.

4.2.16 SUSPENSION OR DISMISSAL OF MUNICIPAL MANAGERS

Issue Statement

In terms of section 57 of the Local Government: Municipal Systems Act 32 of 2000, the municipal council is responsible for the appointment or dismissal of the municipal manager. Municipal councils have on occasion suspended or dismissed municipal

managers without complying with the relevant substantive and procedural labour and local government law provisions. In a number of cases, this non-compliance has resulted in the compulsory reinstatement of the municipal manager concerned.

Recommendation

It is recommended that the relevant legislation be amended to provide binding guidance to municipal councils as regards the suspension and/or dismissal of municipal managers.

5 MUNICIPAL FINANCE

5.1 BACKGROUND

The White Paper on Local Government, 1998, with reference to the Constitution, 1996, emphasised the need for a new framework for municipal finance, which would support the developmental role of local government by:

- Implementing interventions that would improve the financial sustainability of municipalities by means of changes in policy and capacity building initiatives;
- Addressing the root causes of financial problems that face municipalities;
- Balancing programmes of poverty eradication and equity with strategies to enhance growth, job creation and competitiveness;
- Empowering municipalities to fulfil their constitutional mandates;
- Requiring national and provincial government to assist municipalities and to establish a financially independent and viable system of local government; and
- Providing an adequate tax base to fund the delivery of basic services in rural areas;

This emphasis on the establishment of a viable, accountable and effective system of local municipal finance required the enactment of the following provisions:

- Chapter 8 of the Local Government: Municipal Systems Act 32 of 2000 (Municipal services: Parts 1 and 3)
- Chapter 8A of the Local Government: Municipal Systems Act 32 of 2000 (Municipal entities: Parts 1 – 4)
- Chapter 9 of the Local Government: Municipal Systems Act 32 of 2000 (Credit control and debt collection)
- Chapter 2 of the Local Government: Municipal Finance Management Act 56 of 2003 (Supervision over local government finance management)

- Chapter 3 of the Local Government: Municipal Finance Management Act 56 of 2003 (Municipal revenue: Parts 1 – 2)
- Chapter 4 of the Local Government: Municipal Finance Management Act 56 of 2003 (Municipal budgets)
- Chapter 5 of the Local Government: Municipal Finance Management Act 56 of 2003 (Cooperative government)
- Chapter 6 of the Local Government: Municipal Finance Management Act 56 of 2003 (Debt)
- Chapter 7 of the Local Government: Municipal Finance Management Act 56 of 2003 (Responsibilities of mayors)
- Chapter 8 of the Local Government: Municipal Finance Management Act 56 of 2003 (Responsibility of municipal officials: Parts 1 – 2)
- Chapter 9 of the Local Government: Municipal Finance Management Act 56 of 2003 (Municipal budget and treasury offices)
- Chapter 10 of the Local Government: Municipal Finance Management Act 56 of 2003 (Municipal entities: Parts 1 – 6)
- Chapter 11 of the Local Government: Municipal Finance Management Act 56 of 2003 (Goods and services: Parts 1 – 2)
- Chapter 12 of the Local Government: Municipal Finance Management Act 56 of 2003 (Financial reporting and auditing)
- Chapter 13 of the Local Government: Municipal Finance Management Act 56 of 2003 (Resolution of financial problems: Parts 1 – 3)
- Chapter 14 of the Local Government: Municipal Finance Management Act 56 of 2003 (General treasury matters)
- Chapter 15 of the Local Government: Municipal Finance Management Act 56 of 2003 (Financial misconduct)
- Chapter 2 of the Local Government: Municipal Property Rates Act 6 of 2004 (Rating: Parts 1 – 3)
- Chapter 3 of the Local Government: Municipal Property Rates Act 6 of 2004 (Liability for rates)

The implementation of the new financial management system for local government in KwaZulu-Natal has given rise to a number of challenges which require, amongst others, further legislative intervention at both national and provincial level.

