Chapter 2
Restructuring Local Government in the Post Apartheid Period: The Transitional Phase

While the system of apartheid distorted the distribution of wealth, relative development of regions, spatial distribution of different races, all over South Africa, it was in the cities that its impact was very apparent. It was especially because cities in South Africa were not merely pockets of business and industry as in the other cases. Instead, they were safe havens where the white minority showcased their 'first worldly' prosperity and continued to devise ways to maintain that status. The racist values and system that had entrenched itself in more than three hundred years of 'implicit and explicit apartheid' was to prove a formidable obstacle towards achieving a democratic non-racial government.

The changing political situation after 1990 created an environment in which diverse interests stirred a serious debate simultaneously at the national and local level. This brought majority groups into the forefront that had been hitherto denied a say. A close look at the articulation of a range of demands can help bring out the nature of negotiations in the local government transition and the policy options that emerged for the South African government. It would also help bring out the essential elements of the debate in Durban in its efforts to deal with the confusing power relations and racial fragmentation.

This chapter critically assesses the process of the establishment of local government system in South Africa. Such an assessment is done on the basis of identifying the policy options in front of the decision makers in undertaking local level reform. These policy options are reflected in the respective demands of the groups involved in South African politics. The chapter explains why local reform was high on the priority list of the National Party (NP) government and later the
Government of National Unity (GNU). The chapter would in effect probe into the nature of the local government transition process.

1. Need For a Radical Change

The task of creating a non-racial democratic local government was given priority in the political restructuring by the National Party (NP) government. Although local reforms were attempted since the township revolts (between 1976 to 1986), the apartheid government had never contemplated reform on non-racial democratic lines. These reforms as has been discussed in the previous chapter, sought to maintain the political control of the majority Whites. Such reforms were essentially aimed at trying to 'create an illusion of multi-racial decision-making and generate greater legitimacy.'

The failure of the centrally controlled and established local structures such as the RSCs and the formation of local non-racial coalitions generated pressure for the resolution of the constitutional issues at the national level. While the issues of a non-racial government were being resolved at the national level, the NP government attempted to transform the segregated and racially based local structures.

2. The Task of Restructuring

a) Desegregating Local Authorities

The foremost task towards a change in the apartheid local government was to transform them into non-racial democratic structures. As has been discussed in the last chapter, the metropolitan governmental experience in South Africa was characterized by a stark contrast between a highly developed and specialized local government setup and an ill equipped, financially burdened, centrally controlled, illegitimate local authorities. The legacy of racial division remains very apparent in the administrative and spatial structure of Durban. 1

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Durban Boundaries
January 1994
The Durban Metropolitan Area was administratively divided into 66 different local authorities during the apartheid period. These included the White, Colored, Indian, and Black local authorities. The boundaries of the DMA included Phoenix in the North, the western boundary included Newlands, Chesterville, and Chatsworth and Kingsburg and Lower Illovo to its South. The local government was a ‘maze of intergovernmental/ vertical relationships’ that compounded the already fractured and confused situation that included not only the racially based local authorities and management committees but also the RSCs, Joint Service Board, homeland department and tribal authorities. Most of these authorities suffered from problems of weak financial base, shortage of skilled personnel and in many cases simply lacked the legitimacy to govern. ²

In the post apartheid era, the local restructuring plan demarcated the functional boundaries of Durban to include the areas that are integral to the daily functioning of the metropolitan city in terms of commuting, employment, and other recreational patterns. The boundary also includes the commuter township that was a part of the KwaZulu Homeland. Durban now has been demarcated roughly around the natural boundaries such as Umkomas River in the South to the Umnlali River in the North and Mpumalanga and Cato Ridge in the West. ³

However, de-racializing local government was easier said than done. This was not just because most local structures in Durban including all other urban areas in the country was a sum total of a patchwork of local authorities operating on a racial basis. De-racialization did not just involve a process where the controversial structures like the BLAs and the RSCs needed to be replaced by more representative and legitimate local structures. There is no debate on the fact that both the NP government and later the Government of National Unity (GNU) sought change in the distorted structures. However, how far and how fast were they ready to go and the changes new structural changes that would serve their objective were debatable issues that we will deal with later in the chapter.


³ Ibid. p. 69.
b) Fiscal Unity

‘One city one tax base’ had been an operating jargon of the township movement against apartheid. Apartheid provided a legal framework for the white municipalities to effectively exclude the large majority of the urban poor and ensure that the high-rateable commercial development fell within their areas of jurisdiction. Although the consumer and labor power of the township residents contributed to the tax base of white municipalities, services in the townships were not funded from this tax base. Segregation resulted in a feature peculiar to apartheid system of governance— the ‘net outflow of taxes’, as the rates generated by the black worker force in the commercial and industrial areas was not utilized for the development of the peripheral areas where this labor force resided. Rather these rates accrued to the Durban City Council and were utilized to develop the infrastructure of central Durban.

The process of rectifying this legacy was further complicated by the need to take steps to deal with gross mismanagement of resources and corruption under the BLAs and the rent boycotts that would continue to limit the financial capabilities of the townships.

The White Paper on local government noted a ‘crisis’ in local government finance:

“The amalgamation of previously divided jurisdictions has massively increased the population which municipalities must serve, without a corresponding increase in the tax base. Combined with service backlogs, collapsed and deteriorating infrastructure, and deteriorating creditworthiness and borrowing capacity, municipalities are experiencing financial stress and in some instances crisis.”

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Fiscal unity of the city was one of the prime issues that had been at the heart of the township revolts. The affluent minority who did not want to shoulder the burden of upgrading the underdeveloped areas that surrounded them resisted the option. A majority of them supported the view that the township authorities set their finances right before any steps towards fiscal unity of the cities were taken. The debate on the fiscal unity of Durban reflected a sort of a Catch 22 situation. The upgrading and rectifying of the financial situation in the townships had to be worked at simultaneously along with financially uniting the city. At the same time, the process needed to be cautious of not burdening business and financial nodes of the city. This dilemma confronted the leadership and the policy makers right from the onset of the post apartheid period.

c) Bridging the Socio-Economic Gap

Much of the growth rate in the apartheid era in the city of Durban has been due to rural-urban migrations imposing pressure on the municipal services and infrastructure. The population distribution in most of the metropolitan areas including Durban have been characterized by well developed wealthy core areas surrounded by highly underdeveloped peripheral squatter settlement with inadequate access to housing, basic municipal amenities, and unequal access to educational and employment opportunities. Many of these peri-urban areas and informal settlements are located in the boundaries of the homelands surrounding the cities and were directly dependent on the economy of the nearby urban areas. Segregated local structures also implied an unequal distribution of resources between areas.

Policy makers and academicians assessed the nature of challenge and the hurdles faced by the city in its way to establishing a democratic, non-racial, united and non-sexist system. Some of them have presented a vivid account of the situation:

- 80% of the formal jobs are located in the center of Durban and the industrial area south of it. People from formal townships especially from north of Durban like KwaMashu, Clearmont, Inanda, Mishebheni, Emalikwa, Congo etc, still have to commute long distances for work.
In KwaMashu L Section and Lamontville and many such townships, families are forced to live in very cramped conditions.

In Wema and other hostels people are living in appalling conditions, usually without families. ⑨

While areas such as Pine Town, New Germany, Clearmont, Hillcrest, etc are considered the more prosperous white pockets, peri-urban areas of KwaMashu, Umlazi, Sjwini/Ehlanzeni continue to reflect the face of the underdeveloped, black townships. The situation in these peri-urban areas continue to reflect the fact that poverty and underdevelopment are entrenched on racial lines. ⑨ The situation had been allowed to perpetuate by the apartheid local government system. Since Indian and African communities were left to jostle for space within about 13% of the land area of Durban marked for them, these parts of the city have been infested by squatter settlements.

