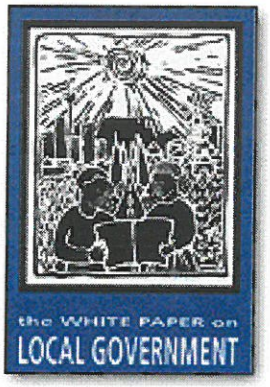
The White Paper on Local Government
9 March 1998



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

would need to assume responsibility for all municipal functions. Special electoral arrangements will be required where this option is exercised to allow the few citizens in these settlements to have representation at the district level.

3.4. Concluding comment

A flexible system of government is required in non-metropolitan areas to accommodate the diversity in settlement types and administrative capacities. District government should provide the consistency across the country, and have variable relationships with local municipalities based on the circumstances in each locality.

4. Traditional leadership

The relationship between traditional leadership and elected rural local government requires clarification in the White Paper on Local Government. Chapter 7 of the Constitution provides for the establishment of elected local government across the country, while Chapter 12 of the Constitution recognises traditional authorities and states that national legislation may provide for a role for traditional leadership as an institution at local level on matters affecting local communities.

This White Paper addresses the relationship between traditional leadership and local government. It is important to note that other issues affecting traditional leadership will be addressed in the White Paper on Traditional Affairs to be drafted by the Department of Constitutional Development, the Department of Justice (customary law and courts) and by the Department of Land Affairs (communal tenure and land trusteeship).

4.1. The role of traditional leadership at local level

At present, traditional leaders have responsibility for a number of functions.

Their functions include, among others:

- Acting as head of the traditional authority, and as such exercising limited legislative powers and certain executive and administrative powers.
- Presiding over customary law courts and maintaining law and order.
- Consulting with traditional communities through imbizo/lekgotla.
- Assisting members of the community in their dealings with the state.
- Advising government on traditional affairs through the Houses and Council of Traditional Leaders.
- Convening meetings to consult with communities on needs and priorities and providing information.
- Protecting cultural values and providing a sense of community in their areas through a communal social frame of reference.
- Being the spokespersons generally of their communities.
- Being symbols of unity in the community.
- Being custodians and protectors of the community's customs and general welfare.

Their role in the development of the local area and community includes:

- Making recommendations on land allocation and the settling of land disputes.
- Lobbying government and other agencies for the development of their areas.
- Ensuring that the traditional community participates in decisions on development and contributes to development costs.
- Considering and making recommendations to authorities on trading licences in their areas in accordance with law.

It must also be acknowledged that there are traditional authorities which have a stake in rich mineral deposits. Through these resources they contribute to development.

4.2. Policy directions

The White Paper process on Traditional Affairs is underway. In that process the following issues, among others, will be dealt with:

- The structure and role of traditional leadership and institutions.
- Principles relating to remuneration.
- A national audit of traditional leaders.
- The role of women.
- The role of traditional leaders in politics.
- The future role of the Houses and Council of Traditional Leaders.
- The rationalisation of current legislation dealing with traditional leadership and institutions.

The Department of Justice has indicated its intention to establish community law courts. These courts will take cognisance of the advantages of customary law courts such as the fact that they are cheap, speedy, informal, conciliatory and accessible. Traditional leadership will enjoy special recognition in the new community law courts which will operate in rural areas.

The Department of Land Affairs is looking at various options of land tenure.

Some of the functions set out above do not overlap with the constitutional functions of local government. Local government does not, for example, lend itself to judicial functions, nor can it speak on traditional affairs or act as the custodian of customs and culture. In some respects, however, the current responsibilities of traditional authorities and municipalities do overlap. This has been a source of tension and has hampered development in certain rural areas. Traditional communities will be entitled to vest the responsibility for general administration and the allocation of their land in the institutions of their choice, which may include traditional authorities.

