

## **CHAPTER 7**

### **LOCAL GOVERNMENT**

#### **Status of municipalities**

151. (1) The local sphere of government consists of municipalities, which must be established for the whole of the territory of the Republic.
- (2) The executive and legislative authority of a municipality is vested in its Municipal Council.
- (3) A municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution.
- (4) The national or a provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions.

#### **Objects of local government**

152. (1) The objects of local government are—
- (a) to provide democratic and accountable government for local communities;
  - (b) to ensure the provision of services to communities in a sustainable manner;
  - (c) to promote social and economic development;
  - (d) to promote a safe and healthy environment; and
  - (e) to encourage the involvement of communities and community organisations in the matters of local government.
- (2) A municipality must strive, within its financial and administrative capacity, to achieve the objects set out in subsection (1).

#### **Developmental duties of municipalities**

153. A municipality must—
- (a) structure and manage its administration and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community; and
  - (b) participate in national and provincial development programmes.

## Municipalities in co-operative government

154. (1) The national government and provincial governments, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.
- (2) Draft national or provincial legislation that affects the status, institutions, powers or functions of local government must be published for public comment before it is introduced in Parliament or a provincial legislature, in a manner that allows organised local government, municipalities and other interested persons an opportunity to make representations with regard to the draft legislation.

## Establishment of municipalities

155. (1) There are the following categories of municipality:
- (a) Category A: A municipality that has exclusive municipal executive and legislative authority in its area.
  - (b) Category B: A municipality that shares municipal executive and legislative authority in its area with a category C municipality within whose area it falls.
  - (c) Category C: A municipality that has municipal executive and legislative authority in an area that includes more than one municipality.
- (2) National legislation must define the different types of municipality that may be established within each category.
- (3) National legislation must—
- (a) establish the criteria for determining when an area should have a single category A municipality or when it should have municipalities of both category B and category C;
  - (b) establish criteria and procedures for the determination of municipal boundaries by an independent authority; and
  - (c) subject to section 229, make provision for an appropriate division of powers and functions between municipalities when an area has municipalities of both category B and category C. A division of powers and functions between a category B municipality and a category C municipality may differ from the division of powers and functions between another category B municipality and that category C municipality.
- (4) The legislation referred to in subsection (3) must take into account the need to provide municipal services in an equitable and sustainable manner.

- (5) Provincial legislation must determine the different types of municipality to be established in the province.
- (6) Each provincial government must establish municipalities in its province in a manner consistent with the legislation enacted in terms of subsections (2) and (3) and, by legislative or other measures, must—
  - (a) provide for the monitoring and support of local government in the province; and
  - (b) promote the development of local government capacity to enable municipalities to perform their functions and manage their own affairs.

(6A) .....

[Sub-s. (6A) inserted by s. 1 of the Constitution Third Amendment Act of 1998 and deleted by s. 2 of the Constitution Twelfth Amendment Act of 2005.]

- (7) The national government, subject to section 44, and the provincial governments have the legislative and executive authority to see to the effective performance by municipalities of their functions in respect of matters listed in Schedules 4 and 5, by regulating the exercise by municipalities of their executive authority referred to in section 156(1).

## **Powers and functions of municipalities**

156. (1) A municipality has executive authority in respect of, and has the right to administer—
- (a) the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5; and
  - (b) any other matter assigned to it by national or provincial legislation.
- (2) A municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer.
- (3) Subject to section 151(4), a by-law that conflicts with national or provincial legislation is invalid. If there is a conflict between a bylaw and national or provincial legislation that is inoperative because of a conflict referred to in section 149, the by-law must be regarded as valid for as long as that legislation is inoperative.
- (4) The national government and provincial governments must assign to a municipality, by agreement and subject to any conditions, the administration of a matter listed in Part A of Schedule 4 or Part A of Schedule 5 which necessarily relates to local government, if—

- (a) that matter would most effectively be administered locally; and
  - (b) the municipality has the capacity to administer it.
- (5) A municipality has the right to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions.

## Composition and election of Municipal Councils

157. (1) A Municipal Council consists of—
- (a) members elected in accordance with subsections (2) and (3); or
  - (b) if provided for by national legislation—
    - (i) members appointed by other Municipal Councils to represent those other Councils; or
    - (ii) both members elected in accordance with paragraph (a) and members appointed in accordance with subparagraph (i) of this paragraph.

[Sub-s. (1) substituted by s. 1 (a) of the Constitution Eighth Amendment Act of 2002 and by s. 3 of the Constitution Fifteenth Amendment Act of 2008.]

- (2) The election of members to a Municipal Council as anticipated in subsection (1)(a) must be in accordance with national legislation, which must prescribe a system—
- (a) of proportional representation based on that municipality's segment of the national common voters roll, and which provides for the election of members from lists of party candidates drawn up in a party's order of preference; or
  - (b) of proportional representation as described in paragraph (a) combined with a system of ward representation based on that municipality's segment of the national common voters roll.
- (3) An electoral system in terms of subsection (2) must result, in general, in proportional representation.

[Sub-s. (3) substituted by s. 1(b) of the Constitution Eighth Amendment Act of 2002.]

- (4) (a) If the electoral system includes ward representation, the delimitation of wards must be done by an independent authority appointed in terms of, and operating according to, procedures and criteria prescribed by national legislation.
- (b) . . . . .