Services such as water and electricity often do not exist in the informal settlements and peripheral areas. These services are not only difficult to obtain but are also expensive. 60% of the formal townships have maintenance problems with existing services. 81% of the informal areas have only minimal water services and 71% have no electricity. ⑩ These squatter settlements were often high security risk areas of the city. Although Durban does not have a crime-rate as high as Johannesburg, violence linked to party-political conflict, ‘tsotsis’ gangsters, threaten the security of the people in the township.

An inefficient municipal structure urgently needed restructuring to provide standard services and to deal with infrastructure backlogs. The process of restructuring also needed to address the issue of inclusion or exclusion of many peri-urban areas that fell under the jurisdiction of the KwaZulu Natal administration.

⑧ Michael Sutcliff, Chairman of the Municipal Demarcation Board in a conference paper presented at the University of Durban Westville, September, 16th and 17th 1992, p.68.
⑨ Ibid. p.72.
d) Creating a Common Identity

Durban faces the same challenges in creating an identity as many other cities of South Africa. However, as other cities it has divisions that are peculiar to itself. The city has never existed as one unit. Its residents have never had an identity of belonging to one city. Not only was defining the city a highly politicized process but there were likely to be deep-seated suspicions of between interest groups, racial and ethnic groups even after the city was politically and economically declared as one political entity. In the case of Durban, the division is not merely between the English speaking white minority and the Zulu-speaking Africans. It also consists of a substantial Indian population that has distanced itself from the Zulus and also holds deep resentment against the whites especially since the treatment meted out to them under the Groups Areas Act. Many of these racial groups still have very superficial interaction with each other with few venturing into the areas of the other racial groups. The political scenario of the city has also witnessed the political conflict between the Inkatha movement and the ANC since the early 1980s. Areas in the African townships continue to be divided on the basis of the allegiance to the respective political party. In the case of the white population, apart from their alleged age-old loyalty to the British crown, harbors fear of 'reverse apartheid'.

e) Deracializing Local Administration

Racial divisions were further entrenched in the local government administration, as a majority of white administrators occupied senior positions, while the black workers were employed as casual workers. The Indian community, in spite of being a relatively advantageous group than the Africans in terms of the educational and employment opportunities it had made available to itself, had difficulty accessing the decision making portfolios.  

An administration driven on racist values was especially unequipped to deal with the administrative problems in the township areas. The highly skilled white administrators were ill equipped to take charge of the townships firstly because

they were not trained to deal with the kind of infrastructure and service delivery challenges in the townships. Secondly, even if they did take charge of the African settlements, they could never be able to win the confidence of the people they were administering or emerge from their image as the oppressing minority rulers. And thirdly, due to historical circumstances the bureaucracy was more geared to a centralized decision-making than being answerable to the political representatives.

Deracializing the administration thus required capacity building efforts for the African administrators and to establish training boards for that purpose. The authoritarian image of public service needed to be transformed by introducing ‘affirmative action’ in the intake of administrators. Such a situation also called for a debate to undertake drastic measures to replace the ‘old guards with the new’. This presented a challenge to balance the experienced (but in the ‘old ways’) administrators with those who lacked experience but could be molded to function as a democratic and accountable administration.

f) Creating an Autonomous Local Government

The last chapter has traced the gradual entrenchment of central control over local government. Local autonomy had been eroded from time to time to impose the policy of apartheid effectively. While the WLAs were controlled directly by handing over excessive power to the provincial administrator, the African local bodies were centrally controlled through the Administrative Boards. South Africa did not inherit a political and administrative system that was geared to a decentralized decision-making. Since local government was not constitutionally protected, its status was open and was going to be a subject of serious debate during the transition period.

13 Ibid. p.18-19.
15 The policy of ‘Affirmative Action’ was designed to deal with the disparities in employment both in the private and public sector. The White Paper on Affirmative Action in Public Service (p. 4.) defines Affirmative Action as “The additional steps, which must be taken in order that
It is to be noted that the country has emerged from an apartheid past in a world where greater local autonomy is being identified with greater democracy. The international experience was probably a strong influence in the minds of the South African policy makers and among the academic circles.  

3. Clash of interests

a) Conservative Minority

The conservative minority is represented by the Conservative Party. The CP was always the minority among the minority but its influence in South African politics could not be ignored. The idea of a common non-racial local authority was a sensitive issue for this section of the population. The creation of non-racial authorities involved a fear among this section of the white population that the change could lead to a 'reverse apartheid'. The October 1988 elections were a reflection of such sentiments where rightist Conservative Party took up the issue against the plans aimed at deracialization.

Thus, this was probably the only minority that wanted to retain as much of the past as possible. This was reflected during the initial talk on reform that did not directly bring up the issue of the creation of non-racial local government but were directed more towards tackling immediate problems of financial unviability, lack of resources to deal with economic inequalities and de-legitimization of local bodies against which violence and conflict was directed.

b) The National Party

The National Party stand was not fundamentally different from that of the ‘conservatives’. However, the post apartheid period saw an interesting turn in the way the NP viewed local government. The party had inherited a history of

\[\text{those who have been historically disadvantaged are able to derive full benefit from an equitable employment environment.}\]

centralized control but its vision for the post apartheid arrangement that was quite the contrary.

The party policy reflected a will to transform local structure. However, the party leadership hoped that this transformation would be a bottom-up arrangement that would not be under the total control of the ruling African majority at the national level. The NP was therefore interested to ensure the establishment of local structural that could resist any ‘drastic changes’. An autonomous local government was seen as the only way to ensure minimum interference in ‘white’ local affairs from a majority African government.  

The party thus pushed for provisions to include as many stakeholders among the minorities to influence the negotiations on the status of local government. Statement from NP minister, the then Minister of Planning and Provincial Affairs, Hermus Kriel reflected this sentiment:

"We believe that all property owners and tenants should have a vote with regard to local government affairs. We also believe that minorities should not be dominated. I repeat this, minorities should not be dominated".  

Local autonomy from the NP point of view was to ensure pockets of control for the party where policies of the African dominated government would not lead to a change in standards. Thus, even tough local autonomy was fervently supported, large-scale amalgamation with poor resourced areas and carving out large metropolitan boundaries was resisted. It invaded their ‘psychological boundaries’ and represented a threat to their claim on the city.


Options for restructuring in the initial stages of reform attempted change within the realm of the existing system. The main argument of the different groups pertaining to this 'school of thought' was that restructuring for the sole purpose of redistribution leads to administrative disruption. The emerging policy must consider the continuities in administration. Continuities were according to this view important for a smooth process of service delivery.

- The Ratepayers: The ratepayers and business associations owed allegiance to either of the political parties—the CP and the NP. They are highly organized groups and therefore exerted their influence through the WLAs. Their core concern was that any experiment with local government should not 'quadruple their rates'. The ratepayers were quick in pointing out the mismanagement in the BLAs. They demanded that any experiment with local government should not 'quadruple their rates'. The ratepayers were quick in pointing out the mismanagement in the BLAs. They demanded that they got their house in order before the increased rates were used to cross subsidize the townships. They were also among those who demanded greater central assistance for any 're-distributive' intension of the government. Probably the biggest spokespersons of a fiscally autonomous local government, they pushed for greater independence to each municipality to frame its own taxing and spending. This group was thus most likely to resist amalgamation with the more underdeveloped areas of the city. Many ratepayer and business association were keen proponents of the 'qualified franchise' and the idea of power sharing on the financial basis.

- The White Local Authorities: The WLAs represented the most affluent areas of the city mostly dominated by the NP and in some case the Conservative Party. This resulted in a range of opinions from those who were described as 'liberal' and those described as the 'conservative'. The small White local authorities especially resisted the transfer of township administration. These local authorities unlike their bigger counterparts did not have large resources or a strong tax base. They therefore pinned their hopes on central assistance and inter-governmental transfers. The WLAs in Durban for instance, were not unwilling to take over underdeveloped townships such as Umlazi. Some of
them did what has been described as ‘cherry-picking’ i.e. taking over townships whose infrastructure was in a better order.  