The challenges identified during the preparation of this White Paper deal with the following key cluster areas as regards municipal finances:

1. Accountability
2. Reporting
3. Financial viability
4. Financial management
5. Property rates
6. Monitoring and evaluation
7. Enforcement

5.2 CHALLENGES

The following 20 challenges were identified with specific reference to municipal finances:

5.2.1 AUTHORISATION FOR UNFORSEEABLE AND UNAVOIDABLE EXPENDITURE

Issue Statement

In terms of section 29(1) of the Local Government: Municipal Finance Management Act 56 of 2003, the mayor of a municipality may in emergency or other exceptional circumstances authorise unforeseeable and unavoidable expenditure for which no provision has been made in the approved budget. This implies that the mayor may, without the consent of the accounting officer, authorise unforeseeable and unavoidable expenditure.

Recommendation

It is recommended that:

- the Minister for Finance should issue the prescribed framework referred to in section 29(2)(a) of Local Government: Municipal Finance Management Act 56 of 2003; and
- this prescribed framework must make provision for the written consent of the accounting officer prior to the authorisation of such unforeseeable and unavoidable expenditure by the mayor.

5.2.2 COMPLIANCE WITH FINANCIAL OBLIGATIONS

Issue Statement

Non-compliance with the financial management framework at municipal level is often not properly investigated nor is appropriate corrective action taken by the relevant authorities.

Recommendation

It is recommended that a policy framework be drafted to enforce the systems for the identification of financial irregularities or non-compliance with the financial management framework.

5.2.3 DEFERMENT OF MUNICIPAL PROPERTY RATES

Issue Statement

The deferment of property rates for rate payers such as pensioners and disabled persons is not provided for in the Local Government: Municipal Property Rates Act 6 of 2004.

Recommendation

It is recommended that the Local Government: Municipal Property Rates Act 6 of 2004 be amended to provide for the deferment of property rates.

5.2.4 DISALLOWANCE AND SURCHARGE

Issue Statement

Section 181 of the Natal Local Authorities Ordinance 25 of 1974 allows the provincial administration to disallow expenditure incurred by a municipality and to surcharge councillors and municipal officials for such disallowed expenditure. In terms of section 32 of the Local Government: Municipal Finance Management Act 56 of 2003 this function is assigned to municipal councils, and in certain circumstances the municipal manager is required to inform the MEC of such irregular expenditure. However, no regulations have been promulgated as provided for in section 32, and no procedure has therefore been adopted indicating how the MEC must address such irregular expenditure.

Recommendation

It is recommended that Regulations be promulgated as contemplated in section 32 of the Local Government: Municipal Finance Management Act 56 of 2003 and that provincial legislation be enacted to retain section 181 of the Natal Local Authorities Ordinance 25 of 1974.

5.2.5 EXPROPRIATION OR OTHER ACQUISITION BY A MUNICIPALITY OF LAND WITHIN ITS AREA OF JURISDICTION NOT PROVIDED FOR

Issue Statement

The Natal Local Authorities Ordinance 25 of 1974 contains detailed clauses with regard to the acquisition of immovable property by municipalities, by way of expropriation or other means, and contains specific clauses providing for provincial oversight in this process. The Local Government: Municipal Finance Management Act 56 of 2003 has clauses providing for the disposal of immovable property, but has no corresponding clauses with regard to the acquisition of immovable property.

Recommendation

It is recommended that the Local Government: Municipal Finance Management Act 56 of 2003 be amended to provide for the acquisition of immovable property by municipalities by way of expropriation or other means, as well as provincial regulation and oversight in this regard.

5.2.6 EXTENT OF REVIEW FOR MUNICIPAL ADJUSTMENT BUDGET

Issue Statement

Section 28 of the Local Government: Municipal Finance Management Act 56 of 2003 provides for an adjustment budget, without clearly indicating whether the original municipal budget must be reviewed in its entirety. Current practices in the national and provincial sphere of government indicate that adjustment budgets do not result in the review of the entire original budget.

Recommendation

It is recommended that section 28 of the Local Government: Municipal Finance Management Act 56 of 2003 be amended to provide that the municipal adjustment budget excludes the review of the entire original municipal budget.

5.2.7 GRANTING OF BURSARIES TO COUNCILLORS BY MUNICIPALITIES

Issue Statement

The Local Government: Municipal Finance Management Act 56 of 2003 prohibits the granting of educational loans and bursaries to councillors, although there is an apparent need for such educational loans and bursaries, as municipalities are obliged to develop the skills of its councillors in terms of the Skills Development Act 97 of 1998.

