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**TWENTY-NINE**

**C O N S T I T U T I O N  
R E P O R T S**

**TWENTIETH REPORT**

**4 NOVEMBER 1993**

**EMBARGOED UNTIL TABLING IN THE  
NEGOTIATING COUNCIL**

**TWENTIETH REPORT OF THE TECHNICAL COMMITTEE  
ON CONSTITUTIONAL ISSUES  
TO THE NEGOTIATING COUNCIL  
4 NOVEMBER 1993**

**CHAPTER 10  
Local Government**

*(As reformulated in accordance with the original draft of Chapter 10 and the instructions of the Negotiating Council.)*

**Establishment and status of local government.**

140. (1) Local government shall be established for the residents of areas demarcated in terms of law and the powers, functions and structures of local government shall be regulated by law.

(2) A local government shall be autonomous and shall be entitled to regulate its affairs within the limits prescribed by law.

(3) A provincial law 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, revenue, physical and environmental conditions and other factors which justify or necessitate such categories.

(4) The status of a local government shall not be changed without prior consultation with the local government concerned.

(5) A bill of a provincial legislature or Parliament which materially affects the 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 shall be given a reasonable opportunity to make written representations in regard thereto to the legislature concerned.

(6) A local government shall have powers and functions to provide such services as may be necessary to maintain and promote the wellbeing of the residents of the area of the local government: provided that, subject to the provisions of this Constitution, the said powers and functions shall not be less than those powers and functions of local government that exist at the date immediately prior to the commencement of this Constitution.

(7) The local government shall ensure that its administration is based on sound principles of public administration, good government and public accountability so as to render efficient services to the inhabitants within its area of jurisdiction and effective administration of its affairs.

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

(9) Actions affecting the physical environment of a local government area shall be undertaken only after consultation with the local government concerned and shall not be carried out against the wishes of such local government unless such actions are reasonably required in the national interest.

(10) A local government shall have the power to make bylaws not inconsistent with national and provincial laws and executive powers which shall allow it to function effectively.

(11) A local government shall be elected democratically and such elections shall take place in terms of provincial legislation and at intervals of not less than 3 nor more than 5 years: provided that, within any province, the first local government elections after the coming into force of this Constitution shall take place on the same day.

(12) No person shall be elected a member of a local government if he or she -

(a) is an elected member of any other legislature; or

(b) does not qualify to be elected as a member of the National Assembly under this Constitution; or

- (c) his or her spouse is an employee of a local government unless, with due regard to the public interest, exemption of this qualification is given by the Executive Council of the province and proof of such exemption accompanies the nomination of such person; or
- (d) is disqualified in terms of any other law.
- (13) A voter for the election of a local government shall be -
- (a) a natural person who -
- (i) is a South African citizen or has been a lawful resident of the Republic for a continuous period of at least five years immediately prior to the date of the election; and
  - (ii) is at least 18 years of age ; and
  - (iii) is not subject to any disqualifications mentioned in section 42 or in any other law; and
  - (iv) 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 payment of assessment rates, service charges or levies to the local government concerned.
- (b) a juristic person which is -
- (i) the owner of immovable property within the area of jurisdiction of the local government concerned;
  - (ii) liable for the payment of assessment rates, service charges or levies, and
  - (iii) registered on the voters' roll of the local government concerned.
- (14) A voter shall not have more than one vote per local government.
- (15) The electoral system for a local government shall include both proportional and ward representation and shall be regulated in provincial legislation.

(16) A local government shall have the right of recourse to the Constitutional Court in any matter relating to the encroachment or threatened encroachment upon its autonomy under this Constitution or any other law.

(17) A local government shall make provision for access by all South African citizens residing within its jurisdiction to water, sanitation, transportation facilities, electricity, primary health, education, housing and security: provided that such services are rendered in an environmentally sustainable manner and are financially and physically practicable.

### **Local government finance**

141. (1) 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 such rates, levies, fees, taxes and tariffs shall be levied uniformly.

(2) 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(3).

### **Continuation of local governments**

**NOTE:** The document produced bilaterally between the South African Government and the ANC that was submitted to us, proposed the following wording for this provision:

*The Local Government Transition Act, 1993, shall regulate restructuring at local government level until after elections at local level have taken place as provided in section 10 of the Local Government Transition Act, 1993, whereupon the function of restructuring local government shall, subject to the provisions of this Act (the Constitution), vest in the national and SPR legislatures which may amend or repeal the Local Government Transition Act, 1993: Provided that the national and SPR legislatures shall maintain the principles embodied in this Chapter and this Act as a whole (the Constitution).*

We have not drawn up a corresponding provision, because it is not completely clear to us what the intention of the parties involved is. We would however like to make the following comments:

- (a) Mention of the "Local Government Transition Act, 1993" in the Constitution may have the effect of entrenching its provisions until elections are held at local government level.
- (b) We do not know to what extent it is certain that a Local Government Transition Act will be adopted before the coming into force of the Constitution or what it will provide for.
- (c) The entrenchment of a Local Government Transition Act in the proposed manner will postpone the assumption by the national and provincial governments of full competence over local government in terms of the Constitution (section 118 and Schedule 9) until elections are held at local government level.
- (d) It is not clear to us what the last proviso is intended to mean.