**c) The Extra-Parliamentary Interests**

The extra parliamentary interests were headed by the ANC. They are referred so due to them being a part of the national constitutional negotiations initiated by the De Klerk government.

- The ANC: The party had consistently through the apartheid struggle rejected piecemeal local reforms and demanded fundamental changes at the national level on the principles of redistribution, equity, and non-racialism. The ANC reflected its commitment to a strong local government from a democratic and participatory perspective.

However, the objectives behind the ANC approach on local government differed fundamentally from that of the NP. The devolution of power from the ANC point of view implied greater resistance for redistribution and change in the hands of the minority. Local government according to this vision was to serve the purpose of equitable redistribution and reallocation of resources. This tilted the ANC towards more centrally driven programs such as the Reconstruction and Development Program that conformed local policies to national development policies.

Moreover, the party favored a national framework for reform because it mistrusted the intentions of the WLAs that could highjack the local agenda. Within this framework, the ANC supported the idea of a metropolitan government that would

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be an ideal local arrangement to achieve a non-racial government and decrease disparities in income and services across the area.  

- The Civic and Township Organization: The cívics have been the main proponents of a grassroots based and participatory system in the emerging post apartheid set-up. Their movement throughout the apartheid period was directed towards corrupt, unresponsive and centrally controlled local authorities that governed the townships. Their central agenda has been the achievement of the principles that the struggles in the townships stood for: greater legitimacy, a non-racial government, a responsive, and a more accountable local government. The local negotiations could not especially put aside community structures. Their main mode of protest had been mass mobilization and resistance that even took a violent turn. In the new political situation, these organizations received a lot of criticism for the very style of politics that they inherited. Many such organizations were organized in a culture of protest and found themselves incapable to encourage participatory processes towards negotiations. Their claim to be a ‘watchdog’ for democracy too was questioned due to their political affiliations mainly to the ANC. But, having said that, these organizations have been considered as important stakeholders in the local government reform process.

Most civic and CBOs held sway in the African townships and were also organized at the national level, they have been able to organize their collective voice as important stakeholders in the transition process. By the end of 1991, the cívics representing local interest in the respective townships and cities formed the South African National Civic Organization (SANCO). This organization put forward the recommendation for the establishment of the Local Government Negotiating Forum, LNGF at the national level.

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27 SANCO was formed in 1992 and represents a large number of civic organization in South Africa.
The stance of the civic movement was therefore quite similar to that of the ANC. In demanding a national level framework to transform local government, in demanding a ‘one city one tax base’, and a more effective redistribution of resources.\(^28\)

d) The Inkatha Freedom Party (IFP)

The party did not feature in as an important stakeholder in the transition process at the national level. However, its voice in Durban cannot be ignored. The party has had a strong presence in KwaZulu Natal politics and a considerable presence in the African townships. It prime interest has been to secure political control in the townships and limit the ANC from dominating metropolitan affairs. It has also been a strong voice in protecting the interests of the tribal chiefs in the KwaZulu homeland, many of whom have been allied to the party. The IFP continually resisted attempts to amalgamate the tribal areas into Durban, a move that would disrupt traditional local government.

A change on ‘their own terms’ could aptly describe the transition. The divergent goals that the local reforms were to address did not certainly make it a planned concerted effort towards a democratic non-racial government as would sometimes appear to be on the surface. The local reforms have often been described as a ‘negotiated transition’. The chapter ahead discusses the process that brought these diverse viewpoints to be debated at the local government negotiation process. Which groups got most out of these negotiations is debatable but the one aspect about the transition that emerges is that it provided an environment where the various viewpoints could be articulated. This provided the government with certain policy options to erect new structures that were sometimes a result of negotiations and other times ‘trade-offs and compromises’.\(^29\)


4. Initiating Change

The pressure built up at the local level precipitated into a situation where the ruling National Party government was forced to compromise with the policy of a racial government. The government's commitment of ending apartheid was reflected by the repealing the Separate Amenities Act in 1990. This led to a national political settlement through the release of important political leaders and un-banning of political organizations and parties like the ANC.

While constitutional negotiations continued through Multi-Party Negotiation Forum (MPNF) and CODESA II, the government put forward its proposals of restructuring local government. The Interim Measures for Local Governance Bill was passed in June 1991 that put the initiative for restructuring in the hands of the local authorities themselves to negotiate their own models of joint local government. These local negotiations were to include the local government bodies, community organizations, civics, branches of liberation movements, relevant union structures etc. Durban was one of the cities where initiative was taken to discuss and negotiate the building of a non-racial and democratic model (the other cities being Johannesburg, Cape Town, East London, Port Elizabeth, Pretoria, Pietermaritzburg etc.)

Along with initiating local discussions, the government passed the Interim Measures for Local Government Act (IMA) in July 1991. The legislation put forward the suggestion that the local authorities could engage in negotiations around the provision of services and joint administration. This was to be done with the approval of the tri-cameral parliament and the Provincial Administrator. While the Act did put the initiative for change with the local authorities, it gave provincial administrators the authority to endorse the restructured authorities, dissolve former local authorities, and initiate the establishment of new joint local authorities. In many ways thus, the IMA continued the stance taken in the

Thornhill proposals that advocated 'local option' by giving the WLAs more than their fair share at the 'negotiating table'. 31

The efforts by the National Party government to bring about the changes in local government through the Interim Measures for Local Government Act were seen with suspicion by the ANC and the extra-parliamentary groups as attempts to merely modify the established system. Such measures reflect the stance of the NP discussed in the previous pages of this chapter. It exposed local negotiations to excessive interference by the provincial administrator and gave the 'illegitimate' authorities the power to negotiate new structures. According to the ANC, the national government was recognizing the legitimacy of the racially segregated local authorities to form joint local forums that were likely to turn a blind eye to the 'civics' and other interest groups. 32

The protest by the ANC merely led the government to amend the process of implementing the IMA. In 1992, Provincial and Local Authorities Affairs Amendment Act extended powers of the local administrators that would enable them to overrule conservative white local authorities to implement the Interim Measures Act. For instance, the Provincial Administrator was given the authority to transfer funds from the WLAs to the BLAs. Such legislation achieved little as it continued to recognize the de-legitimized BLA while setting precedence for greater provincial interference in local government.

'Effective protection of the minorities rather than non-racial local reform remained the main objective of the initial attempts to reform local government structures. The jargons of local option, 'power to the neighborhoods' and privatization of services were seen by the ANC as ways to entrench minority interest and ignore the problem of inequities.

Stiff opposition from the extra-parliamentary forces soon made the NP government realize that even if it succeeded in negotiating joint local authorities on its own terms it would never guarantee an acceptance of the majority population.

This pushed the government towards a multi-party national forum to involve the ANC and other stakeholders to reach a solution that would be largely acceptable and viable. Such a forum would seek to establish the basic framework, a set of parameters within which local structures could be negotiated.

5. A Negotiated Transition

It has been often stated in the context of local government reforms that local government in South African could neither be restructured through a revolution nor through political outbidding. This statement is as relevant for local government as it is for the larger political transition in South Africa as reflected in the multi-party negotiations at the national level (1992-93). The ANC and the larger anti-apartheid movement needed to work along with the established political structure to reach mutually acceptable solutions to problems that all South African together confronted. It has been an accepted fact that the mood of reconciliation was at the very heart of the ANC strategy. Decisions were reached in an environment where all the parties felt an urgent need to resolve conflict and where the interests and concerns of different stakeholders were discussed and weighed to reach a political consensus. However, given the conflicting interests and expectations from the reforms, compromises and in some cases use of tactics of 'brinkmanship' could not be ruled out.