Recommendation

It is recommended that the Remuneration of Public Office Bearers Act 20 of 1998, be amended to provide for such educational loans and bursaries.

5.2.8 IRREGULAR OR FRUITLESS AND WASTEFUL EXPENDITURE

Issue Statement

In terms of section 102 of the Local Government: Municipal Finance Management Act 56 of 2003, the board of directors of a municipal entity must report any irregular or fruitless and wasteful expenditure to, amongst others, the mayor and the municipal manager. The absence of a definition of wasteful and irregular expenditure is problematic and leads to different interpretations as to what can be regarded as fruitless and wasteful expenditure.

Recommendation

It is recommended that the relevant national legislation be amended to provide for a definition of “fruitless and wasteful expenditure”.

5.2.9 MANAGEMENT OF LOSSES AND CLAIMS BY AND AGAINST MUNICIPALITIES

Issue Statement

The Local Government: Municipal Finance Management Act 56 of 2003 and the Regulations issued in terms thereof do not provide for the management of losses and claims except in respect of fruitless, irregular, unauthorised and wasteful expenditure. There is no provision in the Act similar to that contained in Treasury Regulation 12, issued in terms of the Public Finance Management Act 1 of 1999, which also provides for an indemnity of officials in certain circumstances in the event of civil claims.

Recommendation

It is recommended that the Local Government: Municipal Finance Management Act 56 of 2003 and the Regulations thereto be amended to incorporate a provision similar to Treasury Regulation 12.

5.2.10 MUNICIPAL DISASTER MANAGEMENT

Issue Statement

The Public Finance Management Act 1 of 1999 provides that national and provincial governments may utilise 2% of their operational budget to deal with disasters, without a similar provision in respect of local government in the Local Government: Municipal Finance Management Act 56 of 2003.

Recommendation

It is recommended that the Local Government: Municipal Finance Management Act 56 of 2003, be aligned with the Public Finance Management Act 1 of 1999.

5.2.11 PROPOSED PUBLIC SERVICE INFRASTRUCTURE REGULATION

Issue Statement

The Local Government: Municipal Property Rates Act 6 of 2004 contains no enabling provision for the preparation of regulations extending the definition of public service infrastructure, leading to the invalidity of any proposed regulations in this regard.

Recommendation

It is recommended that the Local Government: Municipal Property Rates Act 6 of 2004 be amended to enable the Minister to promulgate regulations on public service infrastructure, alternatively that the proposed regulations be contained in a guideline or best practice document.

5.2.12 PROVINCIAL OVERSIGHT OF MUNICIPAL FINANCES

Issue Statement

No regulations have been promulgated as contemplated in the Local Government: Municipal Finance Management Act 56 of 2003, to regulate municipal overspending, thereby limiting the provinces' capacity to exercise their oversight functions.

Recommendation

It is recommended that the regulations be promulgated, alternatively, that provincial legislation be enacted to expand the framework contained in the Local Government: Municipal Finance Management Act 56 of 2003.

5.2.13 REBATES ON AGRICULTURAL LAND IN TERMS OF THE LOCAL GOVERNMENT: MUNICIPAL PROPERTY RATES ACT 6 OF 2004

Issue Statement

The Local Government: Municipal Property Rates Act 6 of 2004 does not provide for adequate rebates on agricultural land to protect the retention of land for agricultural purposes, as rebates are currently given at the discretion of municipalities.

Recommendation

It is recommended that the Local Government: Municipal Property Rates Act 6 of 2004 be amended to provide for a compulsory rebate for *bona fide* farmers as an incentive to continue farming, thereby preserving the agricultural economy.

5.2.14 RECOVERY OF ARREAR RATES BY MUNICIPALITIES

Issue Statement

There is ambiguity as regards the circumstances under which a municipality may apply for an order to attach and sell residential property in execution. subsequent to a judgement order in favour of the municipality, for the recovery of outstanding rates and services charges due by the owner.

Recommendation

It is recommended that

- the relevant national legislation be amended to ensure that such sales in execution are effected in a manner that is consistent with the constitutional right to housing; and
- national legislation be amended to provide for a framework that will determine under which circumstances municipalities are allowed to attach and sell a residential property in execution in order to recover rates and service charges due.