[Para. (b) deleted by s. 3 of the Constitution Twelfth Amendment Act of 2005.]

[Sub-s. (4) substituted by s. 2 of the Constitution Third Amendment Act of 1998.]

- (5) A person may vote in a municipality only if that person is registered on that municipality's segment of the national common voters roll.
- (6) The national legislation referred to in subsection (1)(b) must establish a system that allows for parties and interests reflected within the Municipal Council making the appointment, to be fairly represented in the Municipal Council to which the appointment is made.

## Membership of Municipal Councils

158. (1) Every citizen who is qualified to vote for a Municipal Council is eligible to be a member of that Council, except—
- (a) anyone who is appointed by, or is in the service of, the municipality and receives remuneration for that appointment or service, and who has not been exempted from this disqualification in terms of national legislation;
  - (b) anyone who is appointed by, or is in the service of, the state in another sphere, and receives remuneration for that appointment or service, and who has been disqualified from membership of a Municipal Council in terms of national legislation;
  - (c) anyone who is disqualified from voting for the National Assembly or is disqualified in terms of section 47(1)(c), (d) or (e) from being a member of the Assembly;
  - (d) a member of the National Assembly, a delegate to the National Council of Provinces or a member of a provincial legislature; but this disqualification does not apply to a member of a Municipal Council representing local government in the National Council; or
  - (e) a member of another Municipal Council; but this disqualification does not apply to a member of a Municipal Council representing that Council in another Municipal Council of a different category.
- (2) A person who is not eligible to be a member of a Municipal Council in terms of subsection (1)(a), (b), (d) or (e) may be a candidate for the Council, subject to any limits or conditions established by national legislation.
- (3) Vacancies in a Municipal Council must be filled in terms of national legislation.

[Sub-s. (3) added by s. 4 of the Constitution Fifteenth Amendment Act of 2008.]

## Terms of Municipal Councils

159. (1) The term of a Municipal Council may be no more than five years, as determined by national legislation.
- (2) If a Municipal Council is dissolved in terms of national legislation, or when its term expires, an election must be held within 90 days of the date that Council was dissolved or its term expired.
- (3) A Municipal Council, other than a Council that has been dissolved following an intervention in terms of section 139, remains competent to function from the time it is dissolved or its term expires, until the newly elected Council has been declared elected.

[S. 159 substituted by s. 1 of the Constitution Second Amendment Act of 1998.]

## Internal procedures

160. (1) A Municipal Council—
  - (a) makes decisions concerning the exercise of all the powers and the performance of all the functions of the municipality;
  - (b) must elect its chairperson;
  - (c) may elect an executive committee and other committees, subject to national legislation; and
  - (d) may employ personnel that are necessary for the effective performance of its functions.
- (2) The following functions may not be delegated by a Municipal Council:
  - (a) The passing of by-laws;
  - (b) the approval of budgets;
  - (c) the imposition of rates and other taxes, levies and duties; and
  - (d) the raising of loans.
- (3)
  - (a) A majority of the members of a Municipal Council must be present before a vote may be taken on any matter.
  - (b) All questions concerning matters mentioned in subsection (2) are determined by a decision taken by a Municipal Council with a supporting vote of a majority of its members.
  - (c) All other questions before a Municipal Council are decided by a majority of the votes cast.

- (4) No by-law may be passed by a Municipal Council unless—
  - (a) all the members of the Council have been given reasonable notice; and
  - (b) the proposed by-law has been published for public comment.
- (5) National legislation may provide criteria for determining—
  - (a) the size of a Municipal Council;
  - (b) whether Municipal Councils may elect an executive committee or any other committee; or
  - (c) the size of the executive committee or any other committee of a Municipal Council.
- (6) A Municipal Council may make by-laws which prescribe rules and orders for—
  - (a) its internal arrangements;
  - (b) its business and proceedings; and
  - (c) the establishment, composition, procedures, powers and functions of its committees.
- (7) A Municipal Council must conduct its business in an open manner, and may close its sittings, or those of its committees, only when it is reasonable to do so having regard to the nature of the business being transacted.
- (8) Members of a Municipal Council are entitled to participate in its proceedings and those of its committees in a manner that—
  - (a) allows parties and interests reflected within the Council to be fairly represented;
  - (b) is consistent with democracy; and
  - (c) may be regulated by national legislation.

## Privilege

161. Provincial legislation within the framework of national legislation may provide for privileges and immunities of Municipal Councils and their members.

## Publication of municipal by-laws

162. (1) A municipal by-law may be enforced only after it has been published in the official gazette of the relevant province.
- (2) A provincial official gazette must publish a municipal by-law upon request by the municipality.
- (3) Municipal by-laws must be accessible to the public.

### Organised local government

163. An Act of Parliament enacted in accordance with the procedure established by section 76 must—
- (a) provide for the recognition of national and provincial organisations representing municipalities; and
  - (b) determine procedures by which local government may—
    - (i) consult with the national or a provincial government;
    - (ii) designate representatives to participate in the National Council of Provinces; and
    - (iii) participate in the process prescribed in the national legislation envisaged in section 221(1)(c).

[S. 163(b) substituted by s. 4 of the Constitution Seventh Amendment Act of 2001.]

### Other matters

164. Any matter concerning local government not dealt with in the Constitution may be prescribed by national legislation or by provincial legislation within the framework of national legislation.