5.1 Local Government Negotiation Forum

The establishment of the LGNF in 1993 is often referred to as the ‘midwife of local reform’. The LGNF established in March 1993 reflected the will on the part

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34 David Christianson and Steven Friedman (1993.) pp.2-3.
35 These tactics could be used by civic bodies through organizing boycotts or by the WLAs through cutting services to the townships.
of the various political parties to enter into negotiations to organize the new local government system.

The LGNF involved a range of local government stakeholders and political parties. However, doubts have often been raised on the extent to which these stakeholders represented their constituencies in the grassroots. The statutory and non-statutory local bodies both in their areas of operation lacked the mechanisms to involve people during the process of negotiation and in most cases lacked even the mandate to represent them.\(^{36}\) Many of the township residents were not involved in the generation of ‘popular opinions’ on the matters of local reform. Much of the civics that claimed to represent the interests of the township residents were unable to organize or test opinions but instead were geared to function more as reactionary mass mobilizations.

The WLAs too on their part did not involve the residents or in some cases even inform them of the process and implications of the negotiations.\(^{37}\) In the same way, the Local Affairs Committees (LACs) that were advisory bodies representing the Indians and Coloreds lacked legitimacy and were considered more as ‘dummy structures’ in the city councils.\(^{38}\)

Despite these limitations, the LGNF was a joint effort by a range of stakeholders to explore and devise solutions to deal with what was seen by many as a crisis in local government. It took up the mission that reflected the will of a range of participants to reach a consensus that would “contribute to the democratization of local government and to bring about a democratic, non-racial, non-sexist, and financially viable local government system.”\(^{39}\) Its 60 member delegation consisted of representatives from both statutory and non-statutory bodies. 50% of the representatives from major city associations, department of local government,

\(^{37}\) Ibid. pp.24-25.  
provincial government consisted of its statutory members. And the rest 50% non-statutory list included the civic organization represented by SANCO.  

The political parties were kept away from this forum. Some of the negotiating parties consider this a strategic plan of the ANC to keep the smaller parties out of local government negotiations. These allegations were made especially by parties like the IFP and the PAC who insisted on being given the status of a non-statutory participant in the negotiations. Such allegations were not baseless considering that SANCO has worked closely with the ANC had been included as a non-statutory member.

The LGNF was a voluntary organization that recommended its solutions to the Multi-Party Negotiation Forum. The three working groups of the forum (legal, financial, and administrative) presented its consensus on the dissolution of all existing racially based councils and the creation of non-racial councils that would have political and administrative jurisdiction over the new non-racial boundaries. Fundamental differences in the LGNF were noted in the following issues:

- Non-statutory delegation submitted that racially based authorities were needed to be dissolved and be replaced by non-racial interim councils that included non-statutory representatives.
- The statutory delegation dominated by the WLAs, on the other hand opposed the involvement of the non-statutory organizations at the local level and put forward the proposal to establish a local power sharing arrangement of about five years at least on the lines the national government arrangement.

It is rather ironical that such serious differences among the stakeholders were resolved in three plenary meetings. Probably its voluntary informal status made

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40 Ibid.
42 The Government of National Unity (GNU) power sharing arrangement at the central government level proved favorable for the NP. The National Assembly constituted of 400 members and 90 senate members. All parties that gained 20 seats in the National Assembly were entitled to the cabinet seats in proportion to the number of seats held.
negotiations smoother. But the differences and unresolved issues eventually surfaced in the Multi-Party Negotiating Forum (MPNF).

The deliberations of the LGNF were discussed and accepted at the Multi-Party Negotiating Forum (MPNF) at the World Trade Center at Kempton Park that subsequently led to the enshrining of the power, functions and status of the local government in the Chapter 10 of the Constitution of Republic of South Africa 1993. However, the proceedings at the MPNF had its stickling points and the proceedings witnessed a lot of tussle between the NP and the ANC on the issue of minority rights.

The conflicting interests at the LGNF and the MPNF could only reach a consensus by bargaining on certain principles—for instance, there was an agreement on central government taking some responsibility to help with the finances of local government, such an agreement favored the minority interests as the central government could take over some of the re-distributive burden and it also opened avenues for a increased role of the center in local affairs as envisioned by the ANC.

5.2 The Interim Constitution and the LGTA

The Local Government Transition Act (LGTA), along with the Interim Constitution (1993) reflected the broad conclusions of the debates that confronted the Local Government Negotiating Forum (LGNF), and the Multi-Party Negotiating Forum (MPNF). The LGTA replaced the Interim Measures Act (IMA) and charted an agreed plan to disband apartheid laws and establish transitional local bodies. A significant compromise reached at the LGTA was the adoption of local government negotiating forums at the local level at ‘each economic and historically bound area’. The LGTA acknowledged the role of the local level stakeholders both statutory and non-statutory who would negotiate the transitional local government arrangements on the basis of a national framework.
The Act marked the phases in the process of restructuring and provided a framework for the local government in the pre-interim phase. 43

Along with this framework, the institution of local government was shaped by the provisions laid down by the Constitution of 1993. 44 Local government was recognized in Chapter 10 of the Constitution. A legal sanction and recognition of the local tier of governance was a significant development in a country where local government had been twisted at the will of the apartheid government. The elected non-racial local government after 1995-96 was arranged according to the provisions set in the Constitution, the provisions of which were worked out in detail by the final Constitution (1996) and the White paper on local government (1998).

Many features and practices from the old system were done away with and some were retained, at least in the interim arrangement to maintain administrative continuity. For instance, with the establishment of the power and duties of the transitional metropolitan councils, the services of the RSCs and the JSBs were redundant. At the same time, the new system could not ignore the political sway of the traditional authorities. They were to act as ex-officio members in case some of their areas fell into a metropolitan or district council area. The issue was especially keenly contested in Durban between the ANC and the IFP that exerted pressure to keep traditional lands out of the metro boundaries. 45

a) Local Autonomy

The status given to the local government has been one of the most fundamental issues that determined the nature of structures that has evolved in South Africa.

44 The LGTA pre-dated the Interim Constitution and was a detailed document governing local government transformation. The Interim Constitution in contrast has been described as 'sparse' and 'nondescript'. Thus, until the local government elections took place, the powers, and functions of the local government were governed by the LGTA. See Gideon Primstone, From Tier to Sphere: Local Government in the new South African Constitutional Order (Johannesburg, Heinemann, 1998) p.13.
45 The official explanation given by the IFP reasoned little economic and social connection of these areas with Durban. Moreover, the IFP asserted that the Traditional leaders were important stakeholders in the local transformation process since they controlled the tribal/ Nkosi, lands at the periphery of the Durban Metropolitan region.
The NP influence can be clearly seen in the Interim Constitution. It declared local government “autonomous and within limits prescribed by or under law”., “shall be entitled to regulate its affairs.” 46

It is to be noted that while the Constitution set up a formal political framework under a federal setup, it did not specify the degree of local autonomy. There have been instances in the case of both the developing and the developed countries, of the central government curbing the autonomy of the local government in the name of national interest or with the belief that the radical economic or political reforms could be implemented more forcefully. The path to decentralization in the South African case becomes more complicated as grassroots democracy in South Africa, according to the leadership required addressing the ‘re-distributive needs’ to manage racial and class differences. 47 The issue in the transition process still hinged around the skepticism that decentralization of power to the local authorities would lead to greater inequality in society. According to the ANC the autonomous local authorities, especially those dominated by conservatives, resisted social change hindering the implementation of important national objectives.