There is no doubt that the important role that traditional leaders have played in the development of their communities, should be continued. However, where Chapter 7 of the Constitution allocates a function to a municipality, the municipality has sole jurisdiction over the matter. On issues such as development, for example, a cooperative relationship will have to be developed. Tensions which arise in this respect will have to be addressed through dispute resolution mechanisms. These mechanisms are being applied by certain communities.

4.3. The relationship between traditional leaders and local government

A cooperative model for rural governance

During consultations with traditional leaders and their communities, local government and other stakeholders, a number of suggestions have been made regarding a suitable model for rural local government in those areas falling under traditional leadership. Proposals range from traditional authorities becoming the primary local government in their areas, to a clear and exclusive division of powers and functions between elected local government and traditional authorities. The model being proposed must, however, be in line with the Constitution.

The proposal put forward here attempts to combine the strengths of various approaches within a model which is consistent with the Constitution and recognises the positive contribution that both elected structures and traditional authorities can make in the overall development of traditional areas and communities. The proposed model ensures cooperation, communication and consultation between local government and traditional leaders and institutions.

It is proposed, in accordance with the Constitution, that there will be elected local government in all the areas falling under traditional authorities. Traditional leadership should play a role closest to the people, and their role should therefore be defined principally in relation to Category (B) municipalities, although larger Kingdoms covering an entire district will clearly require similar relationships with district governments. Their role will include attending and participating in meetings of the Councils and advising Councils on the needs and interests of their communities. In this regard traditional leaders will have representation on such Councils. Whether traditional leaders should exercise voting rights alongside the elected councillors, as

well as other matters relating to this model, needs to be determined after further consultation and research into constitutional provisions. These functions are in addition to those identified in item 4.1. Traditional leaders are also empowered to discuss issues relating to the development of their areas with other spheres of government.

Within the broad scope of this role a number of additional functions can be included. However, the exact nature of such functions will differ from area to area. In this regard, provincial government and legislatures will play a role in determining additional functions of traditional leadership within the national framework provided by this model. In addition, provincial government and legislatures will need to determine the precise circumstances in which the model would apply.

Both district and local municipal Councils must inform and consult traditional leaders regarding municipal projects or programmes within the traditional leaders' area.

The authority responsible for demarcating municipal boundaries should take the existing boundaries of traditional authorities into account when demarcating new municipal jurisdictions.

4.4. Concluding comment

There is no reason why African customs and traditions should be seen to be in conflict with the demands of modern governance. What is required is an innovative institutional arrangement, which combines the natural capacities of both traditional and elected local government to advance the development of rural areas and communities. The cooperative model proposed here provides a constructive role for traditional leadership at local level in the governance and development of rural communities.

5. The demarcation of municipal boundaries

Many existing boundaries irrationally divide settlements, and in so doing disempower municipalities that seek to plan and provide for the needs of communities within the integrated social and economic area of the settlement. To empower municipalities to operate effectively, the most appropriate geographical extent within which a municipality should exercise its particular powers and functions has to be revisited.

Section 155(3)(b) of the Constitution requires that legislation establish:

- An independent demarcation authority for the drawing of new municipal boundaries.
- Appropriate procedures for the proper functioning of the authority.
- Demarcation criteria for the determination of municipal boundaries.

An independent Municipal Demarcation Board will be established during 1998. It will determine the boundaries of municipal areas in line with the following objectives:

- To establish an area that will facilitate:
  - → Coordination between municipal, provincial and national functions, services and programmes.
  - → Integrated social and economic planning and development.
  - → An inclusive tax base.

- To permit the municipal Council of that area to fulfil its constitutional obligations, namely:
  - → To encourage responsive and participatory democracy.
  - → To deliver its municipal responsibilities in the most effective and efficient manner.
  - → To redistribute financial and administrative resources.
  - → To attain financial and administrative viability.
  - → To promote social and economic development.
  - → To create a safe and healthy environment.

When determining the boundaries of an area, the Municipal Demarcation Board must take into account: