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CONSTITUTIONAL ASSEMBLY

FRAMEWORK ON LOCAL GOVERNMENT

REVISED VERSION

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THEME COMMITTEE 3

FRAMEWORK ON LOCAL GOVERNMENT

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a) **Introduction**

The drafting of the provisions of the future constitution is governed, to a considerable extent, by the provisions of the Constitutional Principles found in Schedule 4 of the Constitution of the Republic of South Africa, Act 200 of 1993. Submissions on local government as well as arguments and other inputs relating to the matter of local government must be seen in the light of the relevant Constitutional Principles.

b) **Relevant Constitutional Principles**

1. Constitutional **Principle XVI** provides for the establishment of local government. It provides that government shall be structured at national, provincial and local levels.

2. Such government shall be democratic. Constitutional **Principle I** states that the Constitution shall provide for a democratic system of government.

3. Constitutional **Principle IX** requires that there shall be open and accountable administration at all levels of government, which includes the local government level.

4. To enable each level of government to function effectively, Constitutional **Principle XX** requires that it be given the necessary legislative and executive powers. The framework for local government powers shall be set out in the Constitution, in terms of Constitutional **Principle XXIV**. Such framework shall make provision for appropriate fiscal powers and functions for different categories of local government - Constitutional **Principle XXV**.

5. It appears that it is not required that the Constitution or the provincial constitutions should have provisions dealing with comprehensive powers of local governments. Constitutional **Principle XXIV** provides that the comprehensive powers, functions and other features of local government shall be set out in parliamentary statutes or in provincial legislation or in both.

6. In thinking about local government it is necessary to take into consideration traditional local authorities. Constitutional **Principle XIII (1)** provides that the status and role of traditional leadership, according to

indigenous law, shall be recognised. It also requires recognition of indigenous law.

7. It should also be borne in mind that in terms of **Schedule 6** to the Constitution, the area of local government falls within the legislative competencies of the provinces.

c) **Specific Questions**

The institution of local government aims, among other things, at bringing government closer to the people so that, to a limited degree, they can be part of the machinery that makes decisions which impact on their immediate needs, activities and well-being. Local government is about the rendering of services to the local communities. Local communities differ and their needs differ from community to community.

Since the area of local government resorts under the competencies of provinces, it seems that the provisions of the national constitution, relating to local government matters, should be limited only to the framework for local government powers.

1. *Q. To ensure, in general, that local government does possess the necessary powers which will enable it to function effectively, what legislative and executive powers should be allocated to the local government by the Constitution or what powers should the provinces be obliged to give to local government?*

The applicable Constitutional Principle is CP XX.

2. *Q. Seeing that local government falls under the competencies of the provinces, should the national constitution provide for a framework within which local governments shall be structured? What minimum requirements must be laid down for local government to ensure that a democratic system which is accountable is maintained throughout?*

Section 174 (2) of the 1993 Constitution provides that a law of a competent authority may make provision for categories of metropolitan, urban and rural governments with differentiated powers, functions and structures according to considerations of demography, economy, physical and environmental conditions.

3. *Q. Should local government enjoy any degree of autonomy, and if so, what should be the nature of such autonomy and what degree of*

local government autonomy should be provided for in the national constitution?

This question is asked as a result of submissions from civil society as well as some of the submissions of political parties which stress that there should be local government autonomy. Is it necessary that this autonomy be ensured regarding local governments in all provinces, without encroaching upon the competencies of the provinces but ensuring that provinces do not take away that autonomy? Section 174 (3) of the interim Constitution provides that local government shall be autonomous and shall be able to regulate its affairs within the limits of the law.

4. *Q. In establishing local authorities, especially in rural areas wherein exists the system of traditional leadership, how should the system of traditional leaders be accommodated in local government structures?*

Constitutional Principle XIII is applicable here. Section 182 of the present Constitution of the Republic of South Africa provides that a traditional leader resident within the area of a local authority shall be an *ex officio* member of such local authority.

5. *Q. To ensure democratic government, what electoral system should be applied by local authorities?*
6. *Q. What fiscal powers, provisions or arrangements, in respect of local government, should be included in the national constitution to ensure the financial viability of local government?*

Constitutional Principle XXVI provides that each level of government shall have a constitutional right to an equitable share of revenue collected nationally so as to ensure that provinces and local governments are able to provide basic services and execute the functions allocated to them.

7. *Q. Is it desirable that local government be enabled to perform certain functions and to exercise certain powers of either the provincial government or the national government or both, on a delegated or an agency basis?*

Constitutional Principle XIX makes provision for the performance of functions and the exercise of powers by one level of government on behalf of another on an agency or delegation basis. However, this applies to the relationship between the national government and the

provincial government. The principles are silent regarding the relationship between the provincial and local governments. Considering that the Constitution and the Constitutional Principle emphasise effectiveness in the rendering of service, I think it is conceivable that a downward delegation, at least, would be permissible whereby certain powers or functions or both powers and functions of a provincial or the national government might be delegated to local government. END.