At the same time, it must be noted that along with the pressures to redistribute, the political pressures for the establishment of legitimate local authorities could also not be ignored keeping in mind that the memory of the coercive power of the central government was still fresh in the minds of the South Africans. The political commitment to ‘redistribution’ along with a need to establish democratic and legitimate local structures could be an explanation for why the transitional local structures were so ambiguous in both the LGTA and the Interim Constitution. 48

48 In fact, the RDP officials also influenced the department of constitutional development to amend the LGTA. The amendment obligated the local governments to undertake developmental planning under the IDP framework.
A three-tier structure based on democratic representation was established, but it did not clearly be described either as ‘federal’ or ‘unitary’. From one perspective, the Interim Constitution entrenched local government by prescribing that the national and provincial legislatures could not encroach on the fundamental autonomous status, purpose, and character of local government. The arrangement set forth by the Interim Constitution provided a constitutional framework that established local government as a tier independent from the parliament and provincial legislatures. The local government bodies were given wide statutory, regulative, and executive powers, and functions to provide services and administration to the areas under their respective jurisdiction. The independent status given to the local government would have relieved the NP, however, apart from the traditional functions of local government i.e. provision of basic services, the Constitution did not commit any significant powers and functions. 49

As a third tier of government, the powers of the local government were not as clearly given as that of the national and provincial. Local government according to section 175(4) can legislate only if the laws are consistent with Acts passed by the parliament or by the province. This was mainly due to the fact that many municipalities were either still dealing with the restructuring process or lacked resources and experience to effectively govern. Thus, the provincial government was given the responsibility for not only establishing the municipalities but were also responsible to promote their capacity for the municipalities to eventually manage their own affairs.

While the Constitution established the geographical, functional, and institutional integrity of local government, it could not comprehensively establish the powers and functions of the local government. Section 175 to 178 of the Interim Constitution and Schedule 2 of the LGTA discussed the power and functions, administrative procedures, and financial matters related to local governance. However both the documents left much of the issues open-ended by merely outlining the policy on the issue.

b) Provincial Control

In the absence of a strong tier at the local level, the LGTA put down the responsibility related to the transition process at the provincial level. However, the power given to the provincial level was not solely vested with the Provincial Administrator, as was the case previously under the IMA. Part 2 of the Transition Act established provincial committees that were to remain in place till local government elections. Provincial Committees were created to undertake local government and negotiation at the provincial level. The establishment of provincial committees ensured that none of the Provincial Administrators especially in NP dominated provinces would not highjack local agendas. The Provincial Committee on Local Government (PCLG) was a committee that was representative of the main stakeholders in the local government transition process within the province. The recognition of the civic bodies, traditional authorities and other stakeholders at the local level by the LNGF consequently led to the inclusion of these groups in the formation of the provincial committee.

c) Metropolitan Arrangement

The NP, along with the representatives of the White Local Authorities (WLAs) strongly supported what they called a ‘bottom up approach’. This approach pushed for local solutions decided by members of the local statutory authorities. However, the ANC needed to see a ‘metropolitan arrangement’ that would ensure effective solutions to deal with the disparities in service provision, and inefficient apartheid structures. It opposed the formation of local forums that would only involve the racially based existing councils, as this would have implied a continued segregation of cities. The LGTA and the Interim Constitution left no place for an option of establishing local forums on the lines of the NP demand.

The negotiations were made on a metropolitan level through the creation of metro forums with a broad based representation. Local negotiations in the metropolitan areas included all prominent stakeholders. By establishing an arrangement of 50% statutory representation, the elements of the old white local authorities were not only retained but were given a proportionally higher representation. The civic and township movements too for the first time were given an unprecedented share of 50% in the transitional structures. The Constitution and the LGTA also recognized a role for the traditional authorities that had an important stake in the non-metropolitan and former homeland areas. They were represented in the position of the ex-officio members in the local government.

With regard to municipal structures, the NP argued for a two-tier structure and a weak metropolitan authority. According to the ANC party policy, the metropolitan areas should be governed by a two-tier structure that would ensure proximity of the people to their authority as demanded by the NP. But the ANC called for weaker sub-tiers within a metropolitan set-up to prevent the continuation of 'privileged pockets'. The ANC therefore pressed for a clear definition of a metropolitan area, its powers, structure, functions, and duties. This definition was important to provide a general framework and guarantee that these were not manipulated at local level negotiations by the NP and other right wing parties. LGTA introduced the concept of a metropolitan government, and defined it as 'a government with a jurisdiction over multiple local governments. A metropolitan government governs an area that is:

"Densely populated and has an intensive movement of people, goods, and services within the area. Is extensively developed and urbanized and has more than one central business district, industrial area or concentration of employment. And economically forms a functional unit comprising various smaller units that are interdependent economically and in respect of services.

54 Schedule I of the LGTA put down the criteria that was needed to identify an economically and historically bound forum area.
Accordingly, Section 174 (2) made the provision for a metropolitan government and the LGTA made provisions for Transitional Metropolitan Councils (TMCs). However, a provision was introduced for the Transitional Metropolitan Council to assign certain functions to a local body or a sub-municipal entity (Transitional Local Council or TLC). It incorporated the fears of the minority populations that were fiercely debated by the National Party who feared a drastic ‘decline in standards’ of the municipal services. Minority fears were also considered with regard to other planning arrangements in the Transitional Metropolitan Councils (TMC). For instance, metropolitan decision-making on matters of town planning according to the constitutional provision was to be decided by an absolute majority (50+1%) of all the members.

d) Local Electoral System

Until local government elections took place in the transitional councils (TMCs and TLCs), the interim arrangement consisting of 50% statutory and 50% non-statutory representation was established by the LGTA. By granting the eligibility to vote to all residents of the area within the jurisdiction of the municipal government, the Interim Constitution normalized voting qualification for the first time in the history of South Africa.

Further, the Interim Constitution sought to involve a range of interests through introducing participation of political parties in local government. The electoral system laid down by the Interim Constitution included the party list. This put an end to the argument by a section of the population on the exclusion of party politics from local government. According to the argument, politicization of the local electoral system would result in the influence of the party dogma on local community issues besides pressurizing local councilors to adhere to their party line. This was more of a reaction of a handful of people that wanted an alternative to the political manipulations that were taking place in local government transformation. Since, local government had been politicized, party competition at

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57 Part V, 8(b), Local Government Transition Act, 209 of 1993.
the local level had become inevitable.\textsuperscript{58} Gradual politicization of local government had resulted in interests of communities and groups to be directed predominantly through political parties. This was reflected in the disputes all along the transitional process.\textsuperscript{59}

The municipal area was divided into wards, which were to elect a councilor on a ‘winner takes all’ electoral system. This system was aimed to facilitate a better communication between a councilor and the residents residing in the wards and effectively represent their local needs. Whereas a proportional representation system was aimed to identify issues that concerned the metropolis as a whole and not merely limit the priority of the citizens to the limited area around them. The PR-ward system also achieved the aim of keeping ward councilors accountable not only to their ward residents but also to the council. Each PR councilor elected from a party list was therefore appointed to the ward represented by another political party.

The first local elections were to establish local government whereby 40% of the councilors were elected on the basis of Proportional Representation (PR) votes and 60% elected as ward candidates. Minority fears were addressed in the system according to which local governments that were to be elected democratically every 3-5 years included both proportional and the majoritarian, ‘winner takes all’.\textsuperscript{60} The system was devised with the intention of over-representing the minority white population and was one of the compromises reached during the negotiation process. Section 245(3) of the Constitution laid down the transitional

\textsuperscript{58} An important change witnessed between 1986-1988 was the introduction of party politics in local government. Prior to this, the local representatives were elected on non-political nominations as individuals or as representatives of an interest group. The issue was raised by the Conservative Party that hoped to control local councils. The introduction of party politics proved to be a blessing in disguise with the un-banning of many African political parties. It was initially argued that party politics at the local level would lead to community interests and issues taking a backseat. Besides party politics could politicize and increase community conflict. Candidates would increasingly be selected on the basis of their political affiliations and this would discourage the selection of the candidate based on his capability.