5.2.15 REGULATION OF MUNICIPAL DEBT

Issue Statement

Various aspects of municipal budgeting, debt collection and financial management are dealt with in an insufficient, and, in some instances, conflicting manner.

Examples are

- a municipality's power to raise debt is not provided for in a sufficient manner in the Local Government: Municipal Finance Management Act 56 of 2003; and
- the provision in the Natal Local Authorities Ordinance 25 of 1974, which makes provision for interest to be raised and for collection fees on outstanding debts, is not reflected in any national legislation.

Recommendation

It is recommended that

- all provisions in the Local Government: Municipal Systems Act 32 of 2000, dealing with municipal finances be repealed and incorporated into the Local Government: Municipal Finance Management Act 32 of 2003, so as to ensure that the latter will regulate all aspects of municipal finance;
- the Local Government: Municipal Finance Management Act 56 of 2003, be amended to provide for issues not dealt with at all or in an insufficient manner; and

- municipal by-laws be rationalised and aligned with the proposed amended Local Government: Municipal Finance Management Act 56 of 2003.

5.2.16 REPAYMENT OF LOANS BY MUNICIPALITIES

Issue Statement

Regulations prohibit municipalities from using Municipal Infrastructure Grant funding for the repayment of loans raised with private financiers, such as commercial banks.

Recommendation

It is recommended that the regulations issued in terms of the Local Government: Municipal Finance Management Act 56 of 2003 be amended to provide for the repayment of loans.

5.2.17 REPORTING ON LOANS AND ADVANCES

Issue Statement

In terms of section 66(1)(f) of the Local Government: Municipal Finance Management Act 56 of 2003, the accounting officer must report to council on all expenditure incurred by the municipality on staff salaries, wages, allowances and benefits, and in a manner that discloses such expenditure per type of expenditure including loans and advances. In terms of section 164(c)(i) of the Local Government: Municipal Finance Management Act 56 of 2003, municipalities are prohibited from making loans and advances to municipal employees, although section 66(1)(f) does not clearly indicate that the accounting officer must report on loans and advances made prior to the enactment of the Local Government: Municipal Finance Management Act 56 of 2003.

Recommendation

It is recommended that the relevant legislation be amended to oblige the accounting officer to report on loans and advances made prior to the enactment of the Local Government: Municipal Finance Management Act 56 of 2003.

5.2.18 REQUIREMENT OF CO-SIGNATORIES FOR WITHDRAWAL OF MUNICIPAL FUNDS

Issue Statement

In terms of section 11(1) of the Local Government: Municipal Finance Management Act 32 of 2000, any one of following municipal officials:

- the Accounting Officer;
- the Chief Financial Officer; or

- any other senior financial official of the municipality acting on the written authority of the Accounting Officer,

may withdraw funds or authorise the withdrawal of funds from any of the municipality's bank accounts without any co-signatory. To obviate the possibility of fraud consideration must be given to the requirement of two co-signatories for the withdrawal of municipal funds.

Recommendation

It is recommended that the relevant legislation be amended to provide for the requirement of two co-signatories for the withdrawal of municipal funds.

5.2.19 STANDARDISATION OF TREASURY REPORTING FORMATS

Issue Statement

In terms of sections 71 and 72 of the Local Government: Municipal Finance Management Act 56 of 2003, the Accounting Officer is required to report to, *inter alia*, the provincial treasury and the national treasury on various financial issues. Different reporting formats essentially requiring the same information are required by both provincial treasury and the national treasury, which results in duplication and the generation of unnecessary work, as well as placing an undue administrative burden on municipal officials.

Recommendation

It is recommended that the Local Government: Municipal Finance Management Act 56 of 2003, be amended in a manner that standardises all financial reporting formats.

5.2.20 TABLING OF THE MUNICIPAL BUDGET

Issue Statement

Sections 16 and 28(4) of the Local Government: Municipal Finance Management Act 56 of 2003, respectively, provide that the mayor must table the annual budget and the adjustment budget in the municipal council, although other councillors may often be better suited to perform this function. Furthermore, there is uncertainty concerning the interpretation of the word "table".

