

Chapter 10 Local Government

Establishment and status of local government

140. (1) Local government shall be established for residents of areas demarcated by law.
- (2) Any law passed by a competent legislature providing for or relating to local government may make provision for categories of metropolitan, urban and rural governments with the differentiated powers, functions and structures according to considerations of demography, economy, physical and environmental conditions and other factors which justify or necessitate such categories.
- (3) A local government shall be autonomous and within the limits prescribed by law, shall be entitled to regulate its affairs.
- (4) A competent legislature shall not encroach on the powers, functions and structure of a local government to such an extent as to compromise the fundamental status, purpose and character of local government.
- (5) A bill of a competent legislature which materially affects the status, boundaries, powers and functions of local government shall be published for comment in the Government Gazette or the Provincial Gazette as the case may be, and a local government, interested persons or groups of persons affected thereby, including organised local government shall be given a reasonable opportunity to make written representations in regard thereto to the legislature concerned.

Powers and functions of local government

141. (1) The powers, functions and structures of local government shall be determined by law.
- (2) A local government shall have powers and functions to provide such services as may be necessary to maintain and promote the wellbeing of all persons within the area of the local government.

- (3) A local government shall to the extent determined in any applicable law make provision for access by all persons residing within its area of jurisdiction to water, sanitation, transportation facilities, electricity, primary health, education, housing and security, within a safe and healthy environment: provided that such services and amenities are rendered in a sustainable manner and are financially and physically practicable.
- (4) A local government shall have the power to make by laws not inconsistent with an Act of Parliament or a provincial law.
- (5) A local government shall have executive powers which shall allow it to function effectively.
- (6) A local government may, in its discretion by means of a council resolution, provide for the delegation of specified functions to local bodies or submunicipal entities within its area of jurisdiction as prescribed and regulated in law where, in the opinion of the council, such delegation shall facilitate or enhance the provision or administration of services, the adherence to municipal by laws or, more generally, further good governance in the public interest: Provided that:-
 - (a) such delegation shall not be inconsistent with provincial and or national legislation; and
 - (b) such delegation shall not constitute the abrogation by the local authority of its primary political responsibilities.

142. Council resolutions

A resolution of a council of a local government pertaining to the budget shall be taken by a two-thirds majority, and a resolution of such council pertaining to town planning shall be taken by an absolute majority of all councillors.

143. Executive Committee

A council of a local government shall elect according to a system of proportional representation from amongst its members an executive committee to exercise such powers and perform such duties and functions determined by such council: Provided that -

- (a) the council shall determine the number of members of and the quorum for the

executive committee;

- (b) the executive committee shall exercise its powers and perform its functions and duties on the basis of consensus: Provided that where consensus cannot be achieved, any resolution of the executive committee shall be taken by a two-thirds majority; and
- (c) the executive committee may, instead of exercising such power or performing such duty or function, submit its report and recommendation to the council concerned for its decision in the matter.

Administration and finance

144. (1) The local government shall ensure that its administration is based on the sound principles of public administration, good government and public accountability so as to render efficient services to the persons within its area of jurisdiction and effective administration of its affairs.
- (2) A local government shall, subject to conditions prescribed by law passed by a competent legislature after taking into consideration recommendations of the Financial and Fiscal Commission, be competent to levy and recover such property rates, levies, fees, taxes and tariffs as may be necessary to exercise its powers and perform its duties and functions : provided that within each local government such rates, levies, fees, taxes and tariffs shall be based on a uniform structure for its area of jurisdiction.
- (3) A local government shall be entitled to an equitable allocation by the provincial government of funds and the Financial and Fiscal Commission shall make recommendations regarding criteria for such allocations taking into account the different categories of local government referred to in section 140 (2).

Elections

145. (1) A local government shall be elected democratically and such election shall take place in terms of provincial legislation and at intervals of not less than 3 and not more than 5 years: provided that the first local government elections after the coming into force of this Constitution shall take place on the same day.

- 2 (a) The electoral system for a local government shall include both proportional and ward representation and shall be regulated by a competent legislature.
- 2 (b) For the purposes of the first election for members of a local government, the area of jurisdiction of such local government shall be divided into wards in accordance with the applicable law.
- 2 (c) Forty percent of the members of local government shall be elected according to the system of proportional representation applying at the national level and sixty percent of the members shall be elected on the basis that each such member shall represent a ward as contemplated in paragraph (b): Provided that where the area of jurisdiction of the local government includes -
- (i) the area of jurisdiction of any institution or body contemplated in section 84 (1) (f) of the Provincial Government Act, 1961 (Act No 32 of 1961); and
 - (ii) any other area not falling within the area of jurisdiction of the institution or body referred to in subparagraph (i).

No area referred to in subparagraphs (i) and (ii) shall be allocated less than half of the total number of wards of the local government concerned

- (3) A voter for the election of a local government shall be -
- (a) a natural person who -
 - (i) is eligible to vote in terms of section 6 of this Constitution ;
 - (ii) is ordinarily resident within the area of jurisdiction of the local government for which such election is held, or under law is liable for the repayment of assessment rates, rent, service charges or levies to the local government concerned;
 - (iii) is registered on the voter's role of the local government.
- (4) A voter shall not have more than one vote per local government.
- (5) No person shall be elected a member of a local government if he or she -
- (a) is not eligible to vote in terms of subsection (3); and

- (b) is an elected member of any other legislature; or
- (c) does not qualify to be elected as a member of the National Assembly under this Constitution; or
- (d) is an employee of a local government unless, with due regard to the public interest, exemption of disqualification is given by the executive council of the province and proof of such exemption accompanies the nomination of such person; and
- (e) is disqualified in terms of any other law.

Code of conduct

146. An enforceable code of conduct for members and officials of local government shall be provided for by law.

Transitional arrangement

147. (1) Until elections have been held in terms of the Local Government Transition Act, 1993, restructuring of local government shall not take place otherwise than in accordance with the provisions of that Act.
- (2) Restructuring of local government which takes place as a result of legislation enacted by a competent authority after the election referred to in subsection (1) have been held, shall be effected in accordance with the principles embodied in this chapter and the Constitution as a whole.