\textsuperscript{59} Continued disputes in Durban even led to the postponement of the 1996 elections. These disputes related to the inclusion of tribal areas in the Durban Metropolitan Region and to the tension between an IFP provincial government and the ANC in urban areas of KwaZulu-Natal especially Durban.

\textsuperscript{60} Section 179-180 of the Interim Constitution discussed the electoral system to be followed to elect a government at the local level.
arrangements according to which the first elected councils were constituted on the basis of 40% proportional and 60% ward representation. The ward representation was further divided according to which half the councilors 30% came from the traditional white, colored and Indian local authorities (Category A wards) and 30% represented what constituted the black areas (Category B wards). A (30+30) 60% ward representation implied an overrepresentation of the minorities. 61 This was done in accordance with the NP demands. However, the NP demand for stronger ward councils with financial powers was not entertained in the Constitution. 62

6. A Phased Transition

The transition according to the LGTA was undertaken in two phases:

1. *The pre-interim phase* - This phase entailed:
   - Setting up of local forums for negotiating temporary local government. Like the National LGNF (NLGNF), these local forums included members drawn from both statutory and non-statutory bodies.
   - Establishment of pre interim structures-the Transitional Local Councils (TLCs) in non-metropolitan areas, and Transitional Metropolitan Councils (TMCs) and Transitional Metropolitan Substructures in the (TMSs) in the Metropolitan areas. The pre-interim phase started from 2nd Feb 1994, the day of the legislation of the LGTA and continued till the first day of the election held for the Interim Local Councils.

2. *The interim phase*

This phase was accordingly chalked out to commence on the day after the local elections for the Interim Councils. This phase thus continued till Oct 1995 in most of South Africa as planned and till April 1996 in KwaZulu-Natal and the Western Cape. This elected local government continued until the final model of local government was decided on and legislated.

61 The provision of A and B wards thus over represented the white local authorities. The provision was however opposed by the Indian and the Colored authorities as it under represented them by clubbing them with the whites.
3. The final phase

The final phase was not mentioned in the LGTA. It was assumed that this phase would witness the establishment of the final form of local government on the basis of a final Constitution.

6.1 The Pre-Interim Phase

Until April 1994, 66 racially based local authorities that surrounded Municipal Durban governed the GDMA. Like other metro cities, negotiation for new structures was initiated with the establishment of a local negotiating forum - Greater Durban Metropolitan Negotiating Forum-GDMNF. The GDMNF negotiated boundaries of the Metropolitan Council (TMC) and the Metropolitan substructures (TLC or TMS), the number of seats within it and its powers and duties both for the pre-interim/transitional councils and the elected interim local councils.

The system of representation of interests that was followed in the negotiations at the national level was also followed at the local level. The representation on the GDMNF was therefore based on a 50% statutory and 50% non-statutory basis that ensured participation of all major local stakeholders. The statutory members included members of local government bodies, Local Affairs Committee (LAC) members, political parties (that were involved in local elections before or during 1988), ratepayers and residential associations and organizations. The non-statutory members included political organizations such as the ANC and PAC, civic organizations such as SANCO, local chambers of commerce and industry and, electricity supplier boards such as Eskom. 63

Both the statutory and non-statutory parties reflected the desire to skip the interim phase. The NP seemed reluctant to work with the non-statutory bodies and wanted a power sharing arrangement on the lines of the national government (as has been mentioned before). The non-statutory bodies too on their part viewed the inclusion

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of the WLAs as the continuation of the racially based local structures. Despite this, the two came together into the Transitional Metropolitan Council arrangement as the demands of the former meant a delay in establishing the final structures and complying with the demand of the later was not feasible without setting rules for the electoral processes and finalizing the boundaries.

The stakeholders did not pursue their demands for long as they were supposed to reach agreements within a stipulated time on the area of jurisdiction and the form of local transitional structures failing which the provincial administrator was to take over the charge of instituting a local government in the area. The time limitation was imposed to force the uncooperative groups to the negotiating table. The provision of deadlines distinguished the Act from the IMA and ensured compliance and speedy action on restructuring.

Just as in the case of national level negotiations (LGNF), the clause of the non-statutory membership too proved to be controversial at the local level. This was mainly because the non-statutory members by and large comprised of groups affiliated to the ANC. However, it has been argued that if the ANC benefited from such manipulation of membership in Durban, there have been instances of other parties such as the NP using the same tactic in other city forums. Manipulation of forum membership was also attempted by parties such as the Democratic Party (DP) and the Afrikaner Weerstands beweging (AWB) that claimed membership of the non-statutory wing. 64

It is to be noted that the NP leadership in Durban at this time has been described as by and large progressive. The DCC at this time comprised of liberal councilors such as Jan Venter, Gys Muller, Margaret Winter, and Peter Mansfield. This group had ceased the initiative towards political changes with the passing of the IMA much before the formation of the GDMNF. 65

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In a way, the ANC representation in the 50% non-statutory part of the forum balanced out the conservative representation in the statutory half. The statutory membership in the GDMNF was dominated by the conservative elements-an alliance of the NP, the (Conservative Party) CP, and some other independent candidates. The forums thus included representatives from many relevant groups that could contribute in the local government restructuring. The local forum discussions also involved observers from groups such as Chambers of Commerce, DBSA, water boards, professional, technical, religious, cultural, welfare and recreational bodies.

The full strength of the forum was 1000 that met once a month. This included a joint technical committee that was to make recommendations to the plenary, five sub-committees (Credentials and nominations, boundaries, finance, powers and functions, management administration and training, and legislation), and a coordinating committee for the sub-committees. All the committees were represented with an equal balance of statutory and non-statutory members.

According to the LGTA, the local representatives through intensive informal discussions were obligated to recommend:

- The boundaries, size, and constitution of the forum.
- The name of the new Transitional Council,
- Number of seats it would include according to administrative requirements and financial feasibility.
- Choose a transitional model and decide its function.

The GDMNF took 5 months deliberating on the interim boundaries and structures.

6.2 Creating the Outer Boundaries of Durban

The final process of demarcation was taken up only when an elected transitional local council was put in place. In the meanwhile, the Local Government

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66 Ibid.
67 Ibid. p. 276.
Demarcation Board (LGDB) was appointed at the provincial level to hold the initial investigation and assess the areas that were to be demarcated and delimited for the establishment of wards. Finally the provincial administrator was given the powers to take a decision on the boundaries decided by the LGDB. These boundaries were not finalized at this stage, since there were many complications that were anticipated in case of incorporation of a rural area into an urban municipality due to its proximity or dependence on it.

The outer boundaries of Durban and other metropolitan areas was decided on the basis of the following criteria given in schedule 6 of the LGTA:

- Topography and physical characteristics of the area
- Population Distribution
- Existing administrative boundaries
- Existing and potential land use
- Economic functionality, efficiency, financial viability of service provision and development potential of the area.
- Degree of integration with the urban economy as indicated by commercial, industrial, and residential linkages
- The degree of common interest among residents on the basis of community work and recreation.

This above criteria served only as a guide for the demarcation of areas and could only be used for the inclusion or exclusion of areas that were not controversial. Thus, aside from the criteria mentioned above, the demarcation process has to depend on a process of consultation with the stakeholders and other interest groups in the areas to finalize boundaries.

Thus, the GDMNF and the Durban Metro Council decided on the initial outer metropolitan boundary for Durban. Disputes intensified between the ANC and the IFP on issues concerning the incorporation of certain peripheral tribal areas into the Greater Durban Metropolitan Area (GDMA). The boundaries decided by the

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GDMNF corresponded to the (DFR) Durban Functional Region and its outer boundaries met those of the former homeland of KwaZulu-Natal. Much of the tribal areas were left aside for further negotiations by the Independent Demarcation Board.