Recommendation

It is recommended that:

- the Local Government: Municipal Finance Management Act 56 of 2003, be amended to provide that either the mayor or another appropriate councillor,

such as the Chair of the Finance Portfolio Committee, be authorised to perform this function; and

- the Local Government: Municipal Finance Management Act 56 of 2003, be amended to provide for an appropriate definition of “table”.

6 TRANSFORMATION

6.1 BACKGROUND

Bearing in mind the transformative nature of the 1996 Constitutional framework, and the Constitutional imperative to progressively implement the fundamental values underpinning the democratisation of the South African society, the White Paper on Local Government, 1998, emphasised the challenges faced by municipalities to work with local communities to fulfil their developmental role in a sustainable manner. Within this context, the long term capacitation of municipal governance is to be achieved by:

- Strengthening local government's voice in its relationship with the other spheres of government;
- Coordinating the decentralisation of powers and functions to local government ;
- Developing a coherent planning framework for integrated development planning ;
- Providing support for improved service delivery;
- Developing performance management systems in respect of local government;
- Providing ongoing training and capacity building support;
- Increasing financial certainty; and
- Continuing the development of appropriate institutions to meet the needs of society.

The Transformation process is an obligation placed on each municipality to fulfil its Constitutional mandate and play a role in the development of the nation.

The White Paper on Local Government, 1998, with reference to the Constitution, 1996, emphasised the need for a new framework for municipal finance, which would support the developmental role of local government by:

- Implementing interventions that would improve the financial sustainability of municipalities by means of changes in policy and capacity building initiatives;
- Addressing the root causes of financial problems that face municipalities;

- Balancing programmes of poverty eradication and equity with strategies to enhance growth, job creation and competitiveness;
- Empowering municipalities to fulfil their constitutional mandates;
- Requiring national and provincial government to assist municipalities and to establish a financially independent and viable system of local government; and
- Providing an adequate tax base to fund the delivery of basic services in rural areas.

This emphasis on the transformative nature of new order, inclusive, participative, responsive and accountable local government, is the single most important, uniform, transversal and fundamental principle encapsulated in all post-1996 policy and statutory frameworks, also in respect of local government.

The implementation of transformative developmental local government in KwaZulu-Natal has given rise to a number of challenges which require, amongst others, further legislative intervention at both national and provincial level.

The challenges identified during the preparation of this White Paper deal with the following key cluster areas as regards continued transformation of local governance in the Province:

1. The context for, and implications of, ongoing transformation;
2. The establishment of an effective system of intergovernmental relations, promoting cooperative government and seamless delivery of services to local communities;
3. Enforcement measures;
4. The continued refinement and strengthening of the policy, regulatory, fiscal and implementation environment of local government; and
5. Organisational development.

6.2 CHALLENGES

The following 4 challenges were identified with specific reference to transformation:

6.2.1 LACK OF ENABLING PROVISIONS FOR THE ESTABLISHMENT OF FORUMS CONSISTING OF GOVERNMENT AND CIVIL SOCIETY

Issue Statement

At present, there is uncertainty regarding the sufficiency of existing legislation, which provides an enabling environment for the establishment of forums consisting of the

relevant provincial government department, the municipality and civil society, to deal with issues such as safety and housing.

Recommendation

It is recommended that existing legislation be amended to provide a sufficient legal basis to compel the establishment of such forums, and to provide an enabling environment for their functioning and the taking of binding decisions.

6.2.2 LIMITATIONS ON MUNICIPALITIES' PERFORMANCE OF FUNCTIONS

Issue Statement

Currently, a number of existing provisions in old order legislation impede a municipality's ability or right to exercise its powers or perform its functions in terms of Schedule 4 (Part B) and Schedule 5 (Part B) of the Constitution, 1996.

Recommendation

It is recommended that all old-order legislation be rationalised as a matter of the highest priority.

6.2.3 PROVISION OF SUPPORT TO WARD COMMITTEES

Issue Statement

Section 73(4) of the Local Government: Municipal Structures Act 117 of 1998 provides that a metro or local council may make administrative arrangements to enable ward committees to perform their functions and exercise their powers effectively. In a number of instances, municipal officials have been requested to provide municipal funds for catering and other purposes in terms of this provision.

Recommendation

It is recommended that the relevant legislation be amended to specify the nature of support to be provided to ward committees.