The decisions on the outer boundary proved controversial especially after the GDMNF submitted its recommendations to the Provincial Committee for approval. According to the LGTA, the Provincial Committee (PCLG) was to convey their decisions to the Provincial Administrator/the MEC who was given the authority to delimit the area of jurisdiction, determine the powers and duties of the Transitional Metropolitan Councils and the Metropolitan substructures. It is to be noted that the IFP had the political control over much of Kwa-Zulu Natal after the 1994 elections making it the ruling party in the province. It was therefore not surprising that the provincial committee approved the inclusion of only one small tribal authority area of Kwa-Ximba.

The status of the outer boundary was not finalized in the interim phase. This was decided by an independent body of the KwaZulu Natal Demarcation Board. The decisions taken by the Board still continues to be a subject of controversy. The board recommendation put forward the inclusion of much of the tribal lands surrounding Durban on the basis of the fact that these areas were functionally a part of Durban. However, the inclusion of these areas implied greater cross-subsidization of resources—an arrangement that was likely to be vociferously opposed by many in Durban. The NP, the Democratic Party (DP), and other white interest groups saw the inclusion of the tribal areas as ‘rural areas’ that were an additional burden on the resources of Durban. Moreover, the inclusion also implied that the IFP was likely to lose its control of these areas to the ANC dominated urban areas. In fact, the IFP viewed the Board’s decision as influence from the ANC.

The Board held meetings with tribal leaders in a rather hurried process and therefore could neither convey their agenda to those concerned nor involve interest groups and stakeholders in the areas under consideration. The hurried process made the case of the Board even weaker in the wake of the opposition by these interests.  

With regard to the sub-structure boundaries, intense debates were ignored by the GDMNF at the interim stage. It decided on the establishment of four substructures within the decided boundaries of Durban on the understanding that this was a temporary arrangement and would be discussed again by the newly established Transitional Metropolitan Council and by the Demarcation Board. Since the issue of sub-structure boundaries and the powers and duties of the councils was prone to political manipulations, it was best to be dealt by an independent demarcation board. The forum however did take decisions on the power and duties in the Council and the substructures respectively.

The boundaries of the four substructures in the DMA were chalked out largely through the readjustment of boundaries of the former local authorities. In fact, the substructures were a result of an amalgamation of these racially based authorities and a redrawing of boundaries that established a racially balanced municipal substructure and a fair distribution of the tax base. However, even though the substructures were racially balanced, they were not balanced in terms of infrastructure and resources. The four substructures included the West (comprising of the affluent white areas of Kloof and Pine Town while also incorporating the outlying African areas of Mpumalanga), the Central (comprising Central Durban with the township of Umlazi and rural areas of Ntuzuma), the North, and the South that comprised of assorted clusters in the outlying areas of the Durban Functional Region.

The Demarcation Board later attempted to rectify these disparities. After rigorous process of consultation and representations, the Board put forward its proposals

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70 Ibid.
for the sub-structure boundaries in Durban. The main purpose behind this proposal was to prevent the disparities between sub-structures and the domination of one or two powerful sub-structures in the central council. In attempting to do so however, it went to the other extreme of putting forward the option of nine substructures. This solution was however not financially feasible due to the creation of under resourced structures. 72 The proposal was thus rejected by most of the smaller political parties like the IFP and DP who picked up the issues of racial representation and financial viability and finally by the MEC.

Public comments made the Board change the demarcations to carve out 6 substructures that checked the racial and financial balance. The main concerns of the Board remained the preventing the domination of one or a group of sub-structures in the Metro Council, fiscal, and administrative viability. The city was accordingly divided into 6 Transitional Metropolitan substructures, North, North Central, South Central, South, Inner West, Outer West. 73

The marks of apartheid however, continued to reflect in the local governmental arrangement in the pre interim phase especially in the context of wards per substructure and size of substructure. The substructures greatly differed in size and population distribution. Of these two central substructure councils, North Central and South Central were the most populous, comprising of nearly two thirds of the population of the DMA. The Inner West and the Outer West come next in size, followed by the smaller substructure of the South and North. The proceedings of the GDMNF were marred by disputes during the demarcation of substructures and wards. Understandably, the division of 6 substructures into 164 wards proved to be controversial.

The boundaries of the two central substructures of the North and South continued to correspond to the old Durban Municipal Council. Similarly, the number of wards per substructure greatly varied. For instance, North Central had 42 wards,

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73 The DMA Change Management Committee was established to steer the process of transformation and reorganization of approximately 50 local authorities in the DMA into the current 6 administrations. It negotiated the functions and responsibilities between local and
while North substructure had only 18 wards. The average size of wards too
differed, with South Durban having 3281 voters and South Central as many as
9736. This implied that the former White, Colored and Indian areas were
represented by the same number of ward councilors as the African areas in spite of
the fact that most of them were in a minority.

6.3 **Structure of the Metropolitan Council**

Controversies surrounded the discussions on the local council structures since the
LGTA opened options to choose the model that suited the local situation. The Act
endorsed the two-tier structure but it did not specify the powers and functions of
the metropolitan council vis-à-vis the TMSs. Since the LGTA and the Interim
Constitution left the issue of the structure of the Metropolitan Councils open
ended, the issue was intensely debated at the local level. The two-tier structure
was considered to be the most feasible option in the large and diverse cities of
South Africa. Within a two-tier structure, the local forums were given the option
of deciding the ‘power and function’ balance between the two tiers.

These specifications formed a part of the discussions in the respective local
forums and therefore the relationship of the TMSs with the TMCs differed from
metro to metro. For instance, the negotiating forum in Greater Johannesburg opted
for a more centralized form of government i.e. the GJMC regulated the sub-
structure with maximum power concentrated with the TMC, the Cape Negotiating
Forum CMNF, on the other hand gave more power to the Metropolitan
substructure with the TMC merely coordinating the administration. 74

As has been discussed previously in the chapter, the ANC policy dictated that a
strong metro with weak local sub-structures was the only way to bridge the
disparities in service provision, economic development, and infrastructure.
According to the ANC, the existence of municipal substructures in many ways
came in the way of redirecting resources. It perpetuated the delivery of municipal

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services on unequal basis, slowing down the process of transformation. There was thus a need to ensure that the power and municipal functions were concentrated with the municipal council. 75

The opposition parties argued that a stronger council would be unable to respond to the specific needs of the diverse population in a large area. They saw ANC’s insistence on a powerful metropolitan council as a strategy to lay its political control over the metropolitan area. The IFP and the other smaller parties feared an ANC control of the council under a strong metropolitan structure. However, in spite of the ANC rejecting a weak metropolitan structure, the concept of a full fledged Metro Council was not made operational in the transitional phase.

6.4 Interim Local Government

The successfully conducted local elections in July 1996 marked the end of the pre-interim phase. Durban elected its first non-racial and democratic local council in the city’s history. The residents of Durban voted for 164 ward councilors and 109 PR councilors (total of 273 councilors). These were divided among the 6 sub-substructures, with 70 councilors for the North Central Local Council, 60 for South Central, 42 for Inner West, 41 for Outer West, and 30 each for the North and South Councils. Apart from the sub-structures, the Durban Metropolitan Council was a collected body of 70 councilors, 42 drawn from the Metropolitan Sub-Structures (MSS), and 28 elected to the Metropolitan Council. All the local councils elected Mayors, Deputy Mayors, and Executive Committees.

However, the Interim Local Government Council, despite being based on a democratic non-racial arrangement, did not see any substantial change in the way any local government especially in the urban areas functioned. This fact holds true for Durban more than any South African Metropolitan city. Thus, while Cape Town and Johannesburg went through the process of carving out municipal substructures to create a balance between rich and poor areas, Durban continued with the transition phase without much altering its boundaries and administration.

Durban’s TMSs North Central and South Central continued to be administered by the old Durban city council bureaucracy. Thus, in many ways, the transitional local government arrangement reflected a tight ropewalk between the established and the reformed systems.

Moreover, due to a two-tier structure, the metropolitan substructures were unable to take decisions on allocation of finances. The resources were required to be redirected to areas where they were most needed. In the case of Durban, the Metropolitan Council did not alone hold resource allocation. Its more prosperous substructures continued to work on their individual operating budgets. Moreover, the arrangement did not ensure any clear-cut division of responsibility. For instance, in Durban there was a division between the North Local Council and the Durban Metro Council regarding the maintenance of some Metro roads within the boundaries of the NLC. The existence of local municipal sub-structures was not necessarily based on equal distribution of resources or even ensure an equitable distribution of wealthy and poorer areas between them.

7. Restructuring Finances

The question of an ‘equal distribution of resources’ also hinged on a financial arrangement of ‘One city, one tax base’. A single tax base was given as a solution to the financial problems in the metropolitan areas where the commercial and industrial taxes in the wealthy and predominantly white areas could be redistributed to the peripheral and underdeveloped areas. However, the establishment of a single tax structure was made difficult in the light of the fact that many of the BLAs, Colored and Indian local authorities were in a state of financial disarray due to mounting debts on them. These authorities owed heavy debts to supplier bodies such as the chief electricity supplier Eskom. This situation was further aggravated by high level of individual debts (such as rent and service charges) owed by the residents and service users to the local authorities. In the transitional stage therefore many of these debts has to be written off or taken over by the central or provincial government.

76 Ibid.
It was at the local level that black expectations of economic and social well being inevitably clashed with the white fears of declining standards of services and increasing tax rates. The creation of a single tax base inevitably burdened the affluent areas. Tax rates in South Africa were already so high that even a marginal increase led to tax threatened revolts from the affluent communities.

Intergovernmental transfer has thus been an important concern for the affluent minority. This minority has often considered inter-governmental grants to be unpredictable and insufficient for the local government to set its finances right and to perform its allocated function. The voice of this section of the population stressed more on greater transfers and on reforming the misadministration in what were earlier the BLA areas and to deal with problem of non-payment.

On the other hand, the ANC insisted on greater self-sufficiency of the local institutions and redistribution of existing resources. With limited and insufficient intergovernmental transfer, and the difficulty in getting assured private sector funding, local government including that of Durban needed to rely more on its self-generated financial resources. Local authorities would have to concentrate on many aspects to deal with the challenge of financing development such as cost recovery of the services provided for them, single tax base, extra finance needed to provide services in the historically disadvantaged areas, also for the increasing infrastructural and service requirement of increased urbanization, debts of black local authorities etc.

The financial provisions made in the Interim Constitution tried to strike a balance between the two positions. The provisions aimed at encouraging self-sufficiency and at the same time assisted by the central government. Thus while attention has been given to allocation of funds from the central and provincial government, local governments have been empowered to ‘levy and recover on a uniform basis a series of levies, fees, taxes, tariffs and rates’. 77

77 Republic of South Africa, Constitution Act of 1993 Section 178(2) and (3)
Instead of cross subsidization and ‘redistribution the affluent areas of the city vociferously proposed intensive revenue collection programs from the ‘non-payment’ townships. Non-payment had made it difficult for local authorities to recover the cost of the services or to initiate infrastructure improvement in places where it was absent. The government has made efforts to deal with the problem of non-payment in former BLA areas. This was attempted through programs like Operation *Masakhane* that was essentially focused on the responsibility of the community in pay for services and to break the culture of non-payment - a legacy of the apartheid period. Although non-payment was used as a form of protest against the government in the apartheid period, the problem was not resolved even with the establishment of a democratic government. This culture of non-payment has been loosely described as a situation where people’s refusal to pay taxes was much less an act of protest than it was a case of the either the unwillingness or inability to pay. 78 Apart from all the sociological and financial reasons that have been cited as reasons for the problem of non-payment, it reflected a general indifference and lack of allegiance paid to the local governments. Even with a democratically elected local government established after the 1996 elections, the problem of rent boycotts continued the financial capability of the local authorities.

8. Changes in the Local Bureaucracy

While changes undertaken in local bureaucracy form a separate study in local public administration, it has nevertheless been an important aspect of the local government debate. The issue directly relevant to our discussion is the alterations made in the bureaucracy to adjust to a democratic non-racial structure. A change in the composition of the local bureaucracy was undertaken simultaneously with the establishment of the transitional local councils. It was argued that the old ideals of the administrators were not compatible with democratic governance. Doubts were raised regarding the ‘relevant’ administrative experience and capability inherited from the apartheid structures. Racial discrimination in the selection of bureaucracy had made it highly repressive and unresponsive.

Bureaucratic reforms were needed not just to rationalize the race stratification of the council’s labor force but it also had to be geared to complement the new non-racial and democratic structures. This was to be done through the policy of Affirmative Action that guided the rationalization and redeployment process. Such changes were much resisted by staff most affected by such moves.

Clearly, some elements of the past needed to be retained. A commonly used term used for the transformation of the administration was ‘change-management’. It referred to the retaining of much of the experienced officials while introducing them to the new values and democratic functioning. This was part of the negotiated settlement reached at the Multi-Party Negotiating Forum at Kempton Park. The process went hand in hand with the affirmative action that was to rectify the racial bias in the induction of new administrators.

However, much of the past needed to be done away with. For instance, a democratic system did not require an expensive administration meant for forcefully implementing authoritarian policies. Local authorities in South Africa were spending a major percentage of their expenses on personnel. In 1996-7, the expenditure was calculated to be approximately R10.7 billion, 33.5% of the net expenditure. Salaries in the substructures of Durban too seem to form a large part of the operating expenditure. The Durban Metropolitan Council spent nearly R 700 million on salaries and wages while the respective sub-structure spent a high percentage ranging from 36% to 52%.

But the induction of new administrators and the reorientation of the old guards too required expenditure on capacity building and training programs. Training programs were needed to avoid a situation where inexperienced staff assumed positions of serious responsibility without corresponding any experience. In

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many instances, where inexperienced staff was not in a position to cope with the daunting challenges of local government transition, the services of the previous staff was taken as consultants to municipalities.

Readjustment to a democratic set-up also entailed changing power equations between the democratic representatives and the bureaucracy. The transformation also sought to strengthen the authority of the elected councilors over the officials. But this did not in practice put an end to some senior officials developing serious differences with the councilors. While some senior officials often overstepped their administrative portfolio and engaged in the political terrain, some politicians involved themselves with administration functions. This has resulted in bitter confrontation between officials and councilors.

9. Concluding Points

Much of the local government transition process was undertaken under the NP government and consecutively the Government of National Unity (GNU) headed by the ANC after the 1994 National elections. The negotiations at the national and local level between 1990-1996 recognized that local government was to be an important arena for change in the new democratic set-up. It is however important to note that the main focus of the negotiations in the transitional phase remained de-racialization and democratization of the apartheid cities. In that respect, the transition process as reflected in the case of Durban achieved substantial success. The local transformation involved phasing out of the racial structures, rationalization of un-equal and confused local boundaries, and attempts to reform the local financial and bureaucratic systems. It also ensured that the new democratic local set-up was representative of both the interests of the 'majority' and the 'minorities'. However, much in the local structures were left as transitional arrangements.

The NP and other conservative influence in the talks gave local government a status unprecedented in South African local government history. The spokespersons for decentralized structures did not just exist in the NP but were as vociferous among the civic movement, local government, city associations, and
even within the ANC. However, the ANC remained cautious of the fact that 'local autonomy' implied retaining old power relations that could come in the way of achieving urgent and equitable redistribution of resources and services. Thus, while the LGTA and the Interim Constitution reflected a determination to promote democracy at the grassroots level and establish a representative, non-racial, and accountable local government, the role and status of local government in South Africa remained unclear during the